

INYO COUNTY PROTOCOL FOR
WELFARE AND INSTITUTIONS CODE SECTION 241.1
REPORTS FOR JUVENILE COURT

DRAFT – 11/15/05

BACKGROUND

Welfare and Institutions Code (WIC) § 241.1 requires that when a minor appears to come within the description of both section 300 and sections 601 or 602, the County Probation Department and the County Child Welfare Department shall jointly determine which status will serve the best interest of the minor and the protection of society. California Rules of Court, Rule 1403.5 specifies many of the procedures and guidelines to be used to arrive at a joint recommendation as to the child's status.

DETERMINATION OF WHETHER CHILD APPEARS TO COME WITHIN DESCRIPTION OF SECTION 300 AND EITHER SECTION 601 OR 602

Inyo County Child Protective Service (CPS) shall determine if the child might fall within the description of WIC § 300. Inyo County Probation Department (Probation) shall determine if the child might fall within the description of WIC § 601. Probation, in coordination with the District Attorney's office (DA), shall determine if the child might fall within the description of WIC § 602. If Probation and CPS conclude a child might fall within the description of both WIC § 300 and WIC §§ 601 or 602 (referred to herein as a "potential dual status minor"), the procedures of WIC § 241.1, WIC § 241.2, Rule 1403.5 and this Protocol shall apply.

TERMS

A "dual status minor" is a minor who is adjudicated both a ward and dependent of the juvenile court. A "potential dual status minor" is a minor who Probation and CPS determine appears to come within the description of both section 300 and section 601 or 602 and therefore might properly be adjudicated as either a ward and/or a dependent of the juvenile court. A "special status minor" is a potential dual status minor about whom Probation and CPS agree that one or the other agency should assume sole jurisdiction according to WIC § 241.1(a).

TIMELINESS OF PROTOCOL REPORT AND HEARING

If the minor is detained, the protocol report will be prepared and a hearing held on the report as soon as possible but no later than fifteen court days after the order of detention. If the minor is not detained, the protocol report will be prepared and a hearing held on the report as soon as possible within thirty days of the date of the petition. In all cases, notice of the hearing and the protocol report will be provided to the parties five calendar days prior to the protocol hearing. Both Probation and CPS will sign all protocol reports. The hearing on the protocol report will be held prior to the jurisdictional hearing, unless the Court directs otherwise. The Court in its discretion may delay hearing on the protocol report and ruling thereon, until findings have been made at the jurisdictional hearing or hearings.

PROTOCOL SITUATIONS

1. Pre-petition. In situations in which a minor is not currently under the supervision of either department and is brought to the attention of either Probation or CPS for consideration of jurisdiction, the responsible probation officer or social worker will immediately determine the appropriate status of the child. In circumstances which are not clear-cut, the following procedures apply:
 - a. Minor Evaluated by Probation Department. If the probation officer determines there is an indication of abuse or neglect, that fact will be reported by telephone to CPS and/or the appropriate law enforcement agency for a concurrent investigation. A suspected child abuse report form will be submitted to CPS within thirty-six hours. CPS will report its preliminary conclusions to Probation within five days of receiving the report and Probation and CPS will proceed according to (c) below.
 - b. Minor Evaluated by CPS. Should the minor initially be brought to the attention of CPS, the responsible social worker will immediately begin an investigation to determine if the minor comes within any of the provisions of section 300.
 1. If it appears that the minor does not fall within the description of section 300, but may fall within sections 601 or 602, the social worker will immediately inform the Detention Facility, which will contact a deputy probation officer to determine the appropriate status of the minor.
 2. If it appears that the minor is a potential dual status minor, the social worker will immediately inform the Detention Facility, and Probation and CPS will proceed according to (c) below.
 - c. Filing a petition.
 1. If the minor has been determined not to be a potential dual status minor, the appropriate agency will file a petition, if necessary.
 2. If the child is determined to be a special status minor, the agency which Probation and CPS agree should take jurisdiction of the minor will file a petition and be lead agency for preparation of the protocol report. If Probation and CPS do not agree on the appropriate disposition of a special status minor, the agency with custody of the child will file a petition and be lead agency for preparation of the protocol report. The Court may direct that CPS or Probation file a petition and that the case proceed as a delinquency or dependency case.
 3. If CPS and Probation have determined the child is most appropriately a dual status minor, each agency will file a petition. The agency which

Probation and CPS agree should be the lead agency will prepare the protocol report. Assuming jurisdiction is found under section 300 and section 601 or 602, the Court shall determine the appropriate status, including dual status, for the minor.

2. Post-Filing and Pre-Dispositional Hearing. Where a dependency or delinquency petition has been filed but no dispositional hearing held, whether or not a jurisdictional hearing has been held, and it appears to the parties that the case might more appropriately be handled under the other system, the following procedures apply.

a. Section 601 or 602 Petition Filed.

1. Probation or any other party will file a child abuse report with CPS detailing the specific facts that would support involvement by CPS.
2. CPS will immediately investigate the report and provide its response to Probation as soon as possible. There are two possible outcomes of the investigation.
 - a. The situation is not appropriate to assert jurisdiction. If CPS determines the facts will not support a dependency petition or that a voluntary family maintenance case is the most appropriate course of action, no further action is necessary. (Parties may proceed pursuant to Welf. & Inst. Code § 329.)
 - b. There is evidence to support jurisdiction under section 300. In this instance, the parties will proceed pursuant to the following paragraph.
3. Probation will be the lead agency to prepare the protocol report. Probation and CPS will recommend that the minor be in ward, dependent or dual status. CPS will file and prosecute a petition if the Court determines that the most appropriate disposition for the child is as a dependent or, where Probation and CPS so recommend, as a dual status minor.

b. Section 300 Petition Filed.

1. CPS or any party will provide Probation the specific facts that would support proceeding under section 601 or 602.
2. Probation will immediately investigate those facts and provide its response to CPS as soon as possible. There are two possible outcomes of the investigation.
 - a. The situation is not appropriate to assert jurisdiction. If Probation determines the facts do not support jurisdiction pursuant to WIC

601, or Probation in consultation with the DA determine the facts will not support jurisdiction pursuant to WIC 602, no further action is necessary.

- b. There is evidence to support jurisdiction under section 601 or 602. In this instance, the parties will proceed pursuant to the following paragraph.
 3. CPS will be the lead agency to prepare the protocol report. Probation and CPS will recommend that the minor be in ward, dependent or dual status. Probation will file and prosecute a petition if the Court determines that the most appropriate disposition for the child is as a ward or, where Probation and CPS so recommend, as a dual status minor.
3. Post-disposition. In situations in which either CPS, Probation or the DA intend to file a petition regarding a minor already under the jurisdiction of the court, the agency intending to file the petition (or Probation if the DA will file the petition) will notify the agency with jurisdiction as soon as possible of its intention to file the petition. The filing agency (or Probation if the DA is the filing agency) is the lead agency for preparation of the protocol report. If not already prepared, the Court will order a protocol report at the initial hearing. The Court shall determine the appropriate status for the minor, including dual status where Probation and CPS so recommend.

DECISION CRITERIA

In determining the type of petition to be filed each department shall give consideration to the following, which will be included in the protocol report:

1. The nature of the referral.
2. The age of the minor.
3. The history of any physical, sexual, or emotional abuse of the child.
4. The prior record of the child's parents for abuse of this or any other child.
5. The prior record of the child for out-of-control or delinquent behavior.
6. The parents' cooperation with the child's school.
7. The child's functioning at school.
8. The nature of the child's home environment.
9. The history of involvement of any agencies or professionals with the child and his or her family.
10. Any services or community agencies that are available to assist the child and his or her family.
11. A statement by any counsel currently representing the child.
12. A statement by any Court Appointed Special Advocate currently appointed for the child.
13. Records of other agencies which have been involved with the minor and his or her family.

14. The advantages of having both dependency and delinquency services available for the minor and the minor's family.
15. Whether CPS or Probation should be the lead agency if both recommend dual status for the minor.

Protocol reports will discuss, but need not be limited to, these factors. They will also contain a recommendation from Probation and from CPS as to which status, including dual status, will serve the best interests of the minor and the protection of society.

CONFLICT RESOLUTION

The protocol report shall be signed by the CPS Supervisor and the Chief Deputy Juvenile Probation Officer, who shall make all attempts to agree as to the appropriate status for the minor. If the CPS Supervisor and Chief Deputy Juvenile Probation Officer are unable to agree, the dispute will be elevated to the Multi-Agency Policy Committee (Assistant Director and Director of Health and Human Services, the Chief Probation Officer and the District Attorney, or their respective designees) who will consult with each other and attempt to agree as to the appropriate status of the minor. The agencies must agree dual status is appropriate for the Court to order dual status. If the parties do not reach agreement within five days from initiating preparation of the report, Probation and CPS shall each include in the protocol report a statement of its position regarding the appropriate status for the minor as a dependent minor or ward of the court. The protocol report will be provided to the juvenile court, which shall determine the appropriate disposition of the case.

CASE MANAGEMENT FOR DUAL STATUS MINORS

For dual status minors, the parties hereby adopt a lead court/lead agency system as defined in WIC § 241.1(e)(5)(B). The only cases eligible for dual status designation shall be cases in which the minor is not removed from the home under either WIC § 300 or WIC § 601 or 602. The Court shall determine which agency will be the lead agency to manage the minor's case. The lead agency shall be responsible for case management, visiting the minor monthly, scheduling court hearings, preparing court reports and providing services to the minor and the minor's family. The most restrictive requirements of the dependency or delinquency systems shall apply to the management of the case. The lead and assisting agencies will cooperate and agree on an appropriate case plan for the minor and the family.

Should it appear appropriate for the assisting agency to assume the lead agency role, CPS and Probation shall consult regarding the appropriateness of changing the lead agency and regarding any necessary changes to the case plan and will present their recommendation to the Juvenile Court. If the Juvenile Court determines that a change of lead agency is in the best interest of the minor, the Court will assign that agency as the lead agency. The new lead agency will perform all duties of the lead agency as described above. Lead and assisting agency jurisdiction may change as the Juvenile Court deems appropriate during the pendency of the case.

The Court shall conduct joint dependency/wardship hearings for dual status minors. The lead agency shall be responsible for preparing a single court report for the joint hearing. Where there are findings or studies unique to the assisting agency, the lead agency shall coordinate with the assisting agency and ensure that those findings or other matters are presented to the Court. The assisting agency may prepare supplemental reports for the hearings. The Court shall ensure that findings and orders required for both ward and dependent minors are made at the joint hearing. Both agencies shall attend joint hearings for dual status minors.

Should either agency determine that removal of the minor from the home is appropriate, that agency will proceed with filing a petition for the removal of the minor pursuant to the applicable statute. If that petition is sustained, the Court will terminate the jurisdiction of the non-filing agency.

JUDICIAL COMMUNICATION & PROCEDURES

Whenever possible, the Superior Court of the State of California, County of Inyo shall continue its established practice of having one judge hear all WIC § 300, 601, and 602 cases. Court files for 300, 601, and 602 cases shall continue to be maintained in the same location at the Courthouse in Independence, California. If for any reason, more than one judicial officer should become involved in a dual status or potential dual status case, said judicial officers shall communicate between themselves as to the status of the minor, and shall make sure that each other has access to all relevant court files and reports, including reports filed pursuant to WIC § 727.2. The Court shall appoint the same attorney to represent a minor who is involved in a 300 and 601 or 602 case, unless the Court finds it is not legally or ethically appropriate to do so, or otherwise finds it is not in the best interests of the minor for the minor to have the same counsel in both actions.

Upon the filing of a WIC § 300, 601, and/or 602 Petition, the Court Clerk shall conduct a search of the Court's records, including family law, paternity, and civil and criminal domestic violence cases, to determine if any other files exist with respect to said child and/or family. By local form and/or local rule, the Court may require a party filing a WIC § 300, 601, or 602 Petition to provide notice that another 300, 601, or 602 Petition has been, or may soon be filed with respect to the minor, or that the minor is otherwise possibly subject to dual status.

DATA COLLECTION

As may be required by WIC § 241.2 and/or the Judicial Council of California, CPS and Probation shall collect, compile, and report data to evaluate this protocol, and shall utilize any required data collection and evaluation procedures.

AGREEMENT

The Inyo County Department of Child Welfare Services, the Inyo County Probation Department, and the Superior Court (Juvenile Court) of the State of California, County of Inyo, do hereby adopt the aforesaid jointly developed protocol to allow the Inyo County Probation Department and Inyo County Child Protective Services to jointly assess and produce a

recommendation that a child be designated as a dual status child, and allowing for the child to be simultaneously a dependent child and a delinquent ward of the court. Said court and agencies do hereby elect to adopt and implement the provisions of AB 129. All sections of this document are integral to the whole, and if any section is found to be invalid by a court of competent jurisdiction, the entire agreement is invalid. The undersigned may terminate this agreement for prospective cases by providing thirty-day written notice to each of the undersigned.

Executed this _____ day of _____, 200____, at Independence, Inyo County, California.

Jean Dickinson, Director
Inyo County Health & Human Services

James Moffett, Chief Probation Officer
Inyo County Probation Department

Brian J. Lamb
Presiding Juvenile Court Judge
Superior Court of California,
County of Inyo

Dean T. Stout
Presiding Judge
Superior Court of California,
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APPROVED:

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County of Inyo

Arthur J. Maillet, District Attorney
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