
**PRE-OFFENSE MONITORING OF
POTENTIAL JUVENILE OFFENDERS:
AN EXAMINATION OF THE
LOS ANGELES COUNTY PROBATION
DEPARTMENT’S NOVEL SOLUTION TO
THE INTERRELATED PROBLEMS OF
TRUANCY AND (JUVENILE) CRIME**

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“An ounce of [crime] prevention is worth a pound of cure.”¹

INTRODUCTION

The Los Angeles County Sheriff’s Department (LASD) designated Southeast and East Los Angeles as intensive juvenile gang and drug infestation areas, with high juvenile crime rates.² Predictably, these areas have some of the highest incidents of truancy and drop-out rates within Los Angeles County. For example, although one-third of all students who

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1. Wolfgang Mieder, “*An Apple a Day Keeps the Doctor Away:*” *Traditional and Modern Aspects of English Medical Proverbs*, 1 DE PROVERBIO 1, 9 (1995) (visited Mar. 10, 2000) <<http://info.utas.edu.au/docs/flonta/>> (citing BENJAMIN FRANKLIN, POOR RICHARD’S ALMANAC (1735)). See also, e.g., *In re Chicago, Rock Island & Pac. R.R. Co.*, 756 F.2d 517, 521 (7th Cir. 1985) (Posner, J.).

2. See Interview with Eddie Velasquez, Administrative Assistant to the Superintendent of MUSD (former Principal of Bell Gardens Intermediate School (BGI); former LASD deputy sheriff) in Montebello, Cal. (Nov. 20, 1998).

enroll in high school nationally drop out before graduation,³ in Los Angeles County this rate reaches as high as sixty-three percent for some minority students, and averages approximately forty percent.⁴ In the Montebello Unified School District (MUSD),⁵ the overall minority high school drop-out rate reaches as high as fifty percent.⁶

Although most educators and law enforcement personnel realize the long-established connection between juvenile crime and school attendance (or truancy), few law enforcement or educational programs have attempted to link, and none has succeeded in linking, truancy prevention with juvenile crime prevention.⁷ Cognizant of this lack, the Los Angeles County Probation Department (LACPD) created and implemented the Community Early Identification Program (CEIP), an innovative program that uses a unique combination of state statutes to combat truancy, and consists primarily of school-based, pre-offense monitoring of potential juvenile offenders.⁸ In four sections, this Note details the truancy-jvenile crime problem, explains how CEIP operates, examines possible constitutional problems with its procedures, and by comparing it to other truancy-prevention programs, traces CEIP's remarkable success in eliminating truancy and reducing juvenile crime to early identification and intervention, and collaboration among law enforcement, judicial entities, and schools.

The Note begins in Part I by reviewing the contemporary problems of juvenile crime and truancy and their connection. Part II examines five of the main truancy-prevention programs used in California, such as Abolish

3. See JOHN WIRT, TOM SNYDER, JENNIFER SABLE, SUSAN P. CHOY, YUPIN BAE, JANIS STENNET, ALLISON GRUNER & MARIANNE PERIE, U.S. DEP'T OF EDUCATION, *THE CONDITION OF EDUCATION 1998*, at 30-43 (Rebecca Pratt & Ginger Rittenhouse eds., 1998). Nationwide, eight percent of public high school students were absent daily. See NAT'L CTR. FOR EDUC. STATISTICS, U.S. DEP'T OF EDUC., *Schools and Staffing Survey*, in *THE CONDITION OF EDUCATION 1996*, Supp. tbl. 42-1 (1996).

4. See INFORMATION ANALYSIS UNIT, L.A. COUNTY OFFICE OF EDUC., *THE CONDITION OF PUBLIC EDUCATION IN LOS ANGELES COUNTY 1996*, at tbl. 4.2 [hereinafter L.A. SCHOOLS 1996] (showing graduation rates for Los Angeles County Public School students for 1981-96). See generally Charles Edward Pell, *The Effects in California of the Legislative Cuts in Adult Education on High School Student Achievement and Satisfaction* (1996) (unpublished M.Ed. thesis, Whittier College School of Education) (on file with Whittier College Main Library) (listing the different drop-out rates for the Montebello Unified School District).

5. The MUSD has 18 elementary schools, 6 intermediate schools, 4 high schools, and 4 adult schools. See *Finger Tip Facts, 1997-1998 MONTEBELLO UNIFIED SCH. DIST.* (1998).

6. See Pell, *supra* note 4, at 46.

7. See discussion *infra* Part I. See also, e.g., U.S. DEP'T OF EDUC. & U.S. DEP'T OF JUSTICE, *MANUAL TO COMBAT TRUANCY 1* (1996) ("In Minneapolis, daytime crime dropped 68 percent after police began citing truant students. In San Diego, 44 percent of violent juvenile crime occurs between 8:30 a.m. and 1:30 p.m.").

8. Incidentally, CEIP won the "Most Innovative" program award from the LACPD in 1995.

Chronic Truancy (ACT) and the use of “contributing to the delinquency of a minor” statutes, and then identifies each program’s major shortcomings.

Part III introduces Los Angeles County’s CEIP, which the LACPD currently operates in the MUSD and other school districts, and examines each of its different components. Although most people envision probation officers entering the scene after a person has been adjudicated guilty (which is the most common method of their involvement), CEIP employs probation officers to battle children’s truancy, by use of informal probation, before any criminal involvement has occurred. This Part traces CEIP’s superiority over the aforementioned truancy-prevention programs to: 1) early intervention—before substantial problems have surfaced; 2) vigilant supervision—conducting family, home, and school visits; and 3) collaboration among court, educational, and law enforcement organizations. It concludes by focusing on CEIP’s success through analysis and comparison of the data from CEIP to the other anti-truancy programs, paying specific attention to the improvement in attendance and graduation rates within Bell Gardens Intermediate School (BGI), MUSD, and Los Angeles County.

Part IV identifies two potential concerns with the procedures utilized to enroll children in CEIP—in particular possible violations of juveniles’ procedural due process rights. That is, once a child qualifies as a truant, the probation officer can file against the child in juvenile court and/or file against the parent for “contributing to the delinquency” of her child. Further, any such negative adjudication against the child could possibly be used as an aggravating factor against her under, for example, the Federal Sentencing Guidelines if she is later convicted as an adult. Accordingly, many parents have argued that their participation in CEIP, as well as that of their child, was involuntary because of the fear that they would be prosecuted if they declined to participate. To determine the validity of these complaints, this Part reviews briefly the history of juveniles’ due process rights, then examines and applies the relevant case law and legal literature to evaluate whether these past CEIP participants’ complaints of involuntary CEIP initiation have merit by analogizing to plea bargain and California contractual jurisprudence. This Part concludes by recommending measures to add to CEIP’s procedures that should remedy any and all of their alleged constitutional infirmities without diminishing their effectiveness.

This Note concludes that CEIP is superior to the other anti-truancy programs because of its demonstrable success in reducing truancy and

preventing any (or further) involvement of the juveniles with the criminal justice system, while nevertheless comporting with due process.

I. THE PROBLEM

“Overall, crime and crime victimization rates have fallen sharply since at least 1980 (albeit with fluctuations) but, within that decline, crime by . . . young people has proportionately increased.”⁹ Accordingly, juvenile crime represents a major issue in contemporary society,¹⁰ especially in view of the dramatic increase in violent juvenile crime over the past decade.¹¹ The number of juvenile Violent Crime Index¹² arrests in 1996 was sixty percent

9. THE HANDBOOK OF CRIME & PUNISHMENT 8 (Michael Tonry ed., 1998).

10. See, e.g., Hunter Hurst, *A Closer Look at Juvenile Violence?*, JUV. & FAM. JUST. TODAY, (Spring 1993) (“There is something about youth violence [today] that is far more frightening to all of us than at any time in recent history.”).

11. See PATRICIA MCFALL TORBET, U.S. DEP’T OF JUSTICE, STATE RESPONSES TO SERIOUS AND VIOLENT JUVENILE CRIME I (1996) (citing the increasing violent crime arrest rate of juveniles). See also Anne L. Stahl, *Drug Offense Cases in Juvenile Court, 1986-1995*, U.S. DEP’T OF JUSTICE, Fact Sheet No. 81, June 1998 (“Juvenile arrests and juvenile court cases involving drug offenses more than doubled between 1991 and 1995”); MELISSA SICKMUND, HOWARD N. SNYDER & EILEEN POE-YAMAGATA, U.S. DEP’T OF JUSTICE, JUVENILE OFFENDERS AND VICTIMS: 1997 UPDATE ON VIOLENCE: STATISTICS SUMMARY, August 1997 (between 1985 and 1994, juvenile “[c]ases involving crimes against persons were up 98%, Violent Crime Index offenses (a subset of person offenses) were up 98%, and weapons law violations were up 156%”); Eric J. Fritsch & Craig Hemmens, *An Assessment of Legislative Approaches to the Problem of Serious Juvenile Crime: A Case Study of Texas 1973-1995*, 23 AM. J. CRIM. L. 563, 564 & n.1 (1996) (“Increased numbers of juveniles are being arrested, especially for violent offenses.”); George E. Furtado, Esq., *Juvenile Hearing Boards: Communities Respond to Juvenile Crime*, 44-MAY R.I. B.J. 17, 19 n.21 (1996) (“According to the National Fire Protection Association, children and teenagers constituted 55% of arson arrests in 1994, up about 40% over the last 15 years.”); Kelly Keimig Elsea, *The Juvenile Crime Debate: Rehabilitation, Punishment, or Prevention*, 5-FALL KAN. J.L. & PUB. POL’Y 135, 135 (1995) (“Crimes of murder, rape, robbery, and assault committed by children have increased by 93% over the last decade.”). But see Lauren D’Ambra, *A Legal Response to Juvenile Crime: Why Waiver of Juvenile Offenders is Not a Panacea*, 2 ROGER WILLIAMS U. L. REV. 277, 277 (1997) (“Some national studies suggest that as low as five percent of violent acts are committed by young people”). It is interesting to note that although the nationwide number of overall arrests for the FBI Crime Index decreased by approximately 45,000 between 1991 and 1995, the number of juvenile arrests for the same period increased by approximately 35,000. See *Easy Access to FBI Arrest Statistics: 1991-1995* (visited Feb. 5, 1999) <<http://www.ncjrs.org/ojjhome.htm>>.

Los Angeles County’s juvenile violent crime arrest and teen violent death rates are above both the national and state levels. See L.A. SCHOOLS 1996, *supra* note 4, at tbl. 7.1. Gang crime has increased 34% since 1990. See *id.* at tbl. 7.2 (showing the “Children’s Score Card” for Los Angeles County). The violent crime victimization rate for persons ages 12 and greater has increased 72% over the same time period. See *id.* at tbl. 7.3.

12. The FBI Violent Crime Index measures, by arrests per 100,000 population, the volume of violent crimes nationwide by monitoring four crimes: murder and nonnegligent manslaughter, forcible rape, robbery, and aggravated assault. See Howard N. Snyder, *Juvenile Arrests 1996*, in OFFICE OF JUV. JUST. & DELINQ. PREVENTION BULLETIN, Nov. 1997, at 4 (Dep’t of Justice, Washington, DC).

above the level measured approximately a decade earlier in 1987.¹³ For example, an estimated 2,851,700 juveniles were arrested in 1996.¹⁴ Between 1978-93, juvenile arrests for murder rose 177%, whereas that rate for adults fell 7%.¹⁵ Furthermore, the 26% anticipated increase in the number of juveniles by 2003 has heralded predictions of a juvenile crime explosion during the next century.¹⁶

Although juveniles continue to commit more serious crimes, probation supervision is often the most severe sanction in juvenile cases.¹⁷ It necessarily follows that the number of juveniles placed on probation continues to skyrocket.¹⁸

A connection between attendance in school (or truancy) and juvenile crime has consistently been established:¹⁹ "If they're not in school, they're

13. See *id.* at 1.

14. See *id.* at 2. That same year, juveniles comprised 15 percent of *all* arrests nationwide for murder and aggravated assault, 24 percent for weapons 32 percent for robbery, and 37 percent for burglary. See *id.* at 4.

15. See Steven D. Levitt, *Juvenile Crime and Punishment*, 106 J. POL. ECON. 1156, 1156 (1998).

16. See Cheri Panzer, *Reducing Juvenile Recidivism Through Pre-Trial Diversion Programs: A Community's Involvement*, 19 J. JUV. L. 186, 192 (1997). See also Furtado, *supra* note 11, at 19 ("The projected rate of violent juvenile crime . . . is expected to double in the next 15 years."). Also, the number of children enrolled in Los Angeles County schools is projected to increase from approximately 1.6 million to 1.7 million by 2005. See JIM PARKER & LUCELY ESCAMILLA, *THE CONDITION OF PUBLIC EDUCATION IN LOS ANGELES COUNTY 1996* (1997).

17. See MELISSA SICKMUND, PH.D., U.S. DEP'T OF JUSTICE, OFFICE OF JUV. JUST. & DELINQ. PREVENTION FACT SHEET #54, *THE JUVENILE DELINQUENCY PROBATION CASELOAD, 1985-1994* (Mar. 1997) ("In 1994 courts with juvenile jurisdiction handled 1.6 million delinquency cases. Probation supervision was the most severe disposition in nearly 539,000 of these cases.").

18. See *id.* ("[C]ases placed on probation grew 32% between 1985 and 1994."); JEFFREY A. BUTTS, PH.D., U.S. DEP'T OF JUSTICE, *THE NATIONAL JUVENILE COURT DATA ARCHIVE: COLLECTING DATA SINCE 1927* (Aug. 1997) ("Between 1960 and 1994, juvenile court delinquency caseloads increased 280%").

19. See, e.g., Alvin W. Cohn, *Juvenile Focus*, FED. PROBATION, Sept. 1997, at 71, 72 (1997) (stating that "juveniles who skip school are more likely to commit crimes. . . . Truancy is a stepping stone to delinquent and criminal activity." (quoting Eileen M. Garry, Official, Office of Juvenile Justice and Delinquency Prevention)); Marcia Johnson, *Juvenile Justice*, 17 WHITTIER L. REV. 713, 768-69 (1996) (evaluating the different juvenile justice programs that are utilized and arguing that "academic failure is a key variable in the characteristics of delinquent juveniles" and that without proper educational tools, the probability increases that "children will acquire serious criminal tendencies and criminal records"); Elsea, *supra* note 11, at 141 ("[T]here appears to be a correlation between juvenile delinquency and . . . educational deficiencies.").

It is clear that truancy is a key risk factor for future delinquency. See James W. Payne, *Our Children's Destiny*, TRIAL, Jan. 1999, at 83, 84 ("[F]ailure to correct the truancy . . . problem leads very predictably to more serious delinquent and sometimes violent behavior."). See also Shay Bilchik, *Breaking the Cycle of Juvenile Crime*, TRIAL, Jan. 1999, at 36, 38 (1999); Marc Le Blanc & Rolf Loeber, *Developmental Criminology Updated*, 23 CRIME & JUST. 115, 129 (1998) ("Child developmental studies offer a firm consensus that particular conduct problems, aggression, lying, truancy, stealing, general problem behavior—are predictive of later delinquency, as are early

going to be on the streets—and they're going to learn all the wrong things.”²⁰ Recognition of this truancy-crime connection led to the creation and implementation of various truancy-prevention programs.

II. PROGRAMS THAT COMBAT TRUANCY

Many school districts, cities, and law enforcement agencies combat truancy by utilizing various programs that rely solely on various California statutes such as the Penal, Welfare and Institutions, and Education Codes.²¹ In order to give a background on the current efforts against truancy, this Part of the Note briefly describes five of the most common anti-truancy programs, highlighting, when necessary, their major problems.

A. HOLDING PARENTS LIABLE USING “CONTRIBUTING” STATUTES

Some approaches place responsibility for student truancy on parents. For example, in September 1988, the California State Legislature amended California Penal Code section 272 to hold parents criminally liable for the truancy of their children.²² Not long thereafter, California taxpayers brought suit, on vagueness and overbreadth grounds, to challenge the constitutionality of section 272's ability to hold parents liable. In the

educational problems.”); Jane Watson, *Crime and Juvenile Delinquency Prevention Policy: Time for Early Childhood Intervention*, 2 GEO. J. ON FIGHTING POVERTY 245, 250 (1995) (“[S]chool-related factors suspected to be significant [predictors of delinquency] are grade retention and truancy.”). This delinquency includes sex offenses. See, e.g., Earl F. Martin & Marsha Kline Pruett, *The Juvenile Sex Offender and the Juvenile Justice System*, 35 AM. CRIM. L. REV. 279, 299 (1998) (“The majority [of juvenile sex offenders] have [sic] committed misdemeanors or less serious felonies such as . . . truancy . . .”). It also includes serious and violent offenses, e.g., homicide. See Lee N. Robins, Ph.D., *What Determines Rates of Homicide Over Time and Place: Can We Find Out?*, 69 U. COLO. L. REV. 1009, 1011 (1998) (“The prototypic portrait of the serious offender-to-be is a boy whose conduct problems began by age eight to ten, *consisting of truancy. . . .*”) (emphasis added). See also Alison Mitchell, *Clinton Likes Boston's Gains Against Youth Crime*, SEATTLE POST-INTELLIGENCER, Feb. 20, 1997, at A3 (observing that Boston's reduction in juvenile homicide was attributed to aggressive law enforcement against truancy).

20. Alison Fee, Note, *Forbidding States From Providing Essential Social Services to Illegal Immigrants: The Constitutionality of Recent Federal Action*, 7 B.U. PUB. INT. L.J. 93, 112 (1998). Illustrative of the feelings of most personnel in law enforcement, Florida's State Attorney recently remarked that “we know that most crimes occur during school hours as a result of truancy” Jill A. Lichtenbaum, Note, *Juvenile Curfews: Protection or Regulation?*, 14 N.Y.L. SCH. J. HUM. RTS. 677, 715 (1998) (quoting Harry L. Shorstein, State Attorney for Jacksonville, Fla.).

21. See generally Julius Menacker, *Legal Policy Affecting School Truancy*, 119 EDUC. LAW. REP. 763 (1997) (evaluating the different programs employed to combat truancy such as grade reductions, placing students in detention facilities, and holding parents liable).

22. CAL. PENAL CODE § 272 (West Supp. 1998).

seminal 1993 decision *Williams v. Garcetti*,²³ the California Supreme Court upheld the amendment that allows prosecution of parents under Penal Code section 272.²⁴ As a result of *Garcetti*, many California counties and cities have coordinated efforts to prevent truancy by prosecuting the parents for violation of section 272.²⁵ The response to using section 272 this way predictably has been mixed, ranging from praise²⁶ to criticism.²⁷

CEIP recognizes that placing the responsibility *solely* on the parents—by prosecuting them under section 272 but doing nothing to the child—was not the best way to proceed with abolishing truancy. More often than not, the parent would make a legitimate attempt to send the child to school, but the child would refuse to cooperate. Unable to control their children, parents would complain that they were prosecuted even though they did the best they could under the circumstances.²⁸ In response, CEIP seeks to place some of the responsibility on the child by also imposing sanctions on the child for truancy, which it does by making the juvenile a party to the CEIP contract—rather than holding only the parent responsible.

23. 853 P.2d 507 (Cal. 1993). See also *Parental Responsibility Statutes—and the Programs that Must Accompany Them*, 27 STETSON L. REV. 655, 680 n.154 (1997); Jason Emiliios Dimitris; Ginger Thompson, *Gang Member's Mother Denies Failure Charge*, L.A. TIMES, May 20, 1989, Metro, at 1; Robert W. Welkos, *Mother Seized Under Gang Law Cleared*, L.A. TIMES, June 10, 1989, Metro, at 1.

24. See *Williams*, 853 P.2d at 508-09.

25. See, e.g., *Kid's Truancy Puts Mother in County Jail*, THE NEWS SERVING MONTEBELLO, PICO RIVERA AND SANTA FE SPRINGS 1, Mar. 5, 1998 (“A mother has been sentenced to 15 days in county jail and five years’ probation for contributing to the delinquency of her 13-year-old son and 16-year-old daughter, who have missed hundreds of days of school . . .”).

26. See, e.g., Dimitris, *supra* note 23, at 657 (“Parental responsibility statutes can be a useful tool in combating juvenile crime . . .”); Gloria Molina, *Law on Parental Responsibility*, L.A. TIMES, July 11, 1989, Metro, at 2 (giving support).

27. See, e.g., Linda A. Chapin, *Out of Control? The Uses and Abuses of Parental Liability Laws to Control Juvenile Delinquency in the Untied States*, 37 SANTA CLARA L. REV. 621, 626-27 (1997) (“Punishing or training parents is not an effective solution when bad parenting is not a significant cause of the child’s delinquency.”); Catherine Clements, Summary, *Williams v. Garcetti: The Constitutionality of Holding Parents Criminally Liable for the Acts of Their Children*, 25 GOLDEN GATE U. L. REV. 417 (1995); Tami Scarola, Note, *Creating Problems Rather Than Solving Them: Why Criminal Parental Responsibility Laws Do Not Fit Within Our Understanding of Justice*, 66 FORDHAM L. REV. 1029, 1033 (1997) (“[P]arental control laws are inconsistent with our concepts of justice.”); Toni Weinstein, Note, *Visiting the Sins of the Child on the Parent: The Legality of Criminal Parental Liability Statutes*, 64 S. CAL. L. REV. 859, 862 (1991) (concluding that prosecuting parents under § 272 “unreasonably interferes with individual rights and should be invalidated as an unjustifiable expansion of state power.”).

28. See Interview with Maria Cardenas, mother of student attending BGI, in Bell Gardens, Cal. (Mar. 29, 1999) (stating that “I can’t force him to go to school when he don’t want to go.”).

B. INFORMAL PROGRAMS

Alternative approaches emphasize use of pre-trial diversionary programs targeted at diverting certain juvenile offenders away from the formal adjudicatory juvenile justice system into an informal process,²⁹ such as informal probation, community-based programs,³⁰ or teen court.³¹ Teen court, the most common pre-trial diversionary program, uses peer pressure to alter the behavior of juvenile offenders.³² Within the program, teens act as prosecutor, defense counsel, judge, and jury.³³ The offender's case is pleaded before a group of peers, who then (as either a judge or jury) may mete out the punishment. The teen court program consistently produces recidivism rates below that of other informal programs.³⁴

A common complaint voiced against these informal programs is that they do not effectively combat truancy because almost all of the participants in these programs have been arrested for crimes, not trancies. Likewise, most of the participants are at an age when school improvement intervention may not be effective either because they have already amassed a huge number of trancies (and are therefore far behind in their studies), or because the juveniles are already enrolled in some type of alternative education, for example continuation high school. CEIP addresses all of

29. See Panzer, *supra* note 16, at 194-201.

30. The city of Bell Gardens' Youth Services Bureau (YSB) provides after-school recreational activities for all youth and has specialized programs for at-risk youth, such as boxing classes, police helpers, and after-school tutoring. See Interview with Michael So, Police Officer for Bell Gardens Police Department, in Bell Gardens, Cal. (Mar. 20, 1999).

31. See Panzer, *supra* note 16, at 198.

32. See *id.*

33. See *id.*

34. See, e.g., *id.* at 198-99 ("The juvenile recidivism rate for Bay County is 33 percent, but the Bay County Teen Court has a recidivism rate of less than 5 percent.") (quoting Chris Patterson, *Bay County Bar Forwards Teen Court as Juvenile Sanction Alternative*, 69-OCT. FLA. B.J. 95 (1995)). For a more complete discussion of teen court, see Simon I. Singer, *Criminal and Teen Courts as Loosely Coupled Systems of Juvenile Justice*, 33 WAKE FOREST L. REV. 509, 522-25 (1998). Another relatively new program with great results in reducing truancy is the Youth Accountability Board (YAB), which operates in San Bernardino County, California. See Panzer, *supra* note 16, at 198-200 ("Recent statistics from the Youth Accountability Board reflect a 97% success rate, county-wide, for juveniles completing the program"). This program structures boards that receive police reports of juveniles whom the probation officer deems most likely to benefit from the YAB. The board then explains the program to the juvenile and his family, holds a hearing where an investigator and the juvenile present their respective sides of the case, determines the appropriate disposition—restitution, community service, or education—and finally presents the disposition to the juvenile in the form of a legally-binding contract. See *id.* at 199-200. Through this mechanism, the YAB gives the juvenile offender an opportunity to "mend his ways" before he becomes enmeshed within the criminal justice system. Rhode Island uses a similar program, entitled Juvenile Hearing Boards (JHB), as a weapon against juvenile crime and truancy. See Furtado, *supra* note 11, at 17.

these concerns by attacking the problem before it is too late: before the juvenile has been arrested or expelled from school.

C. DIRECT FILING BY PROBATION OFFICER

In contrast to the previous two truancy-prevention programs, a deputy probation officer (DPO) can file a petition in juvenile court to initiate prosecution against the child. The DPO has two different avenues to file this petition in juvenile court, both of which make the juvenile a “ward of the court.”³⁵ First, California Welfare and Institutions Code (“WIC”) section 601³⁶ contains the main provisions regarding minors who are placed within the jurisdiction of the juvenile court for trancies³⁷ or disobedience of their parents.³⁸ If the minor misses the number of school days constituting habitual truancy³⁹ or continues to disobey his parents, “the minor is then within the jurisdiction of the juvenile court, which may then adjudge the minor to be a ward of the court.”⁴⁰ Second, WIC section 602⁴¹ places any minor into the jurisdiction of the juvenile court if that minor violates any city, state, or federal law or ordinance,⁴² and is the most common section that DPOs use to initiate prosecution in juvenile court against minors arrested for a crime.⁴³

35. CAL. WELF. & INST. CODE §§ 601-02 (West 1982). Once the juvenile is a ward of the court, the court has the discretion to place him in juvenile hall, juvenile camps, or on probation. See Interview with Stephonie Steinruck, DPO II for LACPD, in Bell Gardens, Cal. (Oct. 21, 1998).

36. CAL. WELF. & INST. CODE § 601 (defining habitual truant). See also CAL. EDUC. CODE § 48262 (West 1993) (same).

37. See CAL. WELF. & INST. CODE § 601. The WIC labels a minor as a habitual truant when she has “four or more trancies within one school year.” *Id.* at § 601(b). See also CAL. EDUC. CODE § 48260 (West Supp. 1999) (defining a truancy as “absent from school without valid excuse . . . or tardy or absent for more than any 30-minute period during the school day without a valid excuse”). It is interesting to note that there is an inconsistency between the WIC and Education Code with respect to what constitutes “habitual truancy.” In other words, WIC allows prosecution of a habitual truant after “four or more trancies within one school year.” CAL. WELF. & INST. CODE § 601(b) (emphasis added). However, the Education Code states that “[a]ny pupil is deemed an [sic] habitual truant who has been reported as a truant three or more times per school year.” CAL. EDUC. CODE § 48262 (emphasis added).

38. Parental disobedience is defined as one “who persistently or habitually refuses to obey the reasonable and proper orders or directions of his or her parents, guardian, or custodian, or who is beyond the control of that person.” CAL. WELF. & INST. CODE § 601(a).

39. See discussion, *supra* note 37 (describing the inconsistency between the WIC and Education Code as to whether three or four trancies constitute habitual truancy).

40. CAL. WELF. & INST. CODE § 601(b) (West 1982).

41. CAL. WELF. & INST. CODE § 602 (Minors violating laws defining crime; Ward of court).

42. See *id.*

43. See Interview with Eddie Velasquez, *supra* note 2.

Pursuant to either of the aforementioned sections, a DPO simply enters juvenile court and files a petition alleging that the juvenile falls within the confines of one of the sections, either as a habitual truant or as a criminal law violator.⁴⁴ The juvenile court then decides whether to declare the juvenile a ward of the court.⁴⁵ If it does, the court then metes out the appropriate sanction, which often is only probation.⁴⁶

The drawback with this method of fighting truancy is that by the time the DPO files either of these types of petitions, the goal is not intervention, but rather suppression.⁴⁷ In other words, the DPO seeks not some type of remedial program for the child, but rather incarceration—either in juvenile hall or juvenile camps.⁴⁸ On the other hand, CEIP identifies the child at a time when intervention, not suppression, is the goal, because it targets those youth who either have a limited number of trancies or are at a younger age.

D. ABOLISH CHRONIC TRUANCY (ACT)

For the past decade, Los Angeles County has generally used the ACT program,⁴⁹ which exclusively prosecutes the parents under Penal Code section 272.⁵⁰ ACT is a collaborative effort, established by Los Angeles County deputy district attorney Thomas Higgins in 1991, and used in sixteen Los Angeles County school districts.⁵¹ ACT targets twelve- to sixteen-year-old students who have three or more unexcused absences from school.⁵² ACT has three steps.⁵³ Similar to the approach discussed above,

44. See CAL. WELF. & INST. CODE § 650 (West 1982). The DPO files the petition when proceeding under WIC § 601, whereas the prosecuting attorney files the petition when proceeding under WIC § 602.

45. Technically, a juvenile is not guilty, but rather adjudged to be a ward of the court.

46. See SICKMUND, *supra* note 17, at 1.

47. See Interview with Stephonie Steinruck, *supra* note 35.

48. LACPD has 3 juvenile detention camps and 4 juvenile halls. The camps employ a military-like environment, e.g., awaking at 6 a.m. while the juvenile halls are more akin to traditional jails.

49. See generally SICKMUND, *supra* note 17, at 1. See also Joe Mozingo, *D.A.'s Program Tries to Head Off Truancy Early*, L.A. TIMES, Aug. 30, 1998, at B1; Douglas P. Shuit, *D.A. Steps Up Pressure on Parents of Truants*, L.A. TIMES, Dec. 5, 1997, at B1.

50. See generally Interview with Eddie Velasquez, *supra* note 2.

51. See Mozingo, *supra* note 49, at B1.

52. See Susan Gaertner, *Three Strikes Against Juvenile Crime: Prevention, Intervention and Detention*, THE PROSECUTOR, Nov./Dec. 1996, at 18, 20.

53. First, the school refers the student to the prosecutor as a habitual truant. See CAL. EDUC. CODE § 48262 (West 1993) ("Any pupil is deemed an habitual truant who has been reported as a truant three or more times per school year"); Next the Los Angeles County District Attorney's office informs the student's parents that their child has a truancy problem. Shortly thereafter, the parent is required to attend a meeting held by the District Attorney's office and the school, at which a deputy

ACT also prosecutes the parent under section 272, but in addition, it institutes some preliminary steps before actually initiating the prosecution. Rather than simply file against the parents once the child amasses three or four trancies,⁵⁴ ACT tries to motivate the parent to reduce the trancies by means of a mass parent-deputy district attorney meeting. If this meeting does not produce the desired increased attendance, the ACT program then provides for a contract, formulated during the SART meeting, that gives the parent and child another opportunity to improve attendance before finally being prosecuted under Penal Code section 272.

ACT had great success in bringing children back into school.⁵⁵ Unfortunately, the former truants, who did not want to attend school in the first place, then caused disruptions in school by fighting with other students or swearing at teachers, and the school understandably suspended or expelled them.⁵⁶ ACT thus exacerbated the problem by leading ultimately to more school absences, the exact evil against which it was designed to combat. Furthermore, a child expelled from school is not technically

district attorney explains their obligations as parents under the California Penal Code § 272. *See supra* Part II.A (giving complete discussion of § 272's requirements) and California Education Code § 48200. *See* CAL. EDUC. CODE § 48200 (stating that "each parent, guardian, or other person having control or charge of the pupil shall send the pupil to the public full-time day school . . ."). *See also* CAL. DEP'T OF EDUC., SCHOOL ATTENDANCE REVIEW BOARDS HANDBOOK 17-21 (1995) [hereinafter SARB HANDBOOK]. This is not a one-on-one meeting between the parent and deputy district attorney, but rather is a mass meeting where the deputy district attorney informs fifty or more parents of the possible truancy problem and the personal ramifications of their child's continued truancy.

Second, if attendance does not improve within a prescribed time period, usually three to four months, a School Attendance Review Team (SART) meets, at which time a deputy district attorney and school officials work together with the parents to formulate a contract to improve the student's attendance. The school assistant principal in charge of discipline or attendance, a DPO, the student, his parents, a deputy district attorney, and school attendance officer attend the SART meeting. *See id.* at 1-2. This meeting is the second chance the parent(s) and juvenile have to improve the attendance. Also, the school may impose remedial measures at this meeting, such as after-school tutoring, parenting classes, or weekend study. Additional solutions include recommending changes in the student's program, arranging for changes in teachers' assignments, or assisting students in securing employment. *See id.* at 2. The parents and student sign the SART contract, which stipulates that attendance will improve and that both the parent and child understand prosecution will follow if attendance does not improve.

Finally, if the student continues to be absent without an excuse and the parents have not established that they cannot control the student, the deputy district attorney will charge the parents with "contributing to the delinquency of a minor" under Penal Code § 272. *See supra* Part II.A (giving complete discussion of using California Penal Code § 272 to file charges against the parents). This carries a penalty of up to one year in jail and a \$2,500 fine. *See generally* CAL. PENAL CODE § 272 (West Supp. 1998).

54. Without any precursor steps, the prosecutor can file against the parents once the three or four trancies occur. *See supra* Part II.A.

55. *See* Interview with Eddie Velasquez, Reserve DPO for LACPD, in Bell, Cal. (Jan. 10, 1999).

56. *See id.*

truant, so California Penal Code section 272 is inapplicable against the parents.⁵⁷ CEIP addresses both flaws: Both parents and child have incentives to reduce the child's trancies, and CEIP can prosecute a child for additional acts not reachable under other programs, such as not following school rules.

E. CALIFORNIA EDUCATION CODE

Many communities leave the problem of trancies, as they (regrettably) often leave the education, supervision, and parenting of their children, to school districts. These school districts often use nothing more than the Education Code⁵⁸ to impose penalties directly upon the truant.⁵⁹ For example, upon the second truancy within the same school year, the school, using only the Education Code, may assign the juvenile to an after-school or weekend study program.⁶⁰ Likewise, upon the fourth truancy within the same school year, the school must classify the juvenile as a "habitual truant." If the juvenile is thereafter adjudged a ward of the court under WIC section 601, the school may impose sanctions, including: 1) imposition of twenty to forty hours of community service; 2) payment of a \$100 fine (for which the parent may be jointly liable); or 3) suspension or revocation of driving privileges according to section 13202.7 of the California Vehicle Code.⁶¹ Some teachers have also tailored their classes to make attendance comprise a non-negligible portion of grading, such as conducting pop-quizzes or simply allocating a certain percentage of the

57. In other words, the juvenile is not technically truant because the juvenile's absence is because of expulsion by the school. *See* CAL. EDUC. CODE § 48260 (West Supp. 1999).

58. Section 48264.5 of the California Education Code delineates the penalties available for the first through the fourth trancies within one school year. CAL. EDUC. CODE § 48264.5 (West Supp. 1999).

59. Occasionally, whereas the Penal Code may only have a general provision that applies, the Education Code will often have a specific provision that is exactly tailored to the specific violation. *See, e.g.,* Michael D. Harris, *Lawyer Charged Over Doctored UCLA Transcript*, L.A. DAILY J., Feb. 12, 1999, at 1 (discussing use of Education Code to prosecute for "fraudulently preparing transcripts," instead of the Penal Code's general forging document provision); Michael D. Harris, *UCLA Student Pleads to Ruse to Get Hired*, L.A. DAILY J., Feb. 9, 1999, at 1 (same).

60. *See* CAL. EDUC. CODE § 48264.5(b) (West Supp. 1999).

61. *See id.* § 48264.5(d). The last option only applies if the pupil has attended an attendance review program conducted by the school or probation office. *See id.* § 48264.5(c). *But see* CAL. VEH. CODE § 13202.7 (West Supp. 1999) (allowing the court to suspend the habitual truant's driver's license without requiring a SART meeting).

class grade to attendance points.⁶² Thus, an absent student will not be able to earn these grades and the student's class grade will suffer.⁶³

These school-based programs have some problems when they act solely using the Education Code to combat truancy. If assigned to after-school or weekend study, the truants were intractable, and simply refused to comply; if driving privileges were suspended or revoked, they nevertheless continued driving.⁶⁴ The juveniles simply are not frightened by the sanctions the Education Code affords the schools.⁶⁵ The only school-based programs that succeed are those that use incentives such as field trips, and generally even these are successful only with younger children.⁶⁶

F. PROBLEMS WITH THESE PROGRAMS

As discussed in the preceding five subsections, the major complaint voiced against most of the truancy-prevention programs is that they do not begin until too late in the child's journey down the wrong road. For example, when proceeding against the parent pursuant to Penal Code section 272 for the child's truancy (either using ACT or directly under section 272), the deputy district attorneys would often wait until the child amassed an inordinate number of absences. By then it was often too late to help the child: the child had already developed bad habits, committed other crimes in the interim, was so far behind that returning to school would be futile, or had moved out of the area. Moreover, many people felt that holding parents liable for their child's trancies was unjust or ineffective.⁶⁷ Last, school-based programs had limited effects on truancy because many children would not follow the discipline meted out by the schools. As detailed fully in the next Part of the Note, CEIP squarely addresses each of these shortcomings by: (1) not waiting until the child has gone too far down the road to be helped; (2) involving the parents in the child's attendance-

62. See Interview with Roshan Shah, Classroom Teacher for Montebello High School, in Montebello, Cal. (Nov. 29, 1998).

63. See *id.*

64. See Interview with Eddie Velazquez, *supra* note 2.

65. See *id.* Likewise, reducing grades has not been very successful with high school and older intermediate school students because they tend not to care as much about their grades as younger students do. See Interview with Roshan Shah, *supra* note 62. Furthermore, some students have brought suits claiming that lowering grades as a result of truancy violates their due process rights. See, e.g., Julius Menacker, *Legal Policy Affecting School Truancy*, 119 EDUC. LAW REP. 763 (1997).

66. See, e.g., Interview with Alex Duarte, Classroom Teacher at Caesar Chavez Elementary School for the MUSD, in Bell Gardens, Cal. (Mar. 28, 1999).

67. See, e.g., Scarola, *supra* note 27, at 1074 and accompanying text.

improvement program, with the effect that the parents do not feel unfairly prosecuted because they have had many chances to obtain help; and (3) monitoring aspects of the juveniles' behavior that the other programs do not reach.

III. A BETTER SOLUTION?: THE COMMUNITY EARLY IDENTIFICATION PROGRAM (CEIP)

A. OVERVIEW

In 1995, in conjunction with the Los Angeles County Probation Department (LACPD),⁶⁸ District Attorney's Office, Office of Education, and the MUSD, Stephonie Steinruck⁶⁹ initiated CEIP in order to combat school truancy and juvenile delinquency.⁷⁰ CEIP is an education-based prevention and intervention program that targets at-risk youth.⁷¹

"The [California] Legislature intended to address juvenile delinquency at its inception and at the earliest signs of delinquency."⁷² CEIP attempts to meet the legislature's intention by identifying, as early as possible, youths who may have a high risk of school failure, a precursor of juvenile delinquency. Thus, it proceeds one step further than the other anti-truancy programs, which usually wait too long to act.⁷³ Where traditional probation programs do not begin until the minor has been arrested or has an inordinate number of trancies,⁷⁴ CEIP attempts to identify children at risk

68. LACPD was established in 1903. See L.A. County Probation Dep't, *Los Angeles County Probation Department Homepage* (visited Mar. 10, 2000) <<http://probation.co.la.us>>. It has approximately 4,200 employees, with an annual budget of over \$300 million. See *id.*

69. Stephonie Steinruck (Steinruck) has been a DPO II for the LACPD for the past two decades. See Interview with Stephonie Steinruck, DPO II for LACPD, in Compton, Cal. (Apr. 7, 1998).

70. Steinruck states that she initially began the CEIP because the huge caseload of each DPO prevented her and others from doing much more than supervise the very violent offenders, with the obvious implication that the lesser crimes, e.g., trancies, were not addressed until they reached serious proportions. See *id.* See also PATRICIA MCFALL TORBET, U.S. DEP'T OF JUSTICE, JUVENILE JUSTICE BULLETIN, JUVENILE PROBATION: THE WORKHORSE OF THE JUVENILE JUSTICE SYSTEM (Mar. 1996) ("[T]he number of juvenile cases placed on probation (either formally or informally) increased 21 percent, from 428,500 in 1989 to 520,600 in 1993.").

71. "Los Angeles County's children are much more likely to be at risk on many levels than children in the state or the nation: whether for low income, crime dropping out of school or joblessness." See L.A. SCHOOLS 1996, *supra* note 4, at ch. 7. See also *id.* at tbl. 7.1 (comparing profiles of children in Los Angeles County and the United States, including low birth-weight babies, teen violent death rate/ages 15-19, juvenile violent crime arrest rate/ages 15-17, and teen birth weight).

72. *People v. Adam R. (In re Adam R.)*, 67 Cal. Rptr. 2d 76, 78 (Ct. App. 1997).

73. See Johnson, *supra* note 19, at 768-69 (showing connection between school failure and crime).

74. See *supra* Part II.D (discussing ACT program).

before they fail or become involved within the criminal justice system.⁷⁵ Upon entering CEIP, the child and the child's family receive a family case plan, close supervision by both a reserve⁷⁶ and a full-time DPO, and additional resources, such as tutoring, to ensure student success in school.

Further, CEIP exploits sections of the California WIC and Education Codes that other anti-truancy programs neglect. For example, WIC section 236 allows the probation department to establish "activities designed to prevent juvenile delinquency."⁷⁷ Accordingly, CEIP employs after-school tutoring, parenting classes, and weekend sports, such as basketball leagues.⁷⁸ WIC section 654,⁷⁹ the key section for CEIP, allows the DPO,

75. See CEIP HANDBOOK (on file with author).

76. The LACPD has approximately 60 reserve DPOs. See Telephone Interview with Greg McCovey, Reserve Program Coordinator for the LACPD (Mar. 20, 1999). Reserve DPOs must normally possess at least a four-year university degree and pass a rigorous seven-step process, including an in-depth background process. See, e.g., CAL. GOV'T CODE §§ 1031(d)-(e) (West 1995).

The selection process to become a reserve DPO has seven steps. First, the reserve coordinator evaluates the completed application to ensure that the educational and/or experiential requirements have been met. Second, if the coordinator preliminarily approves the application, the applicant is invited to a personal interview with the coordinator and one or two other reserve DPOs. If accepted, the applicant must then complete the background packet, which includes a comprehensive evaluation of the applicant's background. A criminal background check, including, inter alia, traffic, and credit checks, is then performed. If satisfactory, the fourth step is a psychological exam conducted by a licensed psychologist. Next, a physical exam is given. If the applicant passes all of the preceding steps, he will be scheduled for the next available academy. Presently, the reserve program has three or four academies per year. The academy consists of approximately 150 hours of instruction, ranging from visits to juvenile halls and probation camps to the procedures to use law enforcement computers. Additionally, different instructors will detail their individual programs and the attendant laws. The applicant's badge and first assignment are received when the applicant passes the academy. This is the final step—the six-month period of probation. During this time period, the reserve DPO is evaluated by either a full-time DPO or a senior reserve DPO at least three separate times. If no problems have been encountered, the provisional reserve DPO becomes permanent. Reserve DPOs must work a minimum of 20 hours per month. As stated *supra*, possible assignments vary widely from CEIP to gang unit assistance to courtroom participation. For more information on LACPD's Reserve DPO Program, see *Los Angeles County Probation Department* (last modified Oct. 18, 1999) <<http://www.co.la.ca.us/probation>>.

77. CAL. WELF. & INST. CODE § 236 (West Supp. 1998). WIC § 601.5, also gives the county the option to establish an at-risk youth early intervention program. The program's purpose is to "provide a swift and local service response to youth behavior problems so that future involvement with the justice system may be avoided." *Id.*

78. In essence, CEIP is an activity "designed to prevent juvenile delinquency," and is therefore permissible under § 236. See *id.* Moreover, WIC § 652 explicitly allows the probation officer to make an investigation, "as he or she deems necessary to determine whether proceedings in the juvenile court should be commenced." See *id.* at § 652 (West Supp. 2000) (stating that "[w]henver the probation officer has cause to believe that there was or is within the county, or residing therein, a person within the provisions of Section 601 or 602, the probation officer shall immediately make such investigation as he or she deems necessary to determine whether proceedings in the juvenile court should be commenced.").

79. CAL. WELF. & INST. CODE § 654 (West Supp. 1998) [hereinafter WIC § 654].

with parent consent, to initiate a six-month period of supervision of the minor.⁸⁰

B. CEIP: FIVE MAIN STEPS

1. *Step One: Referral*

A child may enter CEIP through a number of possible avenues. School officials, parents, the probation department, Juvenile Courts,⁸¹ or any community member⁸² may initiate CEIP by completing the service referral form. For example, CEIP “236 WIC Service Referral” form, which CEIP distributes to the schools and parents, allows anyone to refer to CEIP “any minors that you feel are ‘at risk’” of truancy, gang involvement, or drug usage.⁸³ Once the CEIP team receives a referral, its members investigate it, progressing to the next step of CEIP.

2. *Step Two: Referral Evaluation*

The CEIP site team, usually comprised of the school administrator or attendance coordinator and a reserve or full-time DPO, will examine the individual circumstances of the youth and perform a skeletal gathering of information that it places into the CEIP student information packet. This packet should include past attendance patterns, any criminal conduct records, and school behavioral records. Furthermore, a reserve DPO will conduct a home call at the child’s residence to ascertain the conditions of the juvenile’s home life.

If the child fits within CEIP’s parameters, the CEIP team will advance her to the next step.⁸⁴ The primary criteria utilized by the CEIP team to

80. *See id.*, stating that “the probation officer may, in lieu of filing a petition to declare a minor a . . . ward of the court . . . and with consent of the minor and the minor’s parent or guardian, delineate specific programs of supervision for the minor, for not to exceed six months . . .” (emphasis added). This type of supervision is often referred to as “informal probation.” *See, e.g.*, Paul D. v. Superior Court, 205 Cal. Rptr. 77 (Ct. App. 1984) (“informal supervision”).

81. *See, e.g.*, Paul D., 205 Cal. Rptr. at 277.

82. *See* CAL. WELF. & INST. CODE § 653 (West Supp. 1998) (allowing any person to apply to the probation officer requesting that proceedings be commenced against a juvenile, which then requires the probation officer to investigate to determine whether proceedings in juvenile court should be pursued).

83. CEIP Referral Form (on file with author).

84. As a side note, the choice whether or not to admit the minor into CEIP, rather than forward the case to the court for filing may *not* be in the total discretion of the CEIP team. *See, e.g.*, John O. v. Superior Court, 215 Cal. Rptr. 592 (Ct. App. 1985) (juvenile court erred by denying informal supervision to minor on grounds that county lacked adequate funds to provide such supervision); Paul D., 205 Cal. Rptr. at 77 (holding illegal probation department’s refusal to consider minor for informal probation solely because he denied the charges pending against him).

determine whether to admit one into CEIP consist of no violent convictions, a limited number of absences,⁸⁵ and parental cooperation.⁸⁶ No one criterion is dispositive, except the likelihood of the child's rehabilitation.

3. *Step Three: Initial CEIP Meeting*

This meeting is the true beginning of CEIP supervision. A DPO,⁸⁷ reserve DPO, school administrator, parent or guardian, police officer(s),⁸⁸ and the minor herself will meet and discuss the conditions of probation that the CEIP team will impose on the juvenile during CEIP supervision.⁸⁹

CEIP conditions of probation can include many things such as obeying all federal and state laws, obeying all instructions and directions of the reserve and full-time DPO, obeying all instructions and orders of parents and/or guardians, urine testing upon request of a DPO,⁹⁰ and reporting to the DPO or CEIP team as directed.⁹¹ Another standard condition of CEIP probation is that the child submit to search by a (reserve) DPO at any time—without probable cause.⁹² The CEIP conditions of probation also may require the parent to participate in a counseling or educational program with the minor.⁹³ Thereafter, if a child does not meet

85. Because CEIP concentrates on early intervention, if the student has more than ten absences, absent extenuating circumstances, the CEIP team will not admit the student into CEIP.

86. See CEIP REFERRAL EVALUATION FORM 3 (1995).

87. See CAL. WELF. & INST. CODE § 283 (West 2000) ("Every probation officer, assistant probation officer, and deputy probation officer shall have the powers and authority conferred by law upon peace officers. . .").

88. If the juvenile has an arrest or criminal record, the CEIP team invites the arresting officer to the CEIP initial meeting to add his input regarding this juvenile. See Interview with Dan Garcia, Reserve DPO for LACPD, in Montebello, Cal. (Mar. 15, 1999).

89. Often a Spanish translator is required. See Interview with Eddie Velasquez, *supra* note 2 (stating that "in more times than not, either another person or I must translate" at the meeting).

90. See CAL. WELF. & INST. CODE § 729.3 (West 1998) ("[A] condition of probation may require the minor to submit to urine testing upon the request of a peace officer or probation officer for the purpose of determining the presence of alcohol or drugs.").

91. See *In re Abdirahman S.*, 68 Cal. Rptr. 2d 402 (Ct. App. 1997) ("[A] condition of probation which requires or forbids conduct which is not itself criminal is valid if that conduct is reasonably related to the crime of which the defendant was convicted or to future criminality.").

92. See Interview with Eddie Velasquez, *supra* note 2. See also CAL. WELF. & INST. CODE § 654.6 (West 1998) (allowing imposition of at least 10 hours of community service time, with the possibility of the minor's parent bearing the cost of the program, if she has the financial capacity to pay). Moreover, any specific needs of the student, such as drug counseling or after-school tutoring, may be added to the "conditions of supervision," and if so added, have the force of law.

93. See CAL. WELF. & INST. CODE § 661 (West 1998) ("[A] parent, guardian, or foster parent may be required to participate in a counseling or education program with the minor concerning [against] whom the petition has been filed.").

these conditions or has violated CEIP probation, the DPO may file a petition against the child in juvenile court.⁹⁴

4. *Step Four: Period of Supervision*

After completing CEIP's supervision training program,⁹⁵ a reserve DPO usually conducts supervision that includes weekly contact with the minor, her family, or the school. Each officer typically supervises ten to fifteen CEIP clients.⁹⁶ This close supervision is a key step for CEIP, ensuring a swift response if problems arise.⁹⁷

"Regular home visits and home observation are essential components of a successful delinquency prevention program."⁹⁸ The reserve DPO visits the home of the child at least bi-weekly.⁹⁹ "Early identification [of truancy problems] begins in the classroom."¹⁰⁰ Because most of the CEIP participants have either missed school or experienced problems there, the reserve DPO will initiate contact with the probationer's teacher(s) within the first week of CEIP supervision. The teacher will voice any concerns, educational or behavioral, that CEIP should address. After completing the family and teacher interviews, the reserve DPO formulates a plan with the CEIP team to assist the juvenile to either "catch up" or focus on problem

94. See CAL. WELF. & INST. CODE § 654 (West 1998) ("If the probation officer determines that the minor has not involved himself or herself in the specific programs . . . the probation officer shall immediately file a petition or request that a petition be filed by the prosecuting attorney.').

95. Before an officer may supervise a juvenile CEIP probationer, the officer must obtain the "CEIP Juvenile Supervision Certificate." This certificate program includes four components, including completing LACPD's Reserve DPO Academy.

96. Compare this ratio with the national urban median caseload of 47 probationers per officer. See, e.g., PATRICIA MCFALL TORBET, U.S. DEP'T OF JUSTICE, JUVENILE JUSTICE BULLETIN, JUVENILE PROBATION: THE WORKHORSE OF THE JUVENILE JUSTICE SYSTEM (Mar. 1996). In Los Angeles County, the average DPO's caseload surpasses 500 active supervision cases. See Interview with Stephonie Steinruck, *supra* note 69.

97. See Interview with Edward Tapia, Reserve DPO for LACPD, in Bell, Cal. (Jan. 5, 1999).

98. Watson, *supra* note 19, at 256.

99. Usually the reserve DPO will schedule one visit with the parent and child, then make a second visit unannounced. The latter visit gives the probation officer an opportunity to obtain a realistic view of the home life of the juvenile. See *id.* ("Home observations are particularly useful for the assessment of psychological and emotional problems, especially for either difficult clinical problems or hard-to-reach families.'). During the scheduled visit, the reserve DPO records the home conditions and questions the parent and child regarding any problems or special needs. See Interview with Edward Tapia, *supra* note 97. Mr. Tapia states that home visits are essential to the CEIP, because they give the CEIP team a realistic view of the problems the child faces on a daily basis, e.g., gang coercion. Furthermore, the home calls give the CEIP "face value" because the community knows that someone is present to help with problems. See *id.* Often the reserve DPO will also interview neighbors to determine whether or to what extent the juvenile associates with gang members or if any other problems exist that are not apparent from speaking with the juvenile's family. See *id.*

100. SARB HANDBOOK, *supra* note 53 at 3.

areas.¹⁰¹ This aspect of CEIP supervision coincides with the conditions of probation, because a common condition of probation is attendance at after-school tutoring programs. The reserve DPO also maintains contact with the ancillary educational providers to ensure that the juvenile attends on a regular basis and to promptly meet any additional need that may arise.¹⁰² Additionally, if the child cannot attend school without causing problems or getting involved with gangs, CEIP may employ the use of County Schools.¹⁰³

“The training of parents in discipline and supervision is a successful delinquency prevention device.”¹⁰⁴ Just as the children have certain areas, as discussed in the above paragraph, that need work, parents often also have either parenting,¹⁰⁵ language,¹⁰⁶ or educational deficiencies¹⁰⁷ that additional schooling will assist. Recognizing that these needs exist, the CEIP team counsels the parent so that she can obtain the necessary help.

The reserve DPO records every action taken with respect to the CEIP probationer, beginning with the first meeting. These entries in the record of supervision consist of the date of occurrence, action taken, and further recommended action.¹⁰⁸ The DPO records everything learned from the home and school visits, including the exact language of the probationer.

101. Additionally, because the teacher now knows that the juvenile is on probation, the teacher can use this knowledge as another tool to ensure compliance with homework assignments and other requests. For example, the teacher of a misbehaving student will remind the student that bad behavior may require a meeting with the DPO; this warning often quiets down the student. *See* Telephone Interview with Melodie Santana, Teacher for BGI for the MUSD (Jan. 6, 1999). Also, the reserve DPO gives the teacher a supervision form to record any behavioral problems, so that the DPO can address them at the CEIP bi-monthly meeting.

102. *See, e.g.*, Interview with Eddie Velazquez, *supra* note 2. For example, if the child continues to have problems in mathematics, CEIP has an agreement with Montebello Kumon and Bell Gardens Adult School to provide additional mathematics tutoring. *See* Interview with Jaime Quintero, Teacher for Bell Gardens Adult School for the MUSD, in Bell Gardens, Cal. (Mar. 22, 1999).

103. *See, e.g.*, LARRY SPRINGER, L.A. COUNTY OFFICE OF EDUC., DIV. JUVENILE COURT & COMMUNITY SCH., VISION 2000, (1998). Los Angeles County operates the largest juvenile court school system in the United States, serving over 40,000 students annually. *See id.* County schools are schools run by the county, as opposed to the usual school district or city, which are located in juvenile halls, probation camps, community educational centers, and within other schools. *See id.* For example, in 1996-1998, Bell Gardens Intermediate had a Los Angeles County School, which CEIP used to place students who were unable, for whatever reason, to succeed within the traditional program. *See* Interview with Eddie Velazquez, *supra* note 2.

104. Watson, *supra* note 19, at 255.

105. *See* L.A. SCHOOLS 1996, *supra* note 4, at tbl. 24-3.

106. *See District Profile, Fiscal Year 96/97*, MONTEBELLO UNIFIED SCH. DIST. (visited Feb. 26, 1999) <<http://www.ed-data.k12.ca.us>> (showing that 51% of the MUSD has limited English proficient students, as compared to 25% statewide).

107. *See* L.A. SCHOOLS 1996, *supra* note 4, at tbl. 24-3.

108. *See infra* App. A (LACPD record of supervision).

This supervision record is indispensable to CEIP because the reserve DPO refers to it during the CEIP bi-monthly meeting to monitor the probationer's progress. If the probationer does not succeed under CEIP, the record of supervision acts as a more complete record upon which a court relies when evaluating further delinquent conduct of the juvenile.¹⁰⁹

Every two months, or more often if necessary, the CEIP team meets to discuss the progress of the probationers. At this meeting, the reserve DPO who supervises the probationer updates the team as to the probationer's progress and any possible problems. The CEIP team then institutes measures such as remedial tutoring, family classes, or transfer to satellite school.¹¹⁰ If these remedial measures do not succeed, the record of supervision¹¹¹ that the reserve DPO kept on each student may be used to file a petition in Juvenile Court to make the minor a ward of the court.¹¹²

5. *Step Five: Closure of CEIP Case*

If the minor has completed the period of supervision to the satisfaction of the CEIP team, that is, no problems have been encountered and the attendance of the minor has improved, the case will be closed and no further action will be taken.¹¹³ For example, if the student had twenty absences in the time period prior to the initiation of the CEIP supervision and only four at the end of the six months, although technically still a

109. In other words, if the DPO chooses to file a petition against the juvenile, the record of supervision gives the judge a more complete picture of the juvenile. Additionally, once arrested for a crime, the juvenile cannot claim to be an "angel," especially in light of the copious notes that the probation officer compiled on his truancies, home or school problems, or alternative criminal activity.

110. Satellite school is an alternative classroom program used by the MUSD, usually involving students who were expelled from the intermediate schools in the area. See Interview with Alex P. Santana, South Side Satellite Teacher for the MUSD, in Downey, Cal. (Sept. 5, 1999).

111. The reserve or full-time DPO should maintain a record of supervision for each juvenile on CEIP which includes the dates of home and school visits, any school conferences, and any problems.

112. The possibility of using the record of supervision in future delinquency filings against the juvenile is one of the advantages (and a possible problem) with CEIP. In other words, many times a minor experiences problems during the six-month probation period, e.g., fights at school, problems at home, or police contact, that do not rise to the level of violating the child and remanding him or her into custody. As a result, the child finishes CEIP because the six-month period expires. But, if in the future the juvenile is before a judge for some crime, but has no prior arrests (which may be true) and is claiming to have been an "angel", the judge will at least have some background of the juvenile (from the CEIP record of supervision) with which to base his decision on the instant arrest.

113. Compare *People ex rel. Kottmeier v. Superior Court*, 239 Cal. Rptr. 920 (Ct. App. 1987) (petition cannot be brought against minor more than six months after probation agreement for informal supervision) with CAL. WELF. & INST. CODE § 654 (West 1998) ("Nothing in this section shall be construed to prevent the probation officer from filing a petition or requesting the prosecuting attorney to file a petition at any time within the six-month period or a 90-day period thereafter.") (emphasis added).

“habitual truant,”¹¹⁴ the great improvement would be considered by the CEIP team when making the determination whether to file a petition against the child. Also, nothing in WIC section 654 proscribes initiating another, possibly shorter, period of supervision.¹¹⁵ Last, the DPO must prepare a follow-up report of the program, delineating which measures were used.¹¹⁶

C. CEIP WINS THE NUMBERS GAME¹¹⁷

This Part of the Note briefly evaluates the school attendance and drop-out rates for three different groups enrolled in CEIP during the 1992-98 school years: Bell Gardens Intermediate School (BGI), Montebello Unified School District (MUSD),¹¹⁸ and Los Angeles County.¹¹⁹

1. *Bell Gardens Intermediate (BGI)*¹²⁰

BGI is the largest of the four intermediate schools in the MUSD, with an average daily attendance (ADA) of approximately two thousand

114. *See supra* Part III.B.1.

115. *See* CAL. WELF. & INST. CODE § 654.

116. *See id.* at § 654(c) (requiring “followup report of the actual program measures taken.”). These reports are on file with author.

117. Please note that that this Section only cursorily examines the relevant data. Thus, I do not here purport to perform a rigorous econometric analysis of the numbers. For a more complete look at CEIP’s truancy, criminal, and school performance data, see Charles E. Pell, *Does Intense Probation Monitoring of Truants Work? An Empirical Econometric Analysis of Its Effect on School and Individual Attendance, Grades, and Behavior* (forthcoming May, 2000) (unpublished M.A. thesis, University of Southern California) (on file with author).

118. MUSD has twenty-eight schools, six that use CEIP.

119. Los Angeles County has approximately 1,700 schools, nine of which used CEIP (including the six from the MUSD). I selected these groups based on the following rationales: (1) CEIP has served BGI for the longest period of time (six years), so the data are more indicative of long-term effects of CEIP; (2) MUSD has six schools that employ CEIP, including BGI, which affords this Part of the Note the ability to cross-compare CEIP’s effects in different milieus, as compared to observing CEIP’s success at only one school; and (3) by evaluating all of the schools in Los Angeles County involved in CEIP, the data portray a more accurate picture of CEIP’s feasibility over a large area, rather than simply at one or two schools or within one school district.

120. BGI is located in Bell Gardens, California, which is approximately ten miles east of downtown Los Angeles. It has a population of 43,771, with a median age of twenty-two years. *See About the City of Bell Gardens* (visited Mar. 11, 2000) <<http://www.ci.bell-gardens.ca.us/about.htm>>. Especially relevant to CEIP is the fact that approximately twelve thousand of Bell Gardens’ residents (approximately one-fourth) are younger than eleven years. *See id.* In other words, these younger residents are (or will be soon) in the school system, so some program should be in place to ensure that they attend school. Hispanics and Whites comprise, respectively, 87.5% and 10.5% of the city’s residents. The median income is \$23,819. *See id.*

students.¹²¹ The ethnic distribution of the students at BGI has increased from 93.68% Hispanic in 1992 to 96.30% in 1997-98.¹²² CEIP began to supervise BGI students in 1992.¹²³ At that time, BGI had an attendance rate of 91.81%.¹²⁴ After six years of using CEIP, the BGI attendance rate is now 96.34%,¹²⁵ which represents approximately one hundred more students daily attending school.¹²⁶

Not only had the attendance of most of these first-year CEIP students improved, their criminal activity had all but disappeared. For example, of the 119 students, ten had previously been arrested by the Bell Gardens Police Department (BGPD) for a variety of crimes, mostly graffiti.¹²⁷ BGPD had compiled information about another twenty-six students in the form of Field Information Cards (FIC).¹²⁸ After the CEIP supervision, none of the juveniles was rearrested, nor had BGPD completed a new FIC on more than a handful of the CEIP participants.¹²⁹

During the six years of CEIP supervision at BGI, CEIP reserve DPOs have supervised approximately 300 students. The average pre-CEIP attendance rate was sixty-six percent. The average post-CEIP attendance rate is eighty-eight percent, for an average improvement of twenty-two percent. The average pre-CEIP criminal involvement¹³⁰ percentage was twenty-seven percent. The average post-CEIP criminal involvement percentage is five percent. Last, the number of suspensions and expulsions at BGI has decreased during this same period from 259 and four,

121. See MONTEBELLO UNIFIED SCH. DIST. 1992-1998, MONTEBELLO UNIFIED SCH. DIST., EDUCATIONAL MEASUREMENT 10 (1998). ADA is the measure of the average number of students who attend. The state remunerates school districts, and by necessary implication schools, according to the number of students present at the school. See Pell, *supra* note 4, at 4-8 (discussing definition of ADA).

122. See BELL GARDENS INTERMEDIATE 1992-1998, MONTEBELLO UNIFIED SCH. DIST., EDUCATIONAL MEASUREMENT 2 (1998).

123. During that school year, there were 507 fifth-grade and 487 sixth-grade students. Among these fifth-grade and sixth-grade students, the CEIP team supervised approximately ten percent (119 students).

124. See BELL GARDENS INTERMEDIATE 1992-1998, *supra* note 122, at tbl. 3.

125. See *id.*

126. In other words, the rate increased by 4.53%. After multiplying this rate by the total number of students at the school, the increased number of students *per diem* is obtained, *i.e.*, .0453 x 2000 ≈ 90.

127. See Interview with Michael So, police officer, B.G.P.D., in Whittier, Cal. (Mar. 28, 1999).

128. A FIC is an index-sized information card that most police officers use to record information, such as date, names, addresses, and incident descriptions, about suspicious activity or criminal behavior that may not warrant arrest for whatever reason the police officer in his discretion concludes. See *id.*

129. See *id.*

130. This criminal involvement includes arrests (and obviously convictions because an arrest precedes a conviction) and informal negative contact with law enforcement. See, *e.g.*, *supra* note 85 and accompanying text.

respectively, in 1992, to 194 and zero in 1998.¹³¹ This is most probably explained by the threat of CEIP filing against the student if he violates the condition of CEIP probation involving school behavior. Other anti-truancy programs did not have this important checking function—they only ensured that the juvenile return to school.¹³²

2. *Montebello Unified School District (MUSD)*¹³³

MUSD serves over sixty thousand students, dispersed among four adult schools,¹³⁴ four high schools, six intermediate schools (one of which is BGI), and eighteen elementary schools.¹³⁵ Fifty-two percent of MUSD's students are described as "limited English proficient."¹³⁶ MUSD utilized CEIP at seven schools, including two elementary, three intermediate, and two high schools.¹³⁷ During the past six years, CEIP has supervised over 300 students in the MUSD.¹³⁸

Overall, MUSD experienced a 12.8% decline in the number of high school drop-outs between 1992 and 1996.¹³⁹ By contrast, CEIP-supervised MUSD students had fifty-eight percent fewer absences than in the six months prior to CEIP supervision.¹⁴⁰ The elementary schools saw the best improvement in attendance of the three school levels.¹⁴¹

131. See BELL GARDENS INTERMEDIATE 1992-1998, *supra* note 122, at 3.

132. See, e.g., *supra* Part II.D.

133. MUSD is located approximately ten miles east of downtown Los Angeles in the West San Gabriel Valley in Los Angeles County, California. See *Montebello Unified School District* (visited Mar. 11, 2000) <http://www.montebello.k12.ca.us/About_MUSD.html>. See also EDUC. MEASUREMENT OFFICE, MONTEBELLO UNIFIED SCH. DIST., MONTEBELLO UNIFIED SCH. DIST. FINGER TIP FACTS 1997-1998 (1998).

134. It is interesting to note that Montebello Adult Schools serve more students, 36,000, than the entire K-12 program. See *Montebello Unified School District*, *supra* note 133.

135. See *id.* These students predominately come from the cities of Bell Gardens, Commerce, East Los Angeles, Montebello, Monterey Park, Pico Rivera, and South San Gabriel. See *id.*

136. MONTEBELLO UNIFIED SCH. DIST. FINGER TIP FACTS 1997-1998, *supra* note 133, at 1.

137. Specifically, CEIP supervised students within the MUSD at Bell Gardens High School (BGHS), BGI, Cesar Chavez Elementary School (CCE), Eastmont Intermediate School (EI), Montebello High School (MHS), Suva Elementary School (SUE), and Suva Intermediate School (SUI).

138. The approximate breakdown of students that CEIP supervised among the MUSD schools is: BGHS—100; BGI—300; CCE—05; EI—05; MHS—10; SUE—5; SUI—15. See Interview with Eddie Velasquez, *supra* note 2.

139. See L.A. SCHOOLS 1996, *supra* note 4, at Table 7.8.

140. See *supra* note 142, (calculating MUSD's pre- and post-CEIP attendance rates).

141. See *id.*

3. *Los Angeles County*¹⁴²

The County has the largest population of any county in the United States, comprising more than one-fourth of California's residents,¹⁴³ and is exceeded by only eight states.¹⁴⁴ The ethnic makeup of Los Angeles County is 41% Hispanic, 36.9% White, 11.5% Asian, 10.3% Black, and 0.3% American Indian.¹⁴⁵ Los Angeles County has a total enrollment of 1,549,833 students, dispersed among 94 public school districts, including 1,134 elementary, 233 intermediate, 165 high, and 90 continuation schools.¹⁴⁶

Aside from the seven schools in the MUSD,¹⁴⁷ CEIP also supervised a handful of students from three other schools in Los Angeles County: Elizabeth Learning Center,¹⁴⁸ South Gate High School, and South Gate Intermediate School.¹⁴⁹ CEIP supervised approximately 400 students countywide.

Los Angeles County's high school graduation rate declined two percent from 1992-97.¹⁵⁰ In comparison, the attendance of CEIP-supervised students in Los Angeles County improved by over fifty percent from 1995-98.¹⁵¹ Unfortunately, data were not collected for these students' criminal involvement during their pre-CEIP period. Nevertheless, only ten of the one hundred students were arrested during the CEIP supervision.

In sum, from the above data, it appears that CEIP may have improved overall attendance among students whom it supervised at every school

142. Los Angeles County encompasses 4,083.21 square miles with a total population of 8,647,949 residents among 88 cities. See *County of L.A. Statistical Data 1* (visited Feb. 15, 2000) <<http://www.co.la.ca.us/statistics.htm>>.

143. See *id.*

144. See *About Los Angeles* (visited Mar. 11, 2000) <<http://www.co.la.ca.us/overview.htm>>. Los Angeles County's 1997-98 budget was \$12.6 billion. See *id.*

145. See *County of L.A. Statistical Data*, *supra* note 142, at 2.

146. See *County Schools Facts, 1996-97* (visited Mar. 10, 2000) <<http://www.lacoe.edu/schools/facts.html>>. Los Angeles Unified School District is the nation's second-largest school district, with 707,986 students enrolled for the 1999-2000 school year. See Kristina Sauerwein & Karima A. Haynes, *A Dispatch From the Front Lines*, L.A. TIMES, Oct. 15, 1999, at B2.

147. MUSD and therefore BGI are in Los Angeles County.

148. This is an elementary school.

149. Among these three schools, CEIP supervised one hundred students, approximately ten students per year per school for three years.

150. See L.A. SCHOOLS 1996, *supra* note 4, at tbl. 4.2.

151. See *supra* note 142.

within which it operated. Furthermore, the criminal behavior of CEIP-supervised juveniles decreased after they began CEIP.¹⁵²

D. CEIP CONCLUSION

Far from undeserved sycophancy, the preceding sections have shown that CEIP's phenomenal results, especially its increased attendance and lower criminal involvement among its participants, support the conclusion that it is superior to other truancy-prevention programs. CEIP's great results likely derive from its unique combination of: (1) early intervention; (2) vigilant supervision; and (3) collaboration among court, educational, and law enforcement organizations—a synthesis neglected by other truancy-prevention programs. This communitarian rationale—one-half community and one-half law enforcement—makes CEIP unlike most other anti-truancy programs.

IV. DUE PROCESS ANALYSIS OF CEIP

This Section briefly details juveniles' due process rights, then identifies possible constitutional problems with CEIP's procedures (based largely on former participants', both parents and juveniles, complaints of coercion), and finally thoroughly evaluates these complaints by analogies to plea bargain and California Ninth Circuit contract jurisprudence. It closes by suggesting a few minor revisions to CEIP's procedures that may ameliorate any possible constitutional infirmities.

A. JUVENILES' DUE PROCESS RIGHTS

In 1899, the first juvenile court appeared in the United States, and by 1917, all but three states had separate juvenile court systems.¹⁵³ The juvenile justice system has been repeatedly criticized for failing to provide

152. It is interesting to note that CEIP may also serve the normative underpinnings of criminal law. See generally BLACK'S LAW DICTIONARY 1247-48 (Bryan A. Garner ed., 7th ed. 1999) (noting various definitions and justifications for punishment). See also JOSHUA DRESSLER, UNDERSTANDING CRIMINAL LAW 7-17 (2d ed. 1995); WAYNE R. LAFAVE & AUSTIN W. SCOTT, JR., CRIMINAL LAW § 1.5 (2d ed. 1986); FREDERICK HOWARD WINES, PUNISHMENT AND REFORMATION 78-86 (1895).

153. See Johnson, *supra* note 19, at 718-19. The idea to have juvenile justice separated from that of adults dates back thousands of years. See S'Lee A. Hinshaw II, *Juvenile Diversion: An Alternative to Juvenile Court*, 1993 J. DISP. RESOL. 305, 306-08 (1993) (giving examples of where juveniles were treated differently than adults in criminal proceedings).

adequate due process protection for minors,¹⁵⁴ especially procedural due process.¹⁵⁵ Americans have traditionally viewed juvenile offenders as less culpable than their adult counterparts.¹⁵⁶ This view was neither novel nor ephemeral, as many systems treated (and continue to treat) juveniles differently than adults.¹⁵⁷

However, in *In re Gault*,¹⁵⁸ the United States Supreme Court handed down a seminal ruling that greatly affected the workings of the modern juvenile justice system.¹⁵⁹ In *Gault*, fifteen-year old Gerald Gault was arrested for making a lewd telephone call.¹⁶⁰ At the time of the arrest, Gault was on probation for another crime that he had previously committed.¹⁶¹ The juvenile judge held an informal hearing with no transcripts and did not give young Gault counsel.¹⁶² At the conclusion of the hearing, the judge held Gault to be a juvenile delinquent and thereby committed him to Arizona's state school until he reached maturity—his twenty-first birthday.¹⁶³ Because Arizona law did not permit appeals in juvenile cases, Gault filed a petition for a writ of habeas corpus.¹⁶⁴

154. See Barry C. Feld, *In re Gault Revisited: A Cross-State Comparison of the Right to Counsel in Juvenile Court*, 34 CRIME & DELINQ. 393, 394-95 (1988) (criticizing the failure to provide the right to counsel in juvenile court proceedings).

155. See Janet E. Ainsworth, *The Court's Effectiveness in Protecting the Rights of Juveniles in Delinquency Cases*, FUTURE OF CHILDREN, Winter 1996, 64, 70 (Juvenile defendants "still do not receive the same caliber of procedural justice as do adult defendants."). See also Feld, *supra* note 154, at 394-95 (criticizing the failure to provide the right to counsel in juvenile court proceedings); Cecelia M. Espinoza, *Good Kids, Bad Kids: A Revelation About the Due Process Rights of Children*, 23 HASTINGS CONST. L.Q. 407, 437-46 (1996) (evaluating the recent Supreme Court case, *Reno v. Flores*, which dealt with children's substantive and procedural due process rights).

156. See Eric K. Klein, Note, *Dennis the Menace or Billy the Kid: An Analysis of the Role of Transfer to Criminal Court in Juvenile Justice*, 35 AM. CRIM. L. REV. 371, 372 (1998). See also *Parham v. J.R.*, 442 U.S. 584, 602 (1979) (stating that children lack the maturity, experience, and capacity to make difficult decisions); *Prince v. Massachusetts*, 321 U.S. 158, 168-70 (1944) (holding that the state's power to control children's conduct is broader than its power to control adult's conduct).

157. See LAFAVE & SCOTT, *supra* note 152, at 398-400. Cf. MERIL SOBIE, *THE CREATION OF JUVENILE JUSTICE: A HISTORY OF NEW YORK'S CHILDREN'S LAWS* 5, 24-26 (1987) (because juvenile prosecutions occurred infrequently, they were often held in adult courts, with the same possibilities for confinement and death). See also *Planned Parenthood v. Danforth*, 428 U.S. 52, 74 (1976) ("[T]he State has somewhat broader authority to regulate the activities of children than [those] of adults.").

158. 387 U.S. 1 (1967).

159. See *id.* at 13 ("neither the Fourteenth Amendment nor the Bill of Rights is for adults alone"). See also Klein, *supra* note 156, at 377-80 (discussing the importance of *Gault*). See generally Barry C. Feld, *Juvenile (In)Justice and the Criminal Court Alternative*, 39 CRIME & DELINQ. 403, 405-11 (1993) (describing the changes in the juvenile system since *Gault*).

160. See 387 U.S. at 5-10.

161. See *id.* at 4.

162. See *id.* at 4-10.

163. See *id.* at 7-8.

164. See *id.* at 8.

In *Gault*, the Court specifically held that juvenile offenders have the right to: cross-examine their accusers;¹⁶⁵ not incriminate themselves;¹⁶⁶ and have legal assistance during delinquency proceedings.¹⁶⁷ Although the *Gault* Court recognized that juveniles have some due process rights similar to those of adults, the holding specifically limited these rights to the adjudicatory phase of the juvenile justice process—the trial court’s decision to hold that the juvenile is a delinquent.¹⁶⁸ Accordingly, the Supreme Court did not confront the question whether juveniles are entitled to any procedural due process rights during the pre-adjudicatory phases of the juvenile justice process, the period in which CEIP operates.¹⁶⁹ However, in later cases, the Supreme Court has made it clear that in a juvenile context, the due process standard of fundamental fairness is lower than that of adults’, requiring nothing more than accurate fact-finding.¹⁷⁰

Subsequent U.S. Supreme Court decisions have extended some, but not all, procedural or substantive due process rights to minors, generally treating children and adults differently based on their different contexts.¹⁷¹ For example, in *Bethel School District No. 403 v. Fraser*,¹⁷² the Supreme Court upheld the suspension of a student who had used sexual metaphors in a school election speech, speech that most likely would be allowed if it involved an adult in the same context.¹⁷³ On the other hand, “many commentators argue that implicit in the *Gault* decision is the proposition

165. *See id.* at 57.

166. *See id.* at 55.

167. *See id.* at 36-38.

168. *See id.* at 13.

169. *See id.* (“[W]e are not here concerned with the procedures or constitutional rights applicable to the *pre-judicial* stages of the juvenile process . . .”) (emphasis added).

170. *See* *McKeiver v. Pennsylvania*, 403 U.S. 528, 543 (1971). *See also* *Hinshaw*, *supra* note 153, at 310 (“The thrust of this line of decisions is that ‘juveniles ha[ve] to be given sufficient due process rights to ensure the accuracy of fact finding in the adjudicatory hearing.’”).

171. *See, e.g., In re Winship*, 397 U.S. 358, 368 (1970) (setting the standard of proof in juvenile delinquent adjudication at “beyond a reasonable doubt”). *But see* *McKeiver*, 403 U.S. 528 (1971) (denying juveniles the right to a jury trial); *Schall v. Martin*, 467 U.S. 253, 268 (1984) (no right to bail in juvenile proceedings). *Compare* *Prince v. Massachusetts*, 321 U.S. 158 (1944) (upholding statute as constitutional which prohibited minors from soliciting printed material, whereas if statute were directed at adults, it was unconstitutional) *with* *Tinker v. Des Moines Indep. Community Sch. Dist.*, 393 U.S. 503 (1969) (first amendment freedom of speech also applies equally to children).

172. 478 U.S. 675 (1986).

173. *See id.* at 683. The Supreme Court has also treated the rights of juveniles differently than those of adults in other contexts. *See, e.g., New Jersey v. T.L.O.*, 469 U.S. 325, 341 (1985) (holding that in school searches, the state does not have to meet the probable cause requirement of adult searches, but rather the standard is lower: whether the search was “reasonable under the circumstances”).

that a child's right to counsel is a procedural guarantee that extends to all cases where her interests are affected."¹⁷⁴

B. CEIP'S PROCEDURAL "PROBLEM"

"Most constitutional problems with juvenile offenders arise in the pretrial phase of the juvenile process."¹⁷⁵ Based on the complaints of former CEIP participants, one main problem may exist with CEIP—a "procedural problem" with the initial CEIP assignment¹⁷⁶ that may violate the procedural due process rights provided by the U. S. Constitution.¹⁷⁷

As earlier discussed, the juvenile, guardian, and reserve or full-time DPO sign the "Supervision Contract" at the CEIP initial meeting. Some former CEIP participants have complained that during this initial assignment to CEIP: (1) the parents were "coerced" into enrolling their child into the CEIP for fear they would be prosecuted under Penal Code section 272 if they did not; and (2) the juveniles, for different reasons, did not understand what the CEIP forms meant, although they had signed them.¹⁷⁸ These allegations, if true, are important for a variety of reasons, one of which is that if a child enters CEIP and is later adjudicated to be a ward of the court as a result of her CEIP involvement, that juvenile "conviction" could later cause extended sentences for her if she is subsequently convicted of different offenses when an adult, because under most sentencing guidelines, one consideration is prior criminal history.¹⁷⁹

This Section delivers a plenary evaluation of the merit of the above complaints by analogizing CEIP initiation to two well-known lines of law: plea bargaining jurisprudence—because the CEIP team occupies essentially the same position as a prosecutor in plea bargaining negotiations; and

174. Jessica Cherry, Note, *The Child as Apprentice: Enhancing the Child's Ability To Participate in Custody Decisionmaking by Providing Scaffolded Instruction*, 72 S. CAL. L. REV. 811, 814 (1999) (citing James Kenneth Genden, *Separate Legal Representation for Children: Protecting the Rights and Interests of Minors in Judicial Proceedings*, 11 HARV. C.R.-C.L. L. REV. 565, 582 (1976)).

175. Hinshaw, *supra* note 153, at 317-18.

176. See, e.g., Panzer, *supra* note 16, at 189-90 ("The intake phase of the [juvenile] process, where the determination of which juvenile is a candidate for the more favorable pre-trial diversion programs and which is sent through the more punitive court proceedings, has the greatest opportunity for potential due process and equal protection issues.").

177. The Constitution states in relevant part: "No person shall . . . be deprived of life, liberty, or property, without due process of law." U.S. CONST. amend. V.

178. See Interview with Edward Tapia, Reserve DPO for LACPD and CEIP-BGI team member, in Bell Gardens, Cal. (Dec. 2, 1998).

179. See, e.g., *United States v. Sanders*, 41 F.3d 480, 486 (9th Cir. 1994) (holding that a California juvenile adjudication as a ward of the court counts as a "conviction" under the federal sentencing guidelines and may accordingly be used in calculating a defendant's criminal history).

contract law—because the CEIP agreement is essentially a contract,¹⁸⁰ and understanding the material terms of a contract is central to its validity.

1. *Coerced into CEIP?*¹⁸¹

Prosecutors will often draft a plan that only charges the defendant with certain crimes; then if the defendant cooperates fully, they may (using their discretion) not bring other possible charges.¹⁸² “A *plea bargain* is simply an agreement between the defendant . . . and the prosecutor, that in exchange for a plea of guilty, he will receive favorable consideration by the court.”¹⁸³ Within the CEIP context, the CEIP team engages in the same type of negotiation by gaining the consent of the child and parent for the CEIP supervision in lieu of the filing against the parent and/or child. That is, once a juvenile has three or four truancies in the same school year, the DPO can, according to his discretion, file a WIC section 601 petition against him¹⁸⁴ and/or refer the case to a deputy district or city attorney for filing against the parent under California Penal Code section 272.¹⁸⁵ Accordingly, many times the CEIP team will explain to the parent that if he or she does not agree to participate in CEIP (sign the consent form for CEIP), then the case may be referred to the district attorney for prosecution under contributing to the delinquency of a minor. Similarly, the CEIP team often explains that a DPO can, if the child refuses to sign the CEIP forms and begin its supervision, file against the child in Juvenile Court for violation of WIC sections 601 or 602, charges that can occasionally carry serious sanctions.¹⁸⁶ On these bases, it seems that the CEIP team sits in much the same position that prosecutors do when engaging in plea bargaining with criminal defendants. Thus, this Part of the Note analogizes the CEIP initiation to plea bargains and utilizes the applicable federal case law regarding voluntariness of guilty pleas under plea-bargain agreements. However, although analyzing the former CEIP participants’ complaints under this analogy, I emphasize that plea agreements are much more

180. See *supra* note 80 and accompanying text (discussing WIC § 654’s requirements, which include consent of the minor and the minor’s parent or guardian).

181. Courts review the voluntariness of a guilty plea *de novo*. See *United States v. Kikuyama*, 109 F.3d 536, 537 (9th Cir. 1997); *Sanchez v. United States*, 50 F.3d 1448, 1454 (9th Cir. 1995).

182. See Interview with Sammy Boladian, Deputy Public Defender for Los Angeles County, in Montebello, Cal. (Mar. 8, 1999).

183. RONALD J. ALLEN, RICHARD B. KUHN, & WILLIAM J. STUNTZ, *CONSTITUTIONAL CRIMINAL PROCEDURE: AN EXAMINATION OF THE FOURTH, FIFTH, AND SIXTH AMENDMENTS AND RELATED AREAS* 50 (3d ed. 1995) (emphasis in original).

184. See *supra* Part II.C.

185. See *supra* Part II.D.

186. See *supra* Part II.C (discussing WIC §§ 601-02 filings).

serious than CEIP initiation, because of the greater loss of constitutional rights inherent in guilty pleas, as opposed to CEIP participation.¹⁸⁷ This observation supports the finding that CEIP passes constitutional muster, because if the same type of action is permissible in the plea bargain arena (where the risk of serious jail time or criminal sanctions is greater), it most likely would be permissible within CEIP's confines (where the risk of any serious jail time is much less).

"The United States Supreme Court stated its approval of the disposition of cases through plea agreements in *Santobello v. New York*."¹⁸⁸ What may be a core difference is that plea bargains are purportedly "subject to court approval,"¹⁸⁹ whereas assignment to CEIP is not.¹⁹⁰

Nevertheless, Congress has expressed its overriding interest that plea bargains are entered into voluntarily by amending Rule 11 of the Federal Rules of Criminal Procedure¹⁹¹ many times and recently adding subsection (e), which explicitly contains elaborate provisions regarding plea-agreement procedures.¹⁹² Former Fifth Circuit Judge Elbert P. Tuttle formulated the oft-cited standard that the United States Supreme Court adopted to measure voluntariness of a plea:

187. In other words, by pleading guilty under a plea agreement, one usually loses the chance to challenge many parts of the plea. See, e.g., *Sanchez v. United States*, 50 F.3d 1448, 1453 (9th Cir. 1995) ("a defendant who pleads guilty generally cannot later raise independent claims of constitutional violations") (citing *Tollett v. Henderson*, 411 U.S. 258, 267 (1973)).

188. Jonathan D. Duffey, *Plea Agreements: When Agents of the Government Lack the Requisite Authority, But Make Deals with Defendants Anyway*, 66 U. CIN. L. REV. 233, 233 (1997) (footnote omitted). See also *Santobello v. New York*, 404 U.S. 257, 261 (1971). For a complete discussion of plea bargaining's history and critics, see Douglas D. Guidorizzi, *Should We Really "Ban" Plea Bargaining?: The Core Concerns of Plea Bargaining Critics*, 47 EMORY L.J. 753 (1998).

189. Guidorizzi, *supra* note 188, at 756. See also FED. R. CRIM. P. 11(d).

190. The *infra* discussion, i.e., applying contractual principles to CEIP, also loosely applies here in the plea bargain analysis, because a plea bargain is "contractual in nature and 'subject to contract law standards.'" *United States v. Herrera*, 928 F.2d 769, 771 (6th Cir. 1991) (quoting *Baker v. United States*, 781 F.2d 85, 90 (6th Cir. 1986) (citing *Santobello*, 404 U.S. at 262)). See also *United States v. Phillips*, 174 F.3d 1074, 1075-76 (9th Cir. 1999) ("Plea agreements are governed by contract principles.") (citing *United States v. Gerace*, 997 F.2d 1293, 1294 (9th Cir. 1993)). While "the analogy of a plea agreement to a traditional contract is not complete or precise," enough to determine whether a particular plea agreement has been breached, courts often look to "what the parties to this plea agreement reasonably understood to be the terms of the agreement." *United States v. Skidmore*, 998 F.2d 372, 375 (6th Cir. 1993) (citing *United States v. Carbone*, 739 F.2d 45, 46 (2d Cir. 1984) (quoting *Paradiso v. United States*, 689 F.2d 28, 31 (2d Cir. 1982))). However, because CEIP does not involve a guilty plea that probably will result in jail time as in plea bargaining, but rather only involves submitting to the conditions of probation in lieu of having a petition in juvenile court filed, court approval may be unnecessary.

191. FED. R. CRIM. P. 11.

192. See *id.* at 11(e). These procedures are "designed to prevent abuse of plea discussions and agreements by providing appropriate and adequate safeguards." *Id.* at Advisory Committee Notes.

[O]ne [must be] fully aware of the direct consequences, including the actual value of any commitments made to him by the court, prosecutor, or his own counsel, must stand unless induced by threats (or promises to discontinue improper harassment), misrepresentation (including unfulfilled or unfulfillable promises), or perhaps by promises that are by their nature improper as having no proper relationship to the prosecutor's business (e.g., bribes).¹⁹³

As described above, parents of CEIP participants have complained that they did not sign the forms truly voluntarily because they were afraid that either they or their child would be charged with additional crimes, or that if they declined to sign, the CEIP team would subject them or their child to harsher sentences for the trancies already committed.

A guilty plea is invalid if the government induced it "by promises or threats which deprive it of the character of a voluntary act."¹⁹⁴ However, in the plea bargaining context, many cases have held that entering a guilty plea in order to obtain a more lenient sentence for yourself or others, or to escape additional criminal charges, does not necessarily render the guilty plea per se involuntarily given. As the Supreme Court succinctly stated:

While confronting a defendant with the risk of more severe punishment clearly may have a "discouraging effect on the defendant's assertion of his trial rights, the imposition of these difficult choices [is] an inevitable"—and permissible—"attribute of any legitimate system which tolerates and encourages the negotiation of pleas."¹⁹⁵

This Section will evaluate each of these different types of plea-bargain situations as applied to the circumstances during which both parent and child initiate CEIP: (1) lenient (harsher) sentences; (2) additional charges; and (3) (not) charging family members.

First, it is well-established that entering a guilty plea as the result of a plea bargain in order to obtain a more lenient sentence for yourself does not render the plea involuntary.¹⁹⁶ For example, in *United States v. Villaseñor-Cesar*,¹⁹⁷ the Ninth Circuit recently opined:

The Supreme Court held that as long as there is no indication that a defendant has been retaliated against for exercising a constitutional right,

193. *Brady v. United States*, 397 U.S. 742, 755 (1970) (quoting *Shelton v. United States*, 246 F.2d 571, 572 n.2 (5th Cir. 1957)).

194. *Machibroda v. United States*, 368 U.S. 487, 493 (1962).

195. *Bordenkircher v. Hayes*, 434 U.S. 357, 364 (quoting *Chaffin v. Stynchcombe*, 412 U.S. 17, 31 (1973)).

196. *See, e.g., United States v. Tabory*, 462 F.2d 352 (4th Cir. 1972).

197. 114 F.3d 970 (9th Cir. 1997).

the government may encourage plea bargains by affording leniency to those who enter pleas. Failure to afford leniency to those who “have not demonstrated those attributes on which leniency is based” is “unequivocally . . . constitutionally proper.”¹⁹⁸

This line of cases directly addresses the former CEIP participants’ (or their parents’) complaints that they were coerced into participating in CEIP for fear that if they did not, they could receive more serious sentences if later brought to trial under WIC section 601 or 602, or Penal Code section 272.¹⁹⁹ Because such action does not render a guilty plea involuntary in the criminal context, the CEIP team’s offering to forego seeking harsher sanctions if the juvenile initiates CEIP should likewise not render involuntary the juvenile’s CEIP participation. Thus, CEIP most likely is not invalid based on this complaint.

However, the possibility that CEIP initiation lacks voluntariness because of the possibility of the DPO’s charging the juvenile with more (serious) crimes still exists. Many CEIP participants have argued that their initiation of CEIP was involuntary exactly for this reason. However, the federal courts generally do not agree.²⁰⁰ That is, courts regularly hold that a guilty plea remains voluntary regardless of whether the prosecution threatened to charge the defendant with more serious crimes if he refused to enter into the plea.²⁰¹ For example, the Supreme Court in *Town of Newton v. Rumery*²⁰² held that a release-dismissal agreement, where coercion may be even greater than a purely criminal plea bargain, was voluntary, even though plaintiff alleged that he was coerced into signing it because of the possibility of pending criminal charges to be dismissed by

198. *United States v. Villaseñor-Cesar*, 114 F.3d 970, 975 (9th Cir. 1997) (quoting *United States v. Narramore*, 36 F.3d 845, 847 (9th Cir. 1994) (quoting *Corbitt v. New Jersey*, 439 U.S. 212, 223-24 (1978))) (alteration in original).

199. *See, e.g.*, *United States v. Araiza*, 693 F.2d 382 (5th Cir. 1982) (holding that guilty plea was not coerced, even if it was motivated by fear of greater punishment). *See generally Corbitt*, 439 U.S. at 212 (upholding statute that imposed higher sentences on defendants who went to trial than on those who entered guilty pleas).

200. *See, e.g.*, *Mabry v. Johnson*, 467 U.S. 504, 508 (1984) (“[B]ecause each side may obtain advantages when a guilty plea is exchanged for sentencing concessions, the agreement is no less voluntary than any other bargained-for exchange.”) (footnote omitted); *Miles v. Dorsey*, 61 F.3d 1459, 1470 (10th Cir. 1995) (time pressure, stress, mental anguish, and depression that defendant experienced during plea discussions did not establish that plea was involuntary).

201. *See, e.g.*, *Bordenkircher v. Hayes*, 434 U.S. 357, 357 (1978) (stating that the government does not violate the defendant’s due process rights if it threatens to re-indict the defendant on more serious charges if he does not plead guilty to the existing charges); *United States v. DeFusco*, 949 F.2d 114 (4th Cir. 1991) (holding that government’s promises regarding prosecution in another jurisdiction did not render defendant’s guilty plea involuntary).

202. 480 U.S. 386 (1987).

the bargain.²⁰³ While upholding the agreement as voluntarily-given, Justice Powell cogently stated:

In many cases a defendant's choice to enter into a release-dismissal agreement will reflect a highly rational judgment that the certain benefits of escaping criminal prosecution exceed the speculative benefits of prevailing in a civil action. . . . The benefits of the agreement to [the defendant] are obvious: he gained immunity from criminal prosecution²⁰⁴

In her concurring opinion in *Rumery*, Justice O'Connor added that "[t]he nature of the criminal charges that are pending is also important, for the greater the charge, the greater the coercive effect."²⁰⁵ Her statement strongly applies in the CEIP context, because the effect of the filing of a WIC section 601 or 602 petition, or a "contributing to the delinquency of a minor" charge most likely has limited, if any, jail time. Thus, the coerciveness of the possibility of the filing of additional charges against either the juvenile or parent is limited. Moreover, as Justice Harlan had earlier explained:

[T]he criminal process, like the rest of the legal system, is replete with situations requiring "the making of difficult judgments" as to which course to follow Although a defendant may have a right, even of constitutional dimension, to follow whichever course he chooses, the Constitution does not by that token always forbid requiring him to choose.²⁰⁶

Rule 11(e) also explicitly recognizes that defendants will plead guilty to a charged offense or lesser-related offense in exchange for the government's promise to dismiss other charges, thereby clearly supporting this practice.²⁰⁷ Thus, the voluntariness of CEIP participation, when viewed while considering the CEIP participants' complaints regarding involuntariness or coercion based on the possibility of being charged with additional crimes, should withstand serious judicial scrutiny.²⁰⁸

203. *Id.* at 396-99.

204. *Id.* at 394.

205. *Id.* at 401 (O'Connor, J., concurring).

206. *Bonin v. Calderon*, 56 F.3d 815, 839 (9th Cir. 1995) (quoting *McGautha v. California*, 402 U.S. 183, 213 (1971) (alterations removed)).

207. *See, e.g., United States v. Cordova-Perez*, 65 F.3d 1552, 1555 (9th Cir. 1995) (acknowledging the practice and discussing FED. R. CRIM. P. 11(e)(1)(A), which delineates what the court must do in such circumstances).

208. *See also Ford v. United States*, 418 F.2d 855 (8th Cir. 1969) (holding that defendant's guilty plea to federal charges was not coerced, although state authorities had promised him they would drop state charges if he pled guilty to federal charges and threatened him with a life sentence under state charges if he refused).

Last, although not as clear as the above two types of prosecutorial urging of guilty pleas, guilty pleas entered into so the prosecution can either not charge, or give more lenient treatment for, family members have also almost uniformly been held to be voluntarily given.²⁰⁹ For example, the Seventh Circuit evaluated the voluntariness of a defendant's guilty plea given as part of a plea agreement in light of the fact that the plea agreement provided that the defendant's wife would receive a suspended sentence if he pled guilty. It ruled that "a good faith prosecution of a third party, coupled with a plea agreement which provides for a recommendation of a lenient sentence for that third party, cannot form the basis of a claim of coercion by a defendant seeking to show that a plea was involuntarily made."²¹⁰ This line of cases is especially important for the voluntariness of the CEIP participants because both parents and juveniles have argued that they only enrolled themselves into CEIP to prevent the other party from being charged respectively under WIC section 601 or 602 or Penal Code section 272. Aside from the former CEIP participants' complaints, intuitively it seems that this placement of the potential CEIP participant "between a rock and a hard place" would render the CEIP initiation involuntary, because most of us would do almost anything to help our family—even if it means shedding some of our constitutional rights. However, because "no intrinsic constitutional infirmity [exists] in broadening plea negotiations so as to permit third party beneficiaries,"²¹¹ e.g., by entering into CEIP, either the DPO or District Attorney will not

209. See, e.g., *United States v. Marquez*, 909 F.2d 738 (2d Cir. 1990) (holding that guilty plea was voluntary, although government informed defendant that it would plead out his wife's case only if he pleaded guilty); *Miles v. Dorsey*, 61 F.3d 1459, 1468 (10th Cir. 1995) ("[S]o long as the government has prosecuted or threatened to prosecute a defendant's relative in good faith, the defendant's plea, entered to obtain leniency for the relative, is not involuntary"); *Mosier v. Murphy*, 790 F.2d 62, 66 (10th Cir. 1986) (holding plea, offered by man to protect his validly-indicted wife and mother-in-law from prosecution, to be voluntary); *Kent v. United States*, 272 F.2d 795 (1st Cir. 1959) (holding that defendant's guilty plea was voluntary, even though government induced it by stating that it would charge his wife as accessory to crime).

210. *Politte v. United States*, 852 F.2d 924, 930 (7th Cir. 1988). Contrast this with the following:

We have declined to hold plea bargains induced by the promise of leniency toward a third person *per se* unconstitutional. Nonetheless, we recognize that they "pose a greater danger of coercion than purely bilateral plea bargaining, and that, accordingly, special care must be taken to ascertain the voluntariness of guilty pleas entered in such circumstances."

United States v. Bellazerius, 24 F.3d 698, 704 (5th Cir. 1994) (quoting *United States v. Nuckols*, 606 F.2d 566, 569 (5th Cir. 1979)). However, "[t]he Supreme Court has specifically reserved judgment on 'the constitutional implications of a prosecutor's offer during plea bargaining of adverse or lenient treatment for some person *other* than the accused.'" *United States v. Pollard*, 959 F.2d 1011, 1020 (D.C. Cir. 1992) (quoting *Bordenkircher v. Hayes*, 434 U.S. 357, 364 n.8 (1978)) (emphasis in original).

211. *Nuckols*, 606 F.2d at 569.

prosecute the child or parent, using such pressure to enroll the parents and student into CEIP violates no constitutional rights.²¹² Likewise, although no CEIP participant has so argued, even the parent's or child's exerting pressure on the other to sign up for CEIP, e.g., threatening not to speak to them, would not render the CEIP initiation involuntary.²¹³ Indeed, the level of influence necessary to constitute coercion if done by family or friends most likely rises above that required to constitute coercion if employed by prosecutors.²¹⁴ Thus, the lack-of-voluntariness complaint based on third person pressure does not render CEIP initiation involuntarily given.

After applying these three lines of cases regarding coercion in the guilty plea milieu to the complaints voiced above regarding the parents' and/or juveniles' lack of voluntariness during CEIP initiation caused by the threat of a WIC section 601 or 602 filing against the juvenile or California Penal Code section 272 filing against the parent, it seems that CEIP initiation is voluntarily given, and thus comports with constitutional procedural due process.

212. *See Marquez*, 909 F.2d at 738 (citing cases holding that plea entered to protect wife from prosecution was not involuntary). *See, e.g., Sanchez*, 50 F.3d at 1455 ("governmental threats of criminal sanctions against relatives are relevant to the voluntariness determination."); *United States v. Sutton*, 794 F.2d 1415, 1422 (9th Cir. 1986) (considering and rejecting coercion claim based on threat of prosecution of defendant's female companion); *Johnson v. Wilson*, 371 F.2d 911, 912 (9th Cir. 1967) (holding police threats to charge appellant's pregnant wife with drug offense relevant to voluntariness determination); *Kent v. United States*, 272 F.2d 795 (1st Cir. 1959) (holding voluntary guilty plea induced by threat to prosecute defendant's fiancée if defendant did not so plead). Such considerations, however, while relevant to the voluntariness calculus of a guilty plea, do not of themselves render the plea involuntary.

213. *See, e.g., United States v. Gwiazdzinski*, 141 F.3d 784, 787 (7th Cir. 1998) (holding that defendant who testified at plea hearing that his guilty plea was completely voluntary was not entitled to withdraw plea based on claim that his wife threatened not to let him see their child unless he plead guilty); *Miles*, 61 F.3d at 1469 (holding that petitioner's family's pressure exerted on him to accept plea agreement did not coerce him to plead involuntary); *United States v. Pellerito*, 878 F.2d 1535, 1541 (1st Cir. 1989) (holding that defendant's guilty plea was not involuntary, although his hospitalized mother urged him to plead guilty because the family had suffered too much); *Stano v. Dugger*, 921 F.2d 1125, 1142 (11th Cir. 1991) ("Unavoidable influence or pressure from sources such as codefendants, friends or family does not make a plea involuntary.").

214. *See Iaea v. Sunn*, 800 F.2d 861, 867 (9th Cir. 1985); *United States ex rel. Brown v. LaVallee*, 424 F.2d 457, 460-61 (2d Cir. 1970) (holding that statements that may have been coercive from government are not coercive when made by defendant's mother and attorney). *See also Williams v. Chrans*, 945 F.2d 926, 933 (7th Cir. 1991) ("'Advice—even strong urging' by counsel does not invalidate a guilty plea.") (quoting *Lunz v. Henderson*, 533 F.2d 1322, 1327 (2d Cir. 1976)); *Uresti v. Lynaugh*, 821 F.2d 1099, 1102 (5th Cir. 1987) (holding that attorney's threat to withdraw from case if client did not plead guilty under plea agreement did not establish that plea was involuntary).

2. *Understanding the CEIP Forms?*

The CEIP forms that all participants sign appear analogous to contracts because each side (i.e., the probation department and the parents/juveniles) agrees to exchange a benefit for consideration—the basic definition of a contract.²¹⁵ While this may not be an “all-fours” analogy (because CEIP involves activities not traditionally the subject of contracts), the former CEIP participants’ complaints regarding not understanding the terms falls nicely within contractual analysis. Moreover, further drawing on the plea bargain analysis fits here, because “[p]lea bargains are governed by contract principles.”²¹⁶ Thus, this Section evaluates under contractual principles the former CEIP participants’ complaints that they did not truly voluntarily initiate CEIP because they did not understand the CEIP forms when they signed them.

Generally, the law of the state in which a contract was executed governs that contract.²¹⁷ Obviously, if a challenge were brought in a California court challenging a purely California contract, such as CEIP,²¹⁸ then California law should govern.²¹⁹ Similarly, in federal court, “court[s] must apply California law to resolve issues of state contract law”²²⁰—a prescription that incidentally also arises from federal statute.²²¹ Therefore, regardless of whether a challenge to CEIP involvement based on contract is brought in federal or state court, California law governs.

Basic hornbook law explains that the existence of a contract is a precursor to any action based on contract, regardless of the remedy.²²² California statutory law defines a contract as “an agreement to do or not to

215. See, e.g., 1 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW § 4, p. 40-41 (9th ed. 1987 & 1999 Supp.) (giving different definitions of contracts, including “a promise or set of promises for the breach of which the law gives a remedy, or the performance of which the law in some way recognizes as a duty.”) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 1).

216. United States v. Phillips, 174 F.3d 1074, 1075-76 (9th Cir. 1999). See also *supra* note 190.

217. See, e.g., Bertonneau v. Southern Pac. Co., 120 P. 53 (Cal. Ct. App. 1911).

218. There is no question CEIP is purely a California contract, because everyone involved is from California, the contract was executed in California, and it specifically refers to California law.

219. See, e.g., Application Group, Inc. v. Hunter Group, Inc., 72 Cal. Rptr. 2d 73, 80-88 (Ct. App. 1998) (applying California law to decide enforceability of covenant not to compete that operated to bar California businesses from hiring for employment in California, even though court could have used Maryland law); Robert McMullan & Son, Inc. v. United States Fidelity & Guar. Co., 162 Cal. Rptr. 720, 720-21 (Ct. App. 1980) (applying California law to insurance contract purchased, issued, and delivered in California to California resident).

220. Stanford Univ. Hosp. v. Federal Ins. Co., 174 F.3d 1077, 1083 (9th Cir. 1999).

221. See *id.* See also 28 U.S.C. § 1652 (1994).

222. See, e.g., 4 B.E. WITKIN, CALIFORNIA PROCEDURE, PLEADING § 476, at 570 (4th ed. 1997).

do a certain thing.”²²³ Clearly CEIP fits under this definition, because the juvenile agrees to do something—participate in CEIP and follow its guidelines, while the CEIP team also agrees to do something—supervise the minor (and also *not* to do something—file against the juvenile for the previous trancies as long as he participates in CEIP).

“Under California law, the essential elements for a contract are (1) ‘parties capable of contracting;’ (2) ‘[t]heir consent;’ (3) ‘[a] lawful object;’ and (4) ‘[s]ufficient cause or consideration.’”²²⁴ In the discussion below, element one (parties capable of contracting) will be thoroughly examined, especially because the CEIP participant is a juvenile, a party with special rules regarding her ability to contract in California. Additionally, because the former CEIP participants complain that they did not truly understand the terms of the CEIP contract, element two (consent) will also be examined. CEIP basically *per se* meets elements three and four, because a term of probation clearly is a lawful object, while sufficient consideration has been given by both sides, i.e., the DPO foregoes filing the petition against the minor student in Juvenile Court in exchange for the minor’s agreement to participate in CEIP and meet its requirements. Therefore, these two elements need not be discussed further in this analysis of CEIP.

a. *Can juveniles/minors legally contract?*

California statutory law specifically excepts minors, persons of unsound mind, and persons deprived of civil rights (felons) from contracting.²²⁵ Under California law, anyone under eighteen years, unless emancipated, is a minor.²²⁶ It would seem that under the combination of these two statutes that the juveniles in CEIP are incapable of contracting, and thus, their participation in CEIP has no legally-binding authority.

However, section 6700 of the California Family Code specifically states that, subject to a few insignificant exceptions,²²⁷ “a minor may make

223. CAL. CIV. CODE § 1549 (West 1982).

224. *United States v. The Parsons Co.*, 195 F.3d 457, 462 (9th Cir. 1999) (quoting *Marshall & Co. v. Weisel*, 51 Cal. Rptr. 183, 187 (Ct. App. 1966)). *See also* *Schaefer v. Williams*, 19 Cal. Rptr. 2d 212, 214 (Ct. App. 1993) (listing same four elements); CAL. CIV. CODE § 1550 (West 1982) (stating “[i]t is essential to the existence of a contract that there should be: 1. Parties capable of contracting; 2. Their consent; 3. A lawful object; and, 4. A sufficient cause or consideration.”).

225. *See* CAL. CIV. CODE § 1556 (West 1982).

226. *See* CAL. FAM. CODE § 6500 (West 1994).

227. *See* CAL. FAM. CODE § 6701 (West 1994) (stating that “[a] minor cannot do any of the following: (a) Give a delegation of power. (b) Make a contract relating to real property or any interest therein. (c) Make a contract relating to any personal property not in the immediate possession or control of the minor.”).

a contract in the same manner as an adult.”²²⁸ For example, a minor may hold realty,²²⁹ or “can enter into a life insurance or annuity contract on the minor’s life.”²³⁰ On the other hand, if one attempts to contract with a minor and the minor “enters” into the alleged contract, in California, the minor may nonetheless disaffirm that contract “before majority or within a reasonable time afterwards”²³¹ For example, minors usually can disaffirm contracts to pay for medical services.²³² California gives this potent disaffirmance power to minors based on the common belief that minors are immature and lack experience, and should thus be protected:²³³

The rule has traditionally been that the “law shields minors from their lack of judgment and experience and under certain conditions vests in them the right to disaffirm their contracts. Although in many instances such disaffirmance may be a hardship upon those who deal with an infant, the right to avoid his contracts is conferred by law upon a minor ‘for his protection against his own improvidence and the designs of others.’ It is the policy of the law to protect a minor against himself and his indiscretions and immaturity as well as against the machinations of other people and to discourage adults from contracting with an infant. Any loss occasioned by the disaffirmance of a minor’s contract might have been avoided by declining to enter into the contract.”²³⁴

It thus appears that the juveniles who entered into CEIP contracts have the right to unilaterally exit the contracts with no liability. But yet again, California law shifts gears. That is, “[a] minor cannot disaffirm an obligation, otherwise valid, entered into by the minor under the express authority or direction of a statute.”²³⁵ This proscription directly addresses

228. CAL. FAM. CODE § 6700 (West 1994).

229. See generally *Oyama v. California*, 332 U.S. 633 (1948).

230. *Sisco v. Cosgrove, Michelizzi, Schwabacher, Ward & Bianchi*, 59 Cal. Rptr. 2d 647, 650 (Ct. App. 1996) (citing CAL. INS. CODE § 10112).

231. CAL. FAM. CODE § 6710 (West 1994).

232. See, e.g., *Wilson v. Kaiser Found. Hosp.*, 190 Cal. Rptr. 649, 654 (Ct. App. 1983); *Doyle v. Giuliucci*, 401 P.2d 1 (Cal. 1965). This power does not extend to consent given to prevent or treat a pregnancy. See *Michaelis v. Schori*, 24 Cal. Rptr. 2d 380, 381 (Ct. App. 1993).

233. See, e.g., *Pollock v. Superior Court*, 77 Cal. Rptr. 565, 568-69 (Ct. App. 1969).

234. *Michaelis*, 24 Cal. Rptr. 2d at 381 (quoting *Niemann v. Deverich*, 221 P.2d 178 (Ct. App. 1950)). See also *Hohe v. San Diego Unified Sch. Dist.*, 274 Cal. Rptr. 647, 649 (Ct. App. 1990) (“It is often said, ‘he who affirmatively deals with a minor, does so at his peril.’”) (quoting *Holland v. Universal Underwriters Ins. Co.*, 75 Cal. Rptr. 669, 672 (Ct. App. 1969)). For an in-depth discussion on the paternalistic tendencies of California law and its different treatment of juveniles, see *American Academy of Pediatrics v. Lungren*, 16 Cal. 4th 307, 338-407 (1997) (Mosk, J., dissenting).

235. CAL. FAM. CODE § 6711 (West 1994). Section 6712 of the California Family Code (Contracts minors cannot disaffirm; Conditions) also removes some contracts from those that a minor may disaffirm. See CAL. FAM. CODE § 6712 (West 1994). This section most likely does not apply in the CEIP context, because it generally applies to such things as attorneys’ fees, see *Leonard v.*

CEIP, because CEIP is informal probation “entered into” under the direction of Section 654 of the California WIC, clearly a “statute” for purposes of this rule against disaffirmance.²³⁶ As such, CEIP is an obligation incurred by the minor that cannot be disaffirmed.²³⁷

Additionally, parents may enter into contracts that bind their child’s ability to disaffirm²³⁸—an observation that pertains directly to CEIP, because the parents’ signatures on the CEIP forms also bind the juveniles.

Based on section 6711’s refusal to allow minors to disaffirm contracts entered into under the direction of a statute and recognition that parents may legally contract for their children, it is clear that minors can contract for CEIP, but cannot disaffirm their consent (and thus the contract) based on their minority. Thus, CEIP passes the first element of a valid contract required by California law: party capable to contract.

b. *Did the juvenile (or parent) really “consent?”*

“An essential element of any contract is ‘consent.’”²³⁹ Section 1550 of California Civil Code codifies the essential aspects of contractual consent as free, mutual, and communicated by each party to the other.²⁴⁰ California courts determine whether mutual consent exists by referring to objective, rather than subjective, criteria,²⁴¹ using the well-known test that measures “what the outward manifestations of consent would lead a reasonable person to believe”²⁴² Parties must usually communicate their mutual consent to enter a contract,²⁴³ unless, of course, performance

Alexander, 122 P.2d 984 (Cal. Ct. App. 1942), or lodging, *see* Burnand v. Irigoyen, 186 P.2d 417 (Cal. 1947).

236. *See supra* Part III.A. (discussing CEIP’s underlying power to employ voluntary informal probation contracts that is given by WIC § 654).

237. *Cf.* People v. Mortera, 17 Cal. Rptr. 2d 782, 783-84 (Ct. App. 1993) (rejecting minor’s argument that he should be able to disaffirm a guilty plea under the theory that it was a contract subject to his disaffirmance by relying on the normative underpinnings of the juvenile’s right to disaffirm).

238. *See Hohe*, 274 Cal. Rptr. at 649-50 (refusing to allow minor to disaffirm release that was signed by both parent and child). *Cf.* Celli v. Sports Car Club of America, 105 Cal. Rptr. 904 (Ct. App. 1972) (finding invalid release signed by nine-year-old because minor was only one who signed release).

239. *Weddington Prod. v. Flick*, 71 Cal. Rptr. 2d 265, 277 (Ct. App. 1998) (citing Cal. Civ. Code § 1550; 1 B.E. WITKIN, SUMMARY OF CALIFORNIA LAW, CONTRACTS § 6 at 44 (9th ed. 1987)). *See also* Rennick v. O.P.T.I.O.N. Care, Inc., 77 F.3d 309, 315 (9th Cir. 1996) (“It is a basic tenet of contract law that creation of a valid contract requires mutual assent.”) (citing *Kruse v. Bank of America*, 248 Cal. Rptr. 217 (Ct. App. 1988)).

240. *See* CAL. CIV. CODE § 1550 (West 1982).

241. *See, e.g.,* Atlas Assurance Co. v. McCombs Corp., 194 Cal. Rptr. 66, 70 (Ct. App. 1983).

242. *Weddington Prod.*, 71 Cal. Rptr. 2d at 277 (quoting *Meyer v. Benko*, 127 Cal. Rptr. 846, 848 (Ct. App. 1976)). *See also* *Roth v. Malson*, 79 Cal. Rptr. 2d 226, 228-29 (Ct. App. 1998) (same).

243. *See Rennick*, 77 F.3d at 315 (citing CAL. CIV. CODE §§ 1550, 1565 (West 1995)).

clearly constitutes tacit consent.²⁴⁴ “[M]anifestation of assent to a contractual provision may be ‘wholly or partly by written or spoken words or by other acts or by failure to act.’”²⁴⁵ CEIP team members argue that the CEIP participants’ signatures by themselves manifest their assent/consent to the CEIP conditions of probation, regardless of their complaints, now long after the fact, that they did not understand those terms of probation.

Before parties can truly consent, however, there must be a “meeting of the minds” to exactly what they consent.²⁴⁶ In other words, if there is no meeting of the minds on all material points, there is no contract.²⁴⁷ Many former CEIP participants stated that they did not understand CEIP’s terms, but nonetheless signed the contract, and they now argue that no enforceable contract was formed because they really did not have a “meeting of the minds.” But last year, in *Bardin v. Lockheed Aeronautical Systems Co.*,²⁴⁸ the California Court of Appeals addressed a similar argument when determining whether a signed release was valid in light of the plaintiff’s arguments that she did not understand the terms to mean what they said, and rejected her attempt to flee her contractual obligations, explaining that “[t]he general rule is that when a person with the capacity of reading and understanding an instrument signs it, he is, in the absence of fraud and imposition, bound by its contents, and is estopped from saying that its provisions are contrary to his intentions or understanding”²⁴⁹

Applying this general rule to the CEIP contract, no participant has argued that her signature was fraudulently-obtained, only that she did not understand the terms. But as the above line of cases explains, once one signs a contract, she is usually bound by its contents.²⁵⁰

244. See, e.g., *Gilbert v. Superior Court*, 215 Cal. Rptr. 305, 310 (Ct. App. 1985).

245. *Merced County Sheriff’s Employees’ Ass’n v. County of Merced*, 233 Cal. Rptr. 519, 524 (Ct. App. 1987) (quoting RESTATEMENT (SECOND) OF CONTRACTS § 19).

246. See 1 ARTHUR LINTON CORBIN, CORBIN ON CONTRACTS § 107, at 478 (1963).

247. See, e.g., *Banner Entertainment, Inc. v. Superior Court*, 72 Cal. Rptr. 2d 598 (Ct. App. 1998).

248. 82 Cal. Rptr. 2d 726 (Ct. App. 1999).

249. *Id.* at 732. Most states have similar rules. See, e.g., *Schooley v. Merrill Lynch, Pierce Fenner & Smith, Inc.*, 867 F. Supp. 989, 992 (W.D. Okla. 1994), *aff’d*, 107 F.3d 21 (10th Cir. 1997) (holding that party who signs contract is presumed to have read the contract and understands the terms).

250. See *24 Hour Fitness, Inc. v. Superior Court*, 78 Cal. Rptr. 2d 533 (Ct. App. 1998) (holding that employee was bound by handbook terms where she signed form acknowledging she read and received the handbook, although arguing before court that she had not read handbook). See also *Shaw v. AutoZone, Inc.*, 180 F.3d 806, 811 (7th Cir. 1999) (“As a result of the duty to read the contract, a person who signs a written contract is bound by its terms regardless of his or her failure to read and understand its terms.”) (quoting *Betaco, Inc. v. Cessna Aircraft Co.*, 32 F.3d 1126, 1136 (7th Cir. 1994)).

Conversely, if “a supposed ‘contract’ does not provide a basis for determining what obligations the parties have agreed to, and hence does not make possible a determination of whether those agreed obligations have been breached, there is no contract.”²⁵¹ In other words, if the CEIP contracts were unclear with respect to the juvenile’s and parents’ responsibilities and obligations or those of the DPO, then no contract would have been formed. However, this is not the complaint of the former CEIP participants. They only argue that they subjectively did not understand. But as detailed above, California courts have uniformly held that a signature almost always indicates understanding and consent.²⁵²

As shown above, CEIP meets the four requirements for a valid contract under California law. Specifically, CEIP probation (authorized by section 654 of the California Welfare and Institutions Code) is a type of contract into which a juvenile can enter, but not unilaterally disaffirm. Further, CEIP participants have shown their consent to CEIP supervision by their signature on the CEIP contract—a signature not induced by fraud or chicanery. Accordingly, initiation into CEIP supervision, when evaluated from the standpoint of contract law, is valid.

3. *Conclusion*

Although at first blush the former CEIP participants’ complaints of either feeling coerced into initiating CEIP, and/or having some difficulty comprehending every statement of the CEIP contract package, clearly do not seem jejune, the above application of plea bargain jurisprudence and fundamental California contractual principles to CEIP’s initiation procedures shows that CEIP most likely passes constitutional muster.

C. REVISING CEIP

As discussed previously, CEIP’s purported constitutional problem lies in its procedures, specifically the potential lack of voluntariness of both the child and guardian when beginning CEIP, which is exhibited by either the possibility of coercion, or a lack of understanding of CEIP’s forms. Although the analysis directly above concludes that CEIP’s procedures do not violate procedural due process and conform to California’s contractual

251. *Weddington Prod. v. Flick*, 71 Cal. Rptr. 2d 265, 277 (Ct. App. 1998).

252. *See, e.g., Skrbina v. Fleming Cos.*, 53 Cal. Rptr. 2d 481, 489 (Ct. App. 1996) (“If he signed the release on the mere unspoken belief that the release did not encompass such claims, despite express language in the release to the contrary, he may not now rely on his unspoken intention not to waive these claims in order to escape the effect of the release.”).

requirements, a few simple changes to CEIP's procedures may nonetheless mollify the former CEIP participants' complaints.

1. *Eliminate any possible coercion*

a. *Videotape initial CEIP meeting*

This modification will give a clear and indisputable record of the CEIP. The videotape will serve as proof positive of what transpired during the meeting if a parent later complains of being uninformed by the CEIP team of the ramifications of additional truancies. Moreover, if the meeting is taped, the parents and juvenile may not feel as "coerced" into participating. Likewise, one could evaluate the tapes to determine whether, and to what extent, coercive circumstances existed, by examining the demeanor, etc., of both the CEIP team and its participants.²⁵³

The only negative aspects of this taping may be that much of the "informality" of CEIP may dissolve once the parents and child realize the meeting is being taped. The confidentiality of the student's identity could also be compromised.

b. *Add section to CEIP forms and/or school principal verification*²⁵⁴

Another possible safeguard against coercion during CEIP initiation is to add a section at the end of the CEIP forms that addresses whether the parents and juveniles participate in CEIP "freely and voluntarily."²⁵⁵ Additionally, a "neutral" party, such as the school principal or other school district employee could verify that the parents and child enter into the CEIP probation voluntarily by questioning them if they were in any way coerced. For example, in the guilty plea context, the Federal Rules of Criminal Procedure require the court to first "address[] the defendant personally in open court, [and] determin[e] that the plea is voluntary and not the result of force or threats or of promises apart from a plea agreement."²⁵⁶ Although there is no rigid procedure that courts must follow to ensure that the plea is voluntary,²⁵⁷ the court must make some determination that the plea was voluntary; the preferred course is to make a finding on the record.²⁵⁸

253. Tapes could also provide a valuable tool for CEIP training. Experienced and new CEIP team members could review the tapes to pinpoint deficiencies in explanations or to study successful models.

254. This proposed solution applies to both complaints—coercion and understanding CEIP's forms. For application of the understanding forms, see *infra* discussion Part IV.C.2.

255. Specifically, I propose the following addition at the conclusion of the CEIP forms: "We, the undersigned, hereby represent that we enter into CEIP freely and voluntarily, and without coercion."

256. FED. R. CRIM. P. 11(d).

257. See *McCarthy v. United States*, 394 U.S. 459, 467 & n.20 (1969).

258. See *Richardson v. United States*, 577 F.2d 447, 451 (8th Cir. 1978).

Using the guilty plea analogy in the CEIP environs, the principal could make the requisite inquiries with the CEIP participants to ensure voluntariness and sign a form to that effect. The participants would also sign this form acknowledging that they had in fact stated to him that they voluntarily entered into CEIP. Thus, at least two times—in the original CEIP forms and with this secondary “neutral” person—the participants would have opportunities to voice their objections if they feel the CEIP team coerced them into initiating CEIP.

2. *Better Understanding of CEIP's Forms*

a. *Formal adjudication before CEIP assignment*

One obvious solution is to require that CEIP afford its participants a formal hearing before a judicial body prior to assignment to CEIP probation. This modification eliminates any possibility of unconstitutional behavior by the CEIP team because a judge would make the decision whether to assign the juvenile to CEIP probation, and he could ensure that the CEIP participants truly understand the terms of CEIP probation.

However, this reform would not make sense, in light of the main aim of WIC section 654, which is to *informally* supervise the juvenile²⁵⁹ so that no record of adjudication burdens the juvenile in the future.²⁶⁰ Once a formal hearing is conducted, this benefit is eliminated.²⁶¹

b. *Quasi-formal hearing*

Rather than subjecting the potential CEIP participant to a formal hearing with its attendant disadvantages, CEIP could pattern its initial meeting more on the SARB and SART hearings.²⁶² Such a meeting would assemble a neutral hearing body of approximately five persons, one from the CEIP team and the remaining four from community members,

259. See, e.g., *People v. Adam R. (In re Adam R.)*, 67 Cal. Rptr. 2d 76, 78 (Ct. App. 1997) (“The purpose of the informal supervision program is to provide assistance and services to the minor and the minor’s family to ‘adjust the situation’ and avoid further involvement in the formal juvenile criminal justice system.”); *Marvin F. v. Superior Court*, 142 Cal. Rptr. 78, 82 (Ct. App. 1977) (legislative intent of WIC § 654 is to divert minors from formal court process when such could be done in the interest of both minor and society).

260. A minimal record, e.g., the record of supervision or probation officer’s report, may remain, which is still much less than a formal record from a judicial finding or hearing.

261. See *In re Adam R.*, 67 Cal. Rptr. 2d at 79 (“In fact the purpose of the section 654 informal supervision program is to avoid a true finding on criminal culpability which would result in a criminal record for the minor.”).

262. See SARB HANDBOOK, *supra* note 53 and accompanying text.

including parents, teachers, and older students. This body would make the initial determination that CEIP is proper in a given situation.

This community-based body should assuage the complaints that the CEIP team coerces the parents and juveniles to participate in CEIP because a majority of the hearing body is comprised of non-CEIP team members. Moreover, the community members most likely may be able to explain the terms of CEIP probation to the potential participants on a better (more understandable) level than the CEIP team. On the other hand, because the community members may not be cognizant of the proper criteria for assigning students to CEIP, this hearing body risks failing to assign students who could benefit from the program.²⁶³

Nevertheless, this informal hearing body may be a good compromise between a formal hearing and a CEIP team-only hearing.²⁶⁴

c. Improving CEIP's admission forms

Some of CEIP's forms may be confusing, and as previously discussed, various parents and juveniles have complained that they did not understand exactly what they had signed. The CEIP forms seem quite clear, however, at least as clear as any legal form. For example, the "Supervision Contract" that both parent and child sign explicitly states: "We, the undersigned minor and parents, hereby consent to a period of probation supervision not to exceed six months, as authorized under Section 654 of the [California] Welfare and Institutions Code."²⁶⁵ The form then lists the conditions of probation discussed Part II.F.²⁶⁶ Understanding these forms may be difficult for the parents of potential CEIP probationers, especially for those with limited education and/or language difficulties. Thus, another possibility is to improve the CEIP forms by subjecting them to analysis by former CEIP participants, eliciting from them which portions of the forms that they thought were difficult to understand. The CEIP team could use these suggestions to improve these portions of the CEIP contract forms.

As stated above, an additional section should be added to the CEIP contract forms that ensures that the CEIP participant understands the forms and what they mean. Using the plea bargain analogy yet again, Rule 11(c)

263. An obvious solution would be to give some modicum of training to these potential hearing body members. But of course, people may then complain that these "once-neutral" community members are now part of CEIP, or at least non-neutral.

264. Another benefit of this possibility is that it brings the community into the CEIP process, thereby promoting CEIP to more community members and likely engendering their support for CEIP.

265. See CEIP FORMS at 22 (Supervision Contract) (on file with author).

266. See *id.*

mandates that the court “determine[] that the defendant understands”: (1) the nature of the charge; (2) the mandatory minimum penalty, if any, and the maximum possible penalty; and (3) the right to not plead guilty.²⁶⁷ Similarly, the CEIP forms should include a section that explicates these three things to the CEIP participant: that a six-month period of probation with possibilities of WIC section 601 filings is being entered, the possible penalties if adjudicated to be a ward of the court, and the right not to participate in CEIP. The use of the school principal (or similarly-situated district official) to ensure that these rights have been communicated should also be employed.

CONCLUSION

No simple solution exists to the interrelated problems of truancy and juvenile delinquency-crime. But, this Note’s evaluation of the empirical attendance and juvenile crime data buttresses the conclusion that LACPD’s CEIP is more successful at fighting truancy (and therefore fighting juvenile crime) than other programs, such as only holding the parents liable. Rather than simply bringing children who are already far behind back into school (where they may fail or force their way out), CEIP works to keep them there by letting them know that not only will it prosecute their parents, but it will also prosecute the juveniles themselves if they miss school, especially if they commit acts that force the school to expel them. Thus, CEIP keeps the children in school because it identifies them before it is too late, and hence the “EI” of CEIP—“Early Identification.”

Another significant reason for CEIP’s success is that it integrates different California statutes, thereby producing a collaborative effort in the community among educational, law enforcement, and juvenile court systems: hence the “C” of CEIP—“Community.” Loathe to dismantle ACT and the other programs and to use CEIP exclusively, schools should instead employ CEIP in conjunction with ACT and the other anti-truancy programs. Under such collaboration, CEIP would identify early and supervise the younger students whom it can hopefully help to “get on the right track.” But once the children *have* “slipped through the cracks,” ACT can pursue the parents using Penal Code section 272, and the DPO can, pursuant to WIC section 601 or 602, seek incarceration of juveniles with many or onerous criminal acts, or with too many truantries to benefit from CEIP’s assistance.

267. FED. R. CRIM. P. 11(c)(1)-(c)(4).

Finally, using analogies to plea bargains and contracts to evaluate CEIP's procedures in depth, this Note has shown that CEIP clearly comports with due process. Nevertheless, by implementing the few suggested changes in CEIP's procedures, CEIP will continue winning the battle against truancy and so also against juvenile crime, without even the slightest appearance of violating the juveniles' (or their parents') due process rights.

Although arguably in its nascent stage, CEIP has shown such encouraging results in reducing truancy and juvenile criminal activity that it should be expanded throughout Los Angeles County and California.

APPENDIX A