

Legal Requirements  
And Findings

# **Legal Requirements and Findings**

# Delinquency Proceedings—Title IV-E Findings: Legal Citations\*

Revised July 15, 2010

FEDERAL	CALIFORNIA	RESULT IF NO FINDING
Title IV-E of the Social Security Act, 42 U.S.C. § 670 et seq.	Delinquency Welf. & Inst. Code, § 602 et seq.	
<b>Detention/Removal Hearings</b>		
<p><b>A.</b> Court must make finding that continuance in the home of the parent or legal guardian would be contrary to the child's welfare. (42 U.S.C. § 672(a)(1)-(2).)</p> <p>This finding must be made at the time of the first court ruling authorizing removal of the child from the home. (45 C.F.R. § 1356.21(c).)</p>	<p>Continuance in the home of the parent or legal guardian would be contrary to the minor's welfare. (Welf. &amp; Inst. Code, §§ 636(d), 11401(b)(3); Cal. Rules of Court, rule 5.760(c).)</p> <p>This finding must be made at the time of the first court ruling authorizing removal of the minor from the home. (Welf. &amp; Inst. Code, § 636(d)(4).)</p>	<p><b>Never</b> eligible for title IV-E funding (45 C.F.R. § 1356.21(c).)</p>
<p><b>B.</b> Court must order that placement and care are the responsibility of the state agency or any other public agency with whom the responsible state agency has an agreement. (42 U.S.C. § 672(a)(1)-(2); 45 C.F.R. § 1356.71(d)(1)(iii).)</p>	<p>Temporary placement and care are vested with the probation officer pending disposition or further order of court. (Welf. &amp; Inst. Code, § 636(d)(3)(B); Cal. Rules of Court, rule 5.760(e)(2), (f)(2).)</p>	<p>No funding until findings are made.</p>
<p><b>C.</b> Court must make finding that reasonable efforts have been made to prevent or eliminate the need for removal. (42 U.S.C. §§ 671(a)(15), 672(a)(1)-(2); 45 C.F.R. § 1356.21(b)(1).)</p> <p>This finding must be made within 60 days of the date of removal. (45 C.F.R. § 1356.21(b)(1).)</p>	<p>Reasonable efforts have been made to prevent or eliminate the need for removal. (Welf. &amp; Inst. Code, §§ 636(d)(2)(B), 727.4(d)(5), 11401(b); Cal. Rules of Court, rule 5.760(e)(3).)</p>	<p><b>Never</b> eligible for title IV-E funding. (45 C.F.R. § 1356.21(b)(1)(ii).)</p>
<b>Case Review/Status Review Hearings — D Findings</b>		
<p>Court must review child's status and safety no less frequently than once every six months from <b>the date the child entered foster care</b>, in order to make the recommended legal findings as set forth on side two, sections II and IV (42 U.S.C. §§ 671(a)(16), 675(5)(B); 45 C.F.R. §§ 1355.20, 1355.34(c)(2)(ii).)</p>	<p>Periodic status reviews must be held, and the required findings made, for minors in placement no less frequently than every six months from <b>the date the minor entered foster care</b> until termination of the case. (Welf. &amp; Inst. Code, §§ 727.2(c), 11400(i); Cal. Rules of Court, rule 5.810(a).)</p>	<p>Failure to make findings will have financial consequences due to noncompliance with the state plan.</p>
<b>Permanent Plan Hearings — D Findings</b>		
<p>Court must hold a permanency hearing to select a permanent plan no later than 12 months from <b>the date the child entered foster care</b>, and must hold subsequent permanency plan hearings every 12 months thereafter. (45 C.F.R. §§ 1355.20, 1356.21(b)(2)(i); 42 U.S.C. § 675(5)(C), (F).)</p> <p>For a case in which no reunification services are offered, the permanency hearing must be held within 30 days of disposition. (45 C.F.R. § 1356.21(h)(2).)</p>	<p>A permanency planning hearing must be held, and the required findings made, within 12 months from <b>the date the minor entered foster care</b>, and subsequent permanency hearings must be held every 12 months thereafter. (Welf. &amp; Inst. Code, §§ 727.3(a)(1), 11400(j); Cal. Rules of Court, rule 5.810(b).)</p>	<p>Funding stops unless findings are made.</p>

**Definition of “date the minor entered foster care”:**

**Delinquency**—The date the minor entered foster care is the date that is 60 days after the date on which the minor was physically removed from the home of the parent(s) or legal guardian(s) unless one of the following exceptions applies: (1) If the minor is detained pending initial foster care placement and remains detained for more than 60 days, then the date of entry into foster care is the date of the hearing at which placement is ordered. (2) If the minor is adjudged a ward; committed to a ranch, camp, school, or other institution; and remains in that facility for more than 60 days prior to placement in foster care, then the date of entry into foster care is the date the minor is physically placed in foster care. (3) If at the time the wardship petition is filed, the minor is a dependent of the juvenile court and in out-of-home placement, then the date of entry into foster care is the earlier of the date the juvenile court made a finding of abuse or neglect, or 60 days after the date on which the minor was removed from his or her home. (Welf. & Inst. Code, § 727.4(d)(4); Cal. Rules of Court, rule 5.502(9)(B).)

\*This chart is based on laws in effect at the time of publication — July 15, 2010. Federal and state laws can change at any time. The chart was compiled by the Judicial Review and Technical Assistance project of the Administrative Office of the Courts' Center for Families, Children & the Courts, 455 Golden Gate Avenue, San Francisco, California 94102, 415-865-8836.

## Delinquency Proceedings—Basic Title IV-E Findings to Ensure Compliance

### Findings and orders must be based on sufficient supporting evidence, presented to the court by the probation department.

#### I. Detention/Removal Hearings. Make the following:

- A. Continuance in the home is contrary to the minor's welfare.
- B. Temporary placement and care are vested with the probation department.
- C. Reasonable efforts have been made to prevent removal.

#### II. Prepermanency Hearing—Make the following:

- D1. The minor's placement is necessary. The minor's current placement is appropriate.
- D2. The department has complied with the case plan by making reasonable efforts to return the minor to a safe home & to complete whatever steps are necessary to finalize the permanent placement of the minor;
- D3. The extent of progress made toward alleviating or mitigating the causes necessitating placement has been: by the father \_\_\_\_\_, by the mother \_\_\_\_\_; and
- D4. The likely date by which the minor may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in an identified placement with a specific goal, is \_\_\_/\_\_\_/\_\_\_.
- D7. For minor 16 years of age or older: The court finds that the services set forth in the case plan include those needed to assist the minor in making the transition from foster care to independent living.

#### III. Permanency Hearing—Make the following:

- D1. The minor's placement is necessary. The minor's current placement is appropriate.
- D2. The department has complied with the case plan by making reasonable efforts to return the minor to a safe home & to complete whatever steps are necessary to finalize the permanent placement of the minor.
- D3. The extent of progress made toward alleviating or mitigating the causes necessitating placement has been: by the father \_\_\_\_\_, by the mother \_\_\_\_\_.
- D5. The plan selected below is appropriate:
  - a. An immediate return to the home is ordered as the permanent plan; **or**
  - b. The continuation of reunification services and the setting of a further permanency review hearing are ordered. There is a substantial probability that the minor will be returned within the next six months and the minor and his/her parent(s)/guardian(s) have demonstrated the capacity and ability to complete the objectives of the case plan. The court informed all parents present at the time of the hearing and further advises all parents that if the minor is not returned to the custody of a parent within the next six months a proceeding under Welf. & Inst. Code § 727.31 may be instituted, which could result in the termination of parental rights and adoption; **or**
  - c. Reunification services are terminated.
    - (1) Permanent placement with \_\_\_\_\_, a fit and willing relative, with a specific goal of \_\_\_\_\_. (Provide the relative's name and select a goal, e.g., adoption; legal guardianship; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.); **or**
    - (2) Placement with \_\_\_\_\_, with a specific goal of \_\_\_\_\_. (Provide the name of the placement and select a goal, e.g., return home; adoption; legal guardianship; placement with a relative; a less restrictive foster setting; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.) Based upon clear and convincing evidence already presented, a compelling reason exists for determining that a plan of termination of parental rights and adoption is not in the best interest of the minor; **or**
    - d. Reunification services are terminated.
      - (1) Adoption is identified as the permanent plan. The court finds by clear and convincing evidence that reasonable services were provided or offered to the parents. A hearing is set under the procedures described in Welf. & Inst. Code § 727.31 and an adoption assessment report is ordered; **or**
      - (2) A legal guardianship shall be established. A hearing is set under Welf. & Inst. Code § 728(c) and a guardianship assessment report is ordered.
- D6a.  The likely date by which the agency will finalize the permanent plan is \_\_\_/\_\_\_/\_\_\_ . (Use this finding only for a minor with a plan of immediate return home under D5a.)
- D6b.  The likely date by which the minor may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in an identified placement with a specific goal is \_\_\_/\_\_\_/\_\_\_ . (Use this finding only when the court continues reunification services under D5b.)
- D6c.  The likely date by which the minor's specific goal will be achieved is \_\_\_/\_\_\_/\_\_\_ . (Use this finding only for a minor with a specific goal under D5c.)
- D6d.  The likely date by which the minor may be placed for adoption or appointed a legal guardian is \_\_\_/\_\_\_/\_\_\_ . (Use this finding only when the court terminates reunification services under D5d.)
- D7. For minor 16 years of age or older: The court finds that the services set forth in the case plan include those needed to assist the minor in making the transition from foster care to independent living.

#### IV. Postpermanency Hearing—Make the following:

- D1. The minor's placement is necessary. The minor's current placement is appropriate.
- D2. The department has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent placement of the minor.
- D5. The permanent plan selected below is appropriate and ordered:
  - a. An immediate return to the home; **or**
  - b. Adoption as ordered at the hearing held under Welf. & Inst. Code § 727.31; **or**
  - c. Legal guardianship as ordered at the hearing held under Welf. & Inst. Code § 728 with a specific goal of \_\_\_\_\_. (Select a goal, e.g., dismissal of delinquency or adoption); **or**
  - d. Permanent placement with \_\_\_\_\_, a fit and willing relative, with a specific goal of \_\_\_\_\_. (Provide the relative's name and select a goal e.g., adoption; legal guardianship; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.); **or**
  - e. Placement with \_\_\_\_\_, with a specific goal of \_\_\_\_\_. (Provide the name of the placement and select a goal e.g., return home; adoption; legal guardianship; placement with a relative; a less restrictive foster setting; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.) The court finds by clear and convincing evidence, based upon the evidence already presented to it that there is a compelling reason for determining that a plan of termination of parental rights and adoption is not in the best interest of the minor.
- D6a.  The likely date by which the department will finalize the permanent plan is \_\_\_/\_\_\_/\_\_\_ . (Use this finding for a minor with a plan of immediate return home under D5a or adoption under D5b.)
- D6c.  The likely date by which the minor's specific goal will be achieved is \_\_\_/\_\_\_/\_\_\_ . (Use D6c finding only for a minor with a specific goal under D5c, D5d, or D5e.)
- D7. For minor 16 years of age or older: The court finds that the services set forth in the case plan include those needed to assist the minor in making the transition from foster care to independent living.



## Judicial Council of California

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### MEMORANDUM

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**Date**

March 2011<sup>1</sup>

**To**

Interested Parties

**From**

Judicial Review & Technical Assistance Project  
Center for Families, Children & the Courts  
Administrative Office of the Courts

**Subject**

Social Security Act, Title IV-E,  
Delinquency Proceedings:  
General Information,  
Specific Findings and Orders

**Action Requested**

Please Review

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The underlying purpose of the court review system is to ensure the fulfillment of the original goals of the federal legislation, i.e., child safety, reunification when feasible, and permanency—a stable home for the child to grow and develop into a happy and productive adult. The court's findings and orders are viewed as "... important safeguard(s) against inappropriate agency

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<sup>1</sup> The information in this memorandum is based on laws in effect at the time of publication. Federal and state laws may change at any time.

action . . .” and are to be more than a “. . . mere pro forma exercise in paper shuffling to obtain Federal funding . . .” (Senate Report No. 336, 96th Cong., 2nd Session (1980).) The evidence required to support the findings must be provided to the court. The affirmative judicial findings and orders required to support title IV-E eligibility cannot be made if the evidence presented to the court is insufficient.

## **Report Requirements**

Each report prepared by the probation officer must contain factual information that will support the recommended findings and orders. It is the court’s responsibility to reach the legal conclusions (findings) and issue orders based on the facts presented.

### **Detention Report**

A detention report must be filed at the detention hearing if the probation officer is of the opinion that the child is at risk of entering foster care.<sup>2</sup> The general practice in most counties is to prepare a written detention report and include the required information whenever a child is removed from the home of a parent<sup>3</sup> because in most cases, the child is at risk of entering foster care. The detention report must include:

1. Reasons for removal from the parents;
2. Any prior referrals for abuse or neglect, or dependency actions regarding the child;
3. The need, if any, for continued detention;
4. Availability of services to facilitate the child’s return home to the child’s parents;
5. Availability of relatives who are able and willing to provide effective care and control of the child;
6. Documentation that continuance in the home is contrary to the child’s welfare; and
7. Documentation that reasonable efforts were made to prevent or eliminate the need for removal of the child from the home and the nature and results of the services provided (Welfare and Institutions Code,<sup>4</sup> sections 635, 636(c)).

Detailed, factual information must be included in each detention report describing the risks to the child’s safety that require the child’s removal from the home as well as the risks to public safety that may be present. Information related to the efforts made to prevent removal from the home must also be included in each detention report.

There may be cases in which the child’s safety requires immediate removal and detention without the provision of services beyond the initial response and assessment of the child’s situation. In that event, if the court views the assessment as accurate and the actions as

<sup>2</sup> “Foster care” is defined in Welfare and Institutions Code sections 727.4(d)(1) and 11402 and includes residential care provided in an approved relative’s home, a licensed foster home, a licensed group home, the home of a legal guardian, and a licensed transitional housing facility.

<sup>3</sup> All references to “parent(s)” are to be read to include “legal guardian(s).” A “legal guardian” is an individual named in a court order as the child’s “legal guardian” and for whom letters of guardianship have issued.

<sup>4</sup> All code references are to the Welfare and Institutions Code unless otherwise noted.

appropriate, that level of effort will have been reasonable and the court can find that reasonable efforts have been made.

### **Dispositional Report and Order**

A family systems approach must be taken when preparing a dispositional report with a placement recommendation. The report must include a full discussion of the family's strengths and weaknesses, identify the services the family—each parent and the child—requires to make it possible for the child to return to a safe environment, and the referrals provided to the parents to help them address their identified service needs. The noncustodial parent must be included in the assessment. The efforts made by the probation department to engage the noncustodial parent in services must also be discussed. In addition, efforts need to be made to locate a parent whose whereabouts may be unknown at the time of the child's detention. At the initial hearing and at all subsequent hearings until parentage has been established, the court has an ongoing duty to ask the parent and any other appropriate persons present at the hearing for the identity and address of any and all presumed or alleged parents of the child. (Welf. & Inst. Code, § 726.4 and Cal. Rules of Court, rule 5.635.)

The probation department must ensure the provision of reunification services. Please see the document, *Provision of Reunification Services in Probation Placement Cases*, for additional information.

The dispositional hearing minute order must provide each parent with a clear statement of the requirements they must meet to make the home safe for the child's return.<sup>5</sup> The mandatory Judicial Council form JV-665, *Disposition—Juvenile Delinquency*, includes an order directing the parents to participate in the services and activities set forth in the case plan filed with the dispositional report. The case plan filed at the time of the dispositional hearing must include the specific services in which each parent must participate. For example, the services identified for a parent might include the following: enroll and successfully complete a class for parents of adolescents, complete an evaluation for substance abuse and successfully participate and complete the recommended treatment plan, comply with child's treatment plan, visit the child regularly, and display appropriate behavior during visitation.

### **Review Report**

The probation officer's report for the review hearings must contain the factual information that will form the basis for each of the court's findings and orders, including information regarding the child's progress, the probation department's reasonable efforts, the service referrals provided to each parent, and the extent of the progress of the mother and father during the reunification period.

<sup>5</sup> See Information Sheet 1, *Court Ordered to Participate in Services—Parents in 602 Proceedings*, regarding the court's authority to order the parent to participate in services.

### **All Reports**

The probation officer's report prepared for all hearings, including dispositional, joint assessment, detention and review hearings, must include information regarding various aspects of a child's educational needs and the child's physical, mental health, and developmental needs. (Cal. Rules of Court, rules 5.651(a)–(c).) The court must consider these issues and make specific findings and orders related to many of the issues, including the appointment of an educational representative and whether the child's educational, physical, mental health, and developmental needs are being met. (California Rules of Court, rules 5.650 and 5.651.)

### **Case Plan Requirements**

The case plan forms the framework for both the child's care and treatment during the foster care placement and the services to be provided to the family. The case plan must be prepared within 60 days of removal from the home or by the date of the dispositional hearing, whichever occurs first. (Welf. & Inst. Code § 636.1(a).) The completed and signed case plan must be submitted to the court within 30 days of the dispositional hearing when a case plan was not submitted at the dispositional hearing because the probation officer recommended a disposition other than a title IV-E eligible placement and, despite that recommendation, the court entered an order for a title IV-E eligible placement. (Welf. & Inst. Code § 706.5(b).) Updates of the case plan must be submitted to the court at the prepermanency hearing, permanency hearing, and each postpermanency hearing.

The child and each parent must be given the opportunity to participate in the development of the case plan or the case plan update, to sign it, and to receive a copy. The reason for the absence of the signatures of the child or parents should be included when the child or parents do not sign the case plan or case plan update.

Assembly Bill 1412 (Leno; Stats. 2005, ch. 640) provided for a greater degree of participation by the child in the case plan process.<sup>6</sup> Effective January 1, 2006, a child's rights under section 16001.9(a) include the right “. . . [t]o be involved in the development of his or her own case plan and plan for permanent placement . . .” and the right “. . . [t]o review his or her own case plan and plan for permanent placement, if he or she is 12 years of age or older and in a permanent placement, and to receive information about his or her out-of-home placement and case plan, including being told of changes to the plan.” A provision was also added as section 16501.1(f)(12)<sup>7</sup> requiring that in the development of the case plan a child “. . . be given a meaningful opportunity to participate in the development of the case plan and state his or her preference for foster care placement. A child who is 12 years of age or older and in a permanent placement shall also be given the opportunity to review the case plan, sign the case plan, and receive a copy of the case plan.”

<sup>6</sup> Subject to appropriation through the budget process, which has not yet occurred, AB 1412 also expands the existing requirements related to reasonable efforts to maintain relationships between the child and individuals important to the child. (Welf. & Inst. Code, § 16501.1(i)(l).)

<sup>7</sup> Now 16501.1(f)(13)



The court must consider each case plan submitted and make specific findings regarding the probation department's solicitation and integration of the input of the child, the child's family, the child's Indian tribe and other interested parties as well as the involvement of the parent and child in the development of the case plan and the plan for permanent placement. (Cal. Rules of Court, rules 5.785(c)(2)–(3), 5.810(a)(3)(G)–(I), 5.810(b)(2)(E)–(G), and 5.810(c)(2)(D).)

For a child who is 16 years of age or older, the court must make a determination regarding the services needed to assist the child with the transition from foster care to independent living. The case plan and case plan updates must contain a description of the programs and services that will help make that transition. The completed Transitional Independent Living Plan (TILP), signed by the probation officer, the child, the child's caretaker, and other adults involved with the child's transition to adulthood, must be submitted to the court. The successful transition of a young person from foster care to independent living is difficult and complex. It must be carefully planned and closely monitored.

Welfare and Institutions Code section 16501.1 sets forth case plan elements and other requirements related to case plans. Division 31 of the California Department of Social Services' *Child Welfare Services Manual*, sets forth the regulations related to case plan and case plan updates, the probation department's contact with the parents of a child in out-of-home placement, and the probation department's contact with the child as well as the other foster care regulations. The manual is available on the Internet at [www.dss.cahwnet.gov/ord/PG309.htm](http://www.dss.cahwnet.gov/ord/PG309.htm).

### **Family Finding and Engagement**

At the initial hearing and at all subsequent hearings until parentage has been established, the court has an ongoing duty to ask the parent and any other appropriate persons present at the hearing for the identity and address of any and all presumed or alleged parents of the child. (Welf. & Inst. Code, § 726.4 and Cal. Rules of Court, rule 5.635.)

Within 30 days of a child's physical removal from his or her parents, the probation officer must identify and locate the child's adult relatives within the fifth degree.<sup>8</sup> The probation officer must notify located relatives that the child has been removed from his or her parents and explain their various options to participate in the care and placement of the child or support the child's family. The notified relatives must be provided with the form, *Relative Information* (form JV-285), to provide the probation officer and the court with information about the child's needs. (Welf. & Inst. Code, § 628; Cal. Rules of Court, rule 5.637.)

### **Notice Requirements**

Notice of the prepermanency hearing, permanency hearing, and postpermanency hearings, as well as an opportunity to be heard, are important components of title IV-E compliance. The

<sup>8</sup> This includes parents, siblings, grandparents, aunts, uncles, nephews, nieces, great-grandparents, great-aunts and -uncles (grandparents' siblings), first cousins, great-great-grandparents, great-great aunts and uncles (great grandparents' siblings), first cousins once removed (parents' cousins), and great-great-great grandparents. Probate Code § 13.

individuals entitled to these rights include the parents (custodial, non-custodial, and incarcerated parents), the placement agency, foster parents, and relative caregivers. Judicial Council form JV-280, *Notice of Review Hearing*, was adopted for mandatory use in delinquency proceedings. Proof of notice must be filed with the court. Notice requirements are located in section 727.4.

## **Timeliness**

### **Detention Hearing**

The detention finding, “Continuance in the home is contrary to the child’s welfare,” must be made at the first court hearing following the child’s physical removal from the home and may not be delayed even for a one-day continuance under section 638. If this finding is not made at the first court appearance, the child is not eligible for title IV-E foster care funding for that entire stay in care.

Section 636(d)(4) requires the court to make the “contrary to the welfare” finding or release the child from custody when continuing a detention hearing. The court may make a temporary finding at the first court appearance pending a further determination at the continued hearing. A detention hearing is not considered timely if it is continued for even one day and this finding is not made.

### **Prepermanency Hearing, Permanency Hearing, and Postpermanency Hearings**

The prepermanency hearing must occur within 6 months of the date the child entered foster care (DEFC).

The permanency hearing must occur within 12 months of the DEFC.

In a delinquency proceeding, the DEFC is 60 days from the date the child was physically removed from the home of the parent unless one of the following exceptions applies:

- If the child is detained in juvenile hall pending foster care placement under a dispositional order and remains detained in juvenile hall awaiting foster care placement for more than 60 days, then the date of entry into foster care is the date the court made the dispositional order;
- If, before the child is placed in foster care, he or she is committed to a ranch, camp, school, or other institution and remains in that facility for more than 60 days, then the date of entry into foster care is the date the child is physically placed in foster care; or
- If, at the time the wardship petition was filed, the child was a dependent of the juvenile court and in out-of-home placement, then the date of entry into foster care is the earlier of the date the juvenile court made a finding of abuse or neglect, or 60 days after the date on which the child was removed from his or her home. (Welf. & Inst. Code, § 727.4(d)(4).)

A postpermanency hearing must be held within 6 months of the permanency hearing and at least every 6 months thereafter until the child is no longer in a foster care placement.

The prepermanency hearing, permanency hearing, and postpermanency hearings must be held for a child who is on runaway status. A hearing may not be taken off calendar pending the child's return. The report of the probation officer must contain information addressing the required determinations and the efforts to locate the child. Information Sheet 10: *Child on Runaway Status at Time of Review Hearing in Dependency or Delinquency Proceeding—Findings and Orders*, and Information Sheet 11, *Dispositional Hearing in 602 Proceeding for Child Returning from a Runaway Episode*, provide guidance regarding this issue.

### **Specific Findings and Orders**

The findings and orders discussed below are required for Social Security Act, Title IV-E<sup>9</sup> eligibility and Adoption and Safe Families Act<sup>10</sup> (ASFA) compliance purposes. The many other findings and orders required by California statutes are beyond the purview of this memorandum.

### **Detention Hearing**

*Continuance in the home is contrary to the child's welfare.*  
*Temporary placement and care is vested with the child welfare agency.*  
*Reasonable efforts have been made to prevent removal.*

For federal title IV-E purposes there must be a detention hearing and the two detention findings, and order must be made every time a child is physically removed from the home of a parent. This includes the removal from the home for violation of a condition of release or probation of a child on electronic monitoring, home detention, furlough, or probation.

The findings and order must also be made at a dispositional hearing if the child remained in the home of the parents pending the dispositional hearing.

The detention finding, "Continuance in the home is contrary to the child's welfare," must be made at the first court hearing following the child's physical removal or at a hearing during which the child is physically removed from the parent, such as a physical removal during a juvenile drug court hearing because of the child's failure to comply with drug court requirements. The removal of a child from the home can have a severe and lasting impact on the child and the family. The congressional intent in requiring this finding was to ensure that children are protected from unnecessary removals.

The finding, "Reasonable efforts have been made to prevent removal," must be made within 60 days of the child's removal and must refer to reasonable efforts made before removal. The level of effort made by the department to prevent or eliminate the need for removal must be found to have been reasonable. The department may assess the situation of the child and family and decide that, because of concerns for the child's safety, efforts beyond the initial response and assessment are not warranted. In that event, if the court views the department's assessment as

<sup>9</sup> 42 United States Code § 670 et. seq.

<sup>10</sup> The Adoption and Safe Families Act of 1997, Public Law 105-89. Federal regulations governing the review of a state's conformity are found in 45 Code of Federal Regulations §§ 1355–1357.

accurate and its actions appropriate, the level of effort will have been reasonable and the court can find that reasonable efforts have been made. If this finding is not made within the 60 days, the child will be ineligible for title IV-E foster care funding for that entire stay in foster care.

A failure to make the “vesting” order causes ineligibility until the date the order is made.

The detention findings and orders must be made on the record and included in the written order. (Cal. Rules of Court, rule 5.760(d), (e).) It is best practice to make the two findings and order at the first hearing.

### **Prepermanency Hearing, Permanency Hearing, and Postpermanency Hearings**

The JRTA team recommends that the court state on the record and that written orders include all title IV-E findings and orders for the prepermanency hearing, permanency hearing, and postpermanency hearing. However, the court may choose to make the findings and orders on the record through reference to, and adoption of, the probation officer’s recommended findings and orders setting forth the name and date of the report and the page numbers on which the recommendations are found. A copy of the recommended findings and orders adopted by the court *must* be attached to the written minute order or included on the face of the written minute order.

*Finding D1 Prepermanency Hearing, Permanency Hearing, and Postpermanency Hearings*  
*The child’s placement is necessary and*  
*the child’s current placement is appropriate.*

This is a two-part finding. The first issue is whether the child’s placement in foster care continues to be necessary. The second is whether the current foster care placement meets the child’s needs. A child’s placement in foster care may continue to be necessary although the child’s current foster care placement may not be appropriate.

This finding is required at the prepermanency hearing, permanency hearing, and postpermanency hearings.

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*Finding D2 Prepermanency Hearing and Permanency Hearing*  
*The agency has complied with the case plan by making reasonable*  
*efforts to make it possible for the child to safely return home **and** to*  
*complete whatever steps are necessary to finalize the permanent*  
*placement of the child.*

This finding is required at the time of the prepermanency hearing and the permanency hearing. It addresses the issue of concurrent planning.

The initial goal when a child is removed from the parents' care as a ward of the court and placed in foster care is reunification with the parents. Services need to be offered to the family—each parent and the child. The department must, at the same time, develop an alternative permanent plan for implementation in the event reunification is not possible.

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*Finding D2—Modified Postpermanency Hearing*

*The department has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent placement of the child.*

This modified D2 finding is required at postpermanency hearings.

Following the July 2006 title IV-E eligibility review, the federal reviewers noted that the unmodified D2 finding, “the agency has complied with the case plan by making reasonable efforts to make it possible to safely return home **and** to complete whatever steps are necessary to finalize the permanent plan,” is not appropriate for postpermanency hearings, which occur after the termination of reunification services. The focus of the case plan shifts to achieving permanency for the child after the termination of reunification services and this modified D2 finding reflects this focus on permanency.

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*Finding D3 Prepermanency Hearing and Permanency Hearing*

*The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement . . .  
by the mother has been \_\_\_\_\_  
by the father has been \_\_\_\_\_  
by the child has been \_\_\_\_\_*

This finding requires an assessment of the overall progress, which can be characterized with a qualitative descriptor such as none, minimal, moderate or substantial. The progress by the mother and father as well as the child must be assessed and a separate finding must be made for each individual.

Credit is not given when the finding references “the parents” and does not identify which parent. Credit is not given for a reference to “the parents” in cases in which only one parent is receiving services. Credit is not given when the finding fails to include a reference to anyone. Credit is not given when the finding as recommended and adopted is not supported by the information provided in the report and there is not an indication in the minute order that additional evidence was submitted.

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Under federal law, a finding must be made at each 6-month periodic review projecting the “likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship.” (42 U.S.C. § 675(5)(B).) The federal reviewers have notified us that all 6-month periodic reviews must project a date by which a permanent plan will be finalized. Federal law also requires the holding of a permanency hearing within 12 months of the date the child entered foster care.

The JRTA team recommends making finding D4 at the prepermanency hearing, and a D5 finding and a D6 finding at the permanency and postpermanency hearings as discussed below to fulfill the mandates of the law and ensure that the most secure and permanent placement will be found for each child under the court’s jurisdiction.

*Finding D4 Prepermanency Hearing*

*The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in an identified placement with a specific goal is \_\_\_/\_\_\_/\_\_\_.*

This finding is required at the time of the prepermanency hearing.

The correct date is the date of the scheduled permanency hearing because that is the date the child will be returned home or one of the other permanency hearing options will be ordered. The full date must be inserted. For example, January 5, 2011, is correct. January 2011 is not correct.

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*Finding D5 Permanency Hearing*

*The plan selected below is appropriate:*

- a. *An immediate return to the home is ordered as the permanent plan;<sup>11</sup> or*
- b. *The continuation of reunification services and the setting of a further permanency review hearing are ordered. There is a substantial probability that the child will be returned within the next six months and the child and his/her parent(s)/guardian(s) have demonstrated the capacity and ability to complete the objectives of the case plan. The court informed all parents present at the time of the hearing and further advises all parents that if the child is not returned to the custody of a parent within the next six months, a proceeding under Welf. & Inst. Code § 727.31 may be instituted which could result in the termination of parental rights and adoption; or*

<sup>11</sup> See Information Sheet 12, *Return of the Child to the Physical Custody of a Parent*, regarding the issues that must be considered and the appropriate title IV-E findings and orders.

- *c. Reunification services are terminated.*
  - (1) *placement with \_\_\_\_\_, a fit and willing relative, with a specific goal of \_\_\_\_\_. (Provide the relative’s name and select a goal, e.g., adoption; legal guardianship; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.); or*
  - (2) *placement with \_\_\_\_\_, with a specific goal of \_\_\_\_\_. (Provide the name of the placement and select a goal, e.g., return home; adoption; legal guardianship; placement with a relative; a less restrictive foster setting; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.)*  
*Based upon clear and convincing evidence already presented, a compelling reason exists for determining that a plan of termination of parental rights and adoption is not in the best interest of the minor; or*
- *d. Reunification services are terminated.*
  - (1) *Adoption is identified as the permanent plan. The court finds by clear and convincing evidence that reasonable services were provided or offered to the parents. A hearing is set under the procedures described in Welf. & Inst. Code § 727.31 and an adoption assessment report is ordered; or*
  - (2) *A legal guardianship shall be established. A hearing is set under Welf. & Inst. Code § 728(c) and a guardianship assessment report is ordered.*

To order the continuation of reunification services (D5b) at the twelve-month permanency hearing, the court must find either that reasonable services were not provided to the parent or that there is a substantial probability that the child will be returned and safely maintained in the home. To support a finding of “substantial probability” of return, the court must also find that the child and parent “have demonstrated the capacity and ability to complete the objectives of the case plan.” (Welf. & Inst. Code, § 727.3(b)(2).)<sup>12</sup>

The court may then order up to six additional months of services and set another permanency hearing on a date no later than 18 months from the date the child was originally taken from the physical custody of the parent.

Continuation of reunification services for up to 6 additional months is not available if it has been 18 months or more since the child’s initial removal from the home.

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<sup>12</sup> See also Administration for Children and Families Child Welfare Policy Manual, § 8.3C.2c. The manual is available on the ACF Web site at [http://www.acf.hhs.gov/programs/cb/laws\\_policies/laws/cwpm/policy.jsp?id=8](http://www.acf.hhs.gov/programs/cb/laws_policies/laws/cwpm/policy.jsp?id=8).

*Finding D5 Postpermanency Hearing*

*The permanent plan selected below is appropriate and ordered:*

- a. An immediate return to the home; or*
- b. Adoption as ordered at the hearing held under Welf. & Inst. Code § 727.31; or*
- c. Legal guardianship as ordered at the hearing held under Welf. & Inst. Code § 728 with a specific goal of \_\_\_\_\_ (Select a goal, e.g., dismissal of delinquency or adoption); or*
- d. Permanent placement with \_\_\_\_\_, a fit and willing relative, with a specific goal of \_\_\_\_\_ (Provide the relative's name and select a goal e.g., adoption; legal guardianship; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.); or*
- e. Placement with \_\_\_\_\_, with a specific goal of \_\_\_\_\_. (Provide the name of the placement and select a goal, e.g., return home; adoption; legal guardianship; placement with a relative; a less restrictive foster setting; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.)*

*The court finds by clear and convincing evidence, based upon the evidence already presented that there is a compelling reason for determining that a plan of termination of parental rights and adoption is not in the best interest of the child.*

At a permanency hearing or a postpermanency hearing:

- When entering an order for an identified placement with a specific goal, the court must find by clear and convincing evidence that a compelling reason exists for determining that a plan of termination of parental rights and adoption is not in the child's best interests. (Welf. & Inst. Code § 727.3(b)(6).)
- Include the name of the specific relative with whom the child is placed if the permanent plan option chosen is a permanent placement with \_\_\_\_\_, a fit and willing relative with a specific goal.
- Include the name of the group home, residential treatment center, or foster family if the permanent plan option chosen is an identified placement with a specific goal.
- Choose as a specific goal the option that provides the child with a more family-like and permanent setting. The appropriate specific goal will depend on the circumstances of the child's situation. For example, for a child in a group home placement, the goal could be placement with a foster family or a relative. For a child in placement with a relative, the goal could be establishment of a guardianship or adoption, or independent living with identification of a lifelong connection for the child.
- If the placement is confidential, specify the type of placement (e.g., residential treatment center, group home, foster home, relative) followed by the term "location confidential" and provide the court with the specific location under separate cover.



*Finding D6 Permanency Hearing and Postpermanency Hearings*

*Finding D6a The likely date by which the agency will finalize the permanent plan is \_\_/\_\_/\_\_.*

*or*

*Finding D6b The likely date the child may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in an identified placement with a specific goal is \_\_/\_\_/\_\_.*

*or*

*Finding D6c The likely date by which the child's specific goal will be achieved is \_\_/\_\_/\_\_.*

*or*

*Finding D6d The likely date by which the child may be placed for adoption or appointed a legal guardian is \_\_/\_\_/\_\_.*

The full date—month/date/year—must be inserted.

The finding must be based on a realistic assessment of the circumstances of the case.

The D6a finding is used when the plan selected for the child is an immediate return home. The likely date is the date of the hearing as that is the date of the order returning the child to the home.

The D6a finding is used at a postpermanency hearing when the court terminated parental rights and ordered a permanent plan of adoption at the hearing held under section 727.31. The date inserted is the date by which the adoption is expected to be finalized and the jurisdiction of the court dismissed.

The D6a finding is used at a postpermanency hearing when the court selected and ordered a permanent plan of guardianship at the hearing held under section 728(c) and it is anticipated that the court's jurisdiction will be dismissed once the letters of guardianship have been issued, but that has not yet occurred. The date inserted is the date by which the letters are expected to be issued and the court's jurisdiction dismissed.

The D6b finding is used at a 12-month permanency hearing when the court makes the necessary supportive findings and orders 6 additional months of reunification services. The finding is used at this time as it accurately describes what will occur at the 18-month permanency hearing—the child will be returned home or one of the alternate permanent plans will be selected. Use the date of the 18-month permanency hearing or an earlier date if it is anticipated that reunification will be possible before the date set for the 18-month permanency hearing. If the child graduates from the treatment program and the parents complete their case plan requirements before the scheduled 18-month permanency hearing, the probation department may file a motion to vacate the placement order and request an order for return of the child to the home of the parents.

The D6c finding is used at a permanency hearing when reunifications services are terminated and either a hearing is set under the procedures described in section 727.31 and an adoption assessment report is ordered or a hearing is set under section 728(c) and a guardianship assessment report is ordered. Use the date selected for the hearing under section 727.31 or 728(c) as the likely date.

The D6d finding is used for a child in a guardianship other than those described above. The selection of a goal of adoption or dismissal of jurisdiction or transition to independent living with identification of caring adult (relative caregiver or another person) to serve as a lifelong connection or other appropriate goal (e.g., transition to adult care facility with identification of a caring adult to serve as lifelong connection for an older child who is a regional center client and the guardian does not anticipate being able to care for the child as an adult) are examples of appropriate goals for a child in a guardianship in which the court is retaining jurisdiction over time. This promotes the regular reexamination of the appropriateness of the plan for the child's future.

The D6d finding is used for a child in an identified placement with a specific goal and for a child in a placement with a fit and willing relative with a specific goal. The date inserted is the realistic date the court can expect the goal to be achieved.

For example, for a child in an identified placement in a high level group home for sex offenders with a specific goal of placement in a regular group home, the likely date for achieving the specific goal may be in 18 months based on the objectives of the child's treatment plan. For a child in an identified placement in a regular group home with a specific goal of placement with a relative, the likely date for achieving the specific goal may be in 6 months.

Discussion of the progress toward achieving the specific goal is a critical component of the postpermanency hearing reports prepared by the probation department.

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*Finding D7 Prepermanency Hearing, Permanency Hearing, and Postpermanency Hearings*  
*The court finds that the services set forth in the case plan include those needed to assist the child in making the transition from foster care to independent living.*

During each prepermanency hearing, permanency hearing, and postpermanency hearing as well as dispositional hearing for a child 16 years of age or older, the court must assess the services provided by the agency as set forth in the case plan as well as the child's *Transitional Independent Living Plan* (TILP) to determine whether the services will assist the child in making the transition from foster care to independent living. If so, the finding should be made. If not, the matter should be continued to provide sufficient time for this deficit to be corrected. An affirmative finding can then be made at the continued hearing, assuming, of course, that the specific services set forth in the child's revised case plan will assist that child in the transition.

Court oversight of this component of a foster child's transition to adulthood can help ensure that the child receives the array of services and support necessary for success.

Use of the TILP included in ALL COUNTY LETTER NO. 08-31 issued by the California Department of Social Services on July 18, 2008 is recommended.<sup>13</sup> Although probation departments are not required to use this version of the TILP, its use will help ensure collaboration with the child, the probation officer, the caregiver and other dedicated adults in the child's life resulting in a clear, easy-to-follow plan with concrete steps designed to help the child transition to adulthood.<sup>14</sup> It is also a tool that bench officers can use to engage the transition-aged child who appear before them.

<sup>13</sup> This ACL is available at <http://www.dss.cahwnet.gov/lettersnotices/PG1458.htm>

<sup>14</sup> A sample TILP and related training material are located at [http://calswec.berkeley.edu/CalSWEC/OtherTraining\\_i.html](http://calswec.berkeley.edu/CalSWEC/OtherTraining_i.html)

# Reasonable Efforts for Family Reunification

With the passage of Public Law 96-272 and the creation of Title IV-E, the Federal government encouraged greater efforts by state agencies to avoid removal of children from their homes whenever it is safe to do so, to reunify children in out-of-home care with their families as soon as it is safe, and to make and finalize permanent placements for children who cannot return home. With the passage of the Adoption and Safe Families Act of 1997, the concept of reasonable efforts to preserve and reunify families became a key element of permanency planning. These efforts are to be pursued with the paramount concern being the child's health and safety.

Welfare and Institution Code section 361.5 specifies 14 court findings that would relieve a county of the mandate to provide family reunification services to a child and to the child's family. Unless the court has made one or more of these findings, section 361.5 requires the court to order the county to make reasonable efforts to preserve or reunify the family. At removal, adjudication, and review hearings, the court must determine whether or not those efforts are to be initiated, continued or discontinued.

According to Welfare and Institutions Code section 16501(g), family maintenance services are "activities designed to provide in-home protective services to prevent or remedy neglect, abuse, or exploitation, for the purposes of preventing separation of children from their families". Family maintenance efforts are made prior to the placement of a child in foster care, to prevent or eliminate the need to removing the child from the child's home.

Welfare and Institutions Code Section 16501(h) states that family reunification constitutes "activities designed to provide time-limited foster care services to prevent or remedy neglect, abuse, or exploitation, when the child cannot safely remain at home, and needs temporary foster care, while services are provided to reunify the family". The goal is to make it possible for a child to safely return home.

## Elements of Reasonable Efforts for Family Reunification

Family reunification includes:

Services specified in the child's case plan and provided by the county with the explicit goal of successfully resolving the problems that require placing the child in out-of-home care.

A case plan that considers the child's safety both in and out of the home.

A case plan, developed jointly by the probation officer, the child, and the child's parent(s), in which the probation officer has:

- Ensured that the identified needs of the child and the family are addressed;
- Reviewed the plan with the out-of-home care service provider (group home, foster home, counselor; etc) to explain each service objective, obtained agreement on time frames for completion, and confirmed that the provider has provided the services as agreed;
- Met with the child/parent(s) to go over case plan;
- Made sure the child and parent(s) have access to services and that the services are available.

## Information Sheet 1

### Court ordered to participate in services—Parents in 602 proceedings.

The court may order a parent to participate in services along with a child who has been ordered to participate in a program of supervision, or who has been declared a ward of the court. The court may consider the extent of progress the parent has made during the service period prior to returning the child to the home. The court may order the parent to participate in counseling or education programs for a child who is home on probation, or who has been suitably placed out of the home.

Welfare and Institutions Code § 654 provides that for children under a grant of informal probation supervision that the "...program of supervision shall require the parents ... to participate with the minor in counseling or education programs, including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court ..."

WIC § 661 provides that "...notice shall in addition state that a parent...may be required to participate in a counseling or education program with the minor concerning whom the petition has been filed." The parent is entitled to notice that the court may make such an order prior to the actual order.

WIC § 725 states that if the court places a child on probation, that probation include conditions required by WIC § 729.2, unless the court finds those conditions inappropriate. WIC § 729.2 conditions include requiring the parents to participate with the minor in a counseling or education program, including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court or the probation department, unless the child has been declared a dependent under WIC § 300 or a petition to do so is pending.

WIC § 727(b) states that when a minor has been declared a ward, and is to remain in the custody of the parent, and the parent has received notice under WIC § 661 that they may be required to participate in a program of counseling or education program with the minor, the court may then require that the parent "...participate with the minor in a counseling or education program, including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court." WIC § 727(c) states that the court may "...direct any and all reasonable orders to the parents..." as the court deems necessary and proper to carry out subdivisions (a) and (b) of that section, including orders directing the parent to ensure regular school attendance and to make reasonable efforts to obtain appropriate education services. Subdivision (a) includes placement out of the home.

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The information in this document is based on laws in effect at the time of publication (December 2003). Federal and state laws may change at any time.

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WIC § 727.2(a) states that “[i]f the court orders the care, custody and control of the minor to be under the supervision of the probation officer for placement pursuant to subdivision (a) of Section 727, the juvenile court shall order the probation department to ensure the provision of reunification services...” to facilitate the safe return of the child to the child’s home. WIC § 727.2(e)(4) requires the court to consider the “extent of progress that has been made by the minor and the parent ...” toward alleviating or mitigating the causes necessitating placement in foster care, when the court is considering making an order returning the child to the physical custody of the parent, prior to the first permanency hearing. See WIC § 727.2(f).

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## Information Sheet 10

### Child on runaway status at time of review hearing in dependency or delinquency proceeding—Findings and orders

Review hearings (prepermanency, permanency and postpermanency) must be held for a child on runaway status.<sup>1</sup>

We recommend the following findings when the child is on runaway status

The court finds:

The child ran away from the foster care placement on \_\_\_\_\_

**D1** For all hearing types: An out of home placement continues to be necessary and the child's placement was appropriate.

Information supporting the appropriateness of the child's placement prior to the child running away should be in the department's report.

**D2** For pre-permanency and permanency: The department complied with the case plan by making reasonable efforts to return the child to a safe home and to complete whatever steps were necessary to finalize the permanent plan and has made reasonable efforts to locate the child. For post permanency: The department complied with the case plan by making reasonable efforts including whatever steps were necessary to finalize the permanent plan and has made reasonable efforts to locate the child.

During the reunification period, the department should continue to work with the parents, supplying referrals, monitoring progress, meeting with them to discuss their progress and plans for the child, and at all hearing stages the department should be considering possible alternative permanent plans and goals that may be available once the child returns to placement as well as making efforts to locate the child.

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<sup>1</sup> This issue is specifically addressed in the federal Children's Bureau's Child Welfare Policy Manual in Question 3 of section 8.3C.2, Title IV-E, Foster Care Maintenance Payments Program, State Plan/Procedural Requirements, Case review system. The manual is available at <http://www.acf.hhs.gov/programs/cb/laws/cwpm/index.jsp>



**D3** For pre-permanency and permanency: The extent of progress made toward alleviating or mitigating the causes necessitating placement

- by the mother has been \_\_\_\_\_
- by the father has been \_\_\_\_\_
- by the child has been \_\_\_\_\_ (for use in a delinquency proceeding)

The report must include information regarding the mother and father's participation in reunification services as set forth in the case plan such as parenting education, substance abuse assessment and treatment, domestic violence classes, individual and or family counseling, etc., regardless of the child's runaway status. In a delinquency proceeding, the report should also include discussion of the child's participation in services prior to the runaway status.

**D4** For pre-permanency: The likely date by which the child may be returned and safely maintained in the home OR placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in an identified placement with a specific goal is \_\_\_/\_\_\_/\_\_. (Select the date of the permanency hearing.)

**D5** For permanency and post permanency: The permanent plan at the time the child ran away was \_\_\_\_\_ and that plan

is appropriate

is not appropriate

and will be reassessed when the child returns to placement. The agency must continue to make reasonable efforts to finalize the permanent plan.

The report of the agency must contain information addressing the efforts to locate the child, and the current circumstances of the case. The efforts to locate the child can include interviewing the prior caregiver, parents, siblings, relatives, and the child's known acquaintances. The report should address if the previous placement was meeting the child's needs and discuss what placement option would best suit the needs of the child when the child returns from the runaway episode. The report should also address what efforts the agency is making to finalize the permanent plan of the minor, including engaging the parents in services, identifying what services the child will need upon return from the runaway episode, and the efforts made to support the caregiver in continuing to care for the child. The court should exercise judicial oversight by determining if the efforts made to locate the child were reasonable, if the efforts made to finalize the permanent plan were reasonable, and should make any additional inquiry of the agency necessary to select the most appropriate permanent plan for the minor.

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**D6a** The likely date by which the agency will finalize the permanent plan will be identified when the child is no longer on runaway status.

**or**

**D6b** The likely date by which the agency will achieve the child's specific goal will be identified when the child is no longer on runaway status.

**D7** The services identified by the agency in the case plan include those needed to assist the child in making the transition from foster care to independent living. The child and probation officer will reassess the services set forth in the case plan and develop a Transitional Independent Living Plan when the child is no longer on runaway status.

The department should have sufficient knowledge of the child's needs to set forth appropriate services for the child pending the child's return from run away status and at that time the department and the child can more fully develop a plan.

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## Information Sheet 11

### Dispositional hearing in 602 proceeding for child returning from a runaway episode

Generally, a child on runaway status will come into contact with law enforcement, resulting in an arrest on a new offense and/or a violation of probation and detention in juvenile hall with an eventual dispositional order for return to suitable placement in foster care. The options available for ensuring that title IV-E issues are timely considered and findings & orders are made are discussed below in Part A.

In a majority of the cases, the child is still in juvenile hall and a specific placement has not been identified and confirmed by the time of the dispositional hearing, which requires a slight modification of two of the review findings and orders as discussed below in Part B. The remaining review findings are unchanged.

#### Part A: Making the title IV-E findings & orders at the dispositional hearing

At the disposition hearing, the two preferred options available in terms of title IV-E findings & orders are:

- Consider the review issues, enter the title IV-E review findings & orders, and continue to the next previously scheduled review hearing. This is the preferred option in that it ensures eligibility for the child's pending title IV-E placement. In addition, it provides an opportunity for the court to identify the placement and determine its specific appropriateness before a full six month period has passed.
- Consider the review issues, enter the title IV-E review findings & orders, and set the next review hearing six months from the dispositional hearing. This option does ensure title IV-E eligibility for the child's pending placement, but it will be a full six months before the court identifies and determines the appropriateness of the specific placement; or

A third option is available at the time of the disposition hearing, assuming review hearings have been held as required during the period the child was on runaway status:

- Do not make the title IV-E review findings & orders and continue to the next previously scheduled review hearing.

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**PART B:** Modified review findings and orders made at dispositional hearing for a child returning from runaway status who is in juvenile hall and for whom a placement has not yet been identified.

D1 For all hearing types: An out of home placement continues to be necessary and the child's intended placement level is appropriate. (The probation officer's report must include information regarding the child's need for continued placement as well as the level of placement being sought and the reasons that level is appropriate.)

D5<sup>1</sup> For permanency and post permanency:  
The plan of an identified placement in a

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*(identify level of placement—group home, foster home, residential treatment home)* with a specific goal of

---

*(Select return home, adoption, legal guardianship, placement with a relative, a less restrictive foster setting, or emancipation with identification of a long-term mentor)*

is appropriate and is ordered as the permanent plan. The probation department must provide the court with the name of the placement and the goal when the child is placed.

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<sup>1</sup> This assumes the child's permanent plan is an identified placement with a specific goal. If the child has a permanent plan of adoption or guardianship, that plan should be identified and ordered.

## Information Sheet 12

### Return of the child to the physical custody of a parent

A child is declared a ward or a dependent, removed from the home of the parent and placed in an out-of-home placement upon the order of a judicial officer following a determination that removal from the physical custody of the parent is necessary for reasons related to the child's safety as well as public safety for a child who is a ward. The order of removal and placement may be modified by a juvenile court judicial officer and the child returned to the physical custody of the parent following a determination regarding the child's interests and safety in the home at a hearing held pursuant Welf. & Inst. Code, section 350(c), 366.21, 366.22, 388, 727.2, 727.3, 728, 782, or 778.

The report of the social worker or probation officer prepared for the hearing which recommends a return to the physical custody of the parent, must include a factual discussion of all of the issues, including:

The necessity and appropriateness of the child's placement during the period from the last review hearing to the present;

The efforts the department made to return the child to his/her home and finalize the permanent plan including the services to the child and each parent;

The progress made by the child and each parent;

The reasons the out-of-home placement is no longer necessary and the return of the child to the physical custody of the parent would not present a risk of detriment to the child;

The reasons the return to the parent's home is the appropriate permanent plan;

The recommended date for the return of the child to the physical custody of the parent;

If the child is 16 years or older, the services provided to the child during the period of placement and the services recommended for the future.

The appropriate title IV-E related findings and orders to use under these circumstances are:

The return of the child to the physical custody of the parent would not create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.

The information in this document is based on laws in effect at the time of publication (June 2006). Federal and state laws may change at any time.

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- D1 The child's placement in foster care is no longer necessary or appropriate.
- D2 The county agency has complied with the case plan by making reasonable efforts to make it possible for the child to safely return home and to complete whatever steps are necessary to finalize the permanent placement of the child.

- D3 The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement...  
by the child has been \_\_\_\_\_ (For use only in a delinquency proceeding)  
by the mother has been \_\_\_\_\_  
by the father has been \_\_\_\_\_

- D5 The permanent plan of return to the home of the parent, \_\_\_\_\_, (name)  
is appropriate and is ordered as the permanent plan.

- D6 The child is ordered placed in the home of the parent on or before,  
\_\_\_\_\_  
(Date within five court days of the hearing)

- D7 The court finds that the services set forth in the case plan include those needed to assist the child in making the transition from foster care to independent living.  
(Use for child 16 years of age or older)

- D8 The child was in foster care at 16 years of age and remains eligible for independent living services. The county agency is ordered to ensure the continued provision of those services as stated in the child's case plan and Transitional Independent Living Plan.  
(Use for child 16 years of age or older)

Other findings and orders may be required depending on the child's status and particular circumstances.

The information in this document is based on laws in effect at the time of publication (June 2006). Federal and state laws may change at any time.

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In the Superior Court of the State of California  
In and for the County of Canyon

**SAMPLE**

JUVENILE DEPARTMENT

Action #: 07-234  
Probation #: 87096

**DISPOSITIONAL REPORT AND RECOMMENDATION  
OF THE PROBATION OFFICER**

<b>In the Matter of:</b> Darryl England, a minor		
<b>AKA:</b>		
<b>Age:</b> 14.10	<b>Birth Date:</b> 09/10/1992	<b>Birthplace:</b> Canyon, CA
<b>Custody Status:</b> Electronic Monitoring		

<b>Disposition Hearing:</b> 06/30/2007	<b>Time:</b> 8:30 a.m.	<b>Dept:</b> C
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**Legal Counsel:** Public Defender's Office

**JURISDICTIONAL FINDINGS**

<u>Petition Filed</u>	<u>Cnt</u>	<u>Code</u>	<u>Section</u>	<u>M/F</u>	<u>MPC</u>	<u>Finding</u>
4/10/2007	1	PC	288(a)	F	8 years	Admits

**ADJUDICATION:**

On June 16, 2007, the minor appeared for a DEJ suitability hearing in Department C of the Juvenile Court. The minor was found unsuitable for the DEJ program and the minor did not withdraw his admission. The Court set the Disposition hearing for June 30, 2007.

**TIME CREDITS/BEHAVIOR:**

	<u>From</u>	<u>To</u>	<u>Total</u>
Juvenile Hall	<u>4/7/2007</u>	<u>5/15/2007</u>	<u>38 days</u>

### **CIRCUMSTANCES OF OFFENSE(S):**

According to Canyon Police Department Report #07-041234 on April 6, 2007, at approximately 10:30 p.m., officers responded to a report of a sexual battery. The reporting party, Donald England, the minor's father, reported that he received a call earlier in the evening from his cousin, Leanna Cruz, who resides with him and his family. He asked her if everything was ok, and she responded, "No it's not, you need to talk to your son." She reported that the minor and her son, the Confidential Victim (CV) (DOB 1/12/98), were in the bedroom together with the door locked late that afternoon. She reported that her son told her that the minor had pulled down the CV's pants and touched his penis.

The minor's father returned to the home and told the minor to go to his room. The minor's father and his cousin then talked to the CV, who they reported was embarrassed. Mr. England noted that the CV would lower his head during questioning and when asked if the minor touched his penis he would cry. The CV eventually admitted that the minor pulled down his shorts and underwear and proceeded to grab his penis in his hands and hold it. He reported that the minor threatened to beat him up if he told anyone about the incident.

The reporting officer then interviewed the CV. The CV reported that he went into the minor's bedroom to watch television. He reported that the minor locked the door behind him and approached him and started pulling down the CV's jean shorts and underwear. The minor then used his hand to grab the CV's penis. The CV stated that he then made a moaning sound like a ghost would. The CV reported that he asked the minor to let go, but he refused. The CV reported that his mother then began to pound on the door and he hid underneath the bed out of fear. The CV's mother entered the room and eventually found him underneath the bed.

The CV's mother, Leanna Cruz, was then interviewed. She reported that she became concerned when she did not see her son for about 15 minutes. She stated that she suspected he was in the minor's room so she went and pounded on the door. She stated that the minor eventually opened the door; however, due to the look on his face, she suspected he had done something wrong. She asked the minor where her son was and he pointed to underneath the bed. She demanded her son come out, and he did, with his shirt and shorts in disarray, as if he had just pulled up his shorts. She reported that she took her son into the living room and asked him why he was in the room with the door locked, at which time he reported the minor asked him to come in and locked the door behind him. She reported that she asked him why he had his shorts down; however, he looked at the ground and hesitated in answering her. She reported that she asked her son if the minor had touched him in his private area. She stated that her son again lowered his head and started to cry uncontrollably. She reported that it took approximately 20 minutes for the CV to answer her questions. She stated that the CV finally admitted that the minor pulled down his shorts and touched his penis.

The minor was questioned and denied ever touching the CV. He denied allowing the CV in his room. He did admit to locking the door, and he could not explain why. The minor was arrested and booked into the Canyon County Juvenile Hall.



**MINOR'S AND MOTHER'S STATEMENT ABOUT OFFENSE:**

The minor and his mother were interviewed on May 4, 2007, at Juvenile Probation. The minor was asked to make a statement, at which time he hesitated. The minor's mother asked him if he would like her to leave the room, to which the minor responded, "No." The minor's mother then made the following statement: "My son didn't do anything wrong, and that is why he does not want to say anything. He said he did it so he could just get court over with. I think a program for sex offenders would be ok for him to do because he was a victim of sexual abuse."

The minor was asked if it was true that he only admitted the offense to get court over with and that he indeed did not do the crime. The minor merely shrugged his shoulders in response.

The minor's mother added that his father turned him in and now wants nothing to do with him. The minor added, "Yeah, he does not like me."

**FATHER'S STATEMENT ABOUT OFFENSE:**

This officer spoke with the minor's father on May 29, 2007, and set an appointment to meet with him on June 4, 2007, to obtain information for this report. The minor's father failed to appear. It should be noted that this officer wrote the disposition report on the minor's brother who was before the Court last year for a violation of Penal Code 288(a). The father was the reporting party in that matter and failed to appear for interviews with me on that case as well.

**VICTIM'S STATEMENT/RESTITUTION INFORMATION:**

- Restitution appears to be an issue and it is recommended that it be reserved.
- This officer attempted to contact the mother of the victim, but was able only to leave a voicemail message on her phone. To date no response has been received, but appropriate forms were mailed and a Victim Impact Statement was requested. If information is received prior to the Disposition hearing, it will be forwarded for the court's consideration.

**ADDITIONAL INFORMATION:**

On June 18, 2007 the minor's case was screened for the Placement Services Program.

- The minor was accepted for the program.

**INDIAN CHILD WELFARE ACT**

The mother submitted a form ICWA-020 indicating that she has no known Indian ancestry. She also stated that to her knowledge the father has no Indian ancestry. The child was asked and stated the he does not know of any Indian ancestry.

**FATHER:**

**Name:** Donald England  
**DOB:** 1/11/1971  
**SSN:** Unknown  
**Address:** 130 N. Lark Ave, #32, Canyon, CA 83122  
**Phone:** (419) 272-2929  
**Citizenship:** U.S.  
**Marital Status:** Single

**Employment:** Unknown

**Health/Education/Psychological/Substance Abuse History:** The minor's mother reported that the minor's father has sold narcotics but has never used narcotics. The minor and his mother both reported that the father uses marijuana on a regular basis. The father completed high school and a year of community college.

**Criminal Record:** Mr. England has a prior criminal history dating back to 1990. He has had two arrests for violations of Penal Code 148(a)(1), the last occurring in 2005. Further, he has numerous traffic citations for driving without a license. In 2004 he was convicted of a violation of Health and Safety Code 11378 and sentenced to one year in county jail and two years probation.

**MOTHER:**

**Name:** Karen Laidley

**DOB:** 1/3/1973

**SSN:** Unknown

**Address:** 121 N. Commercial, Apt 22 Canyon, CA 83128

**Phone:** (419) 276-1672

**Citizenship:** U.S.

**Marital Status:** Single

**Employment:** Unemployed

**Health/Education/Psychological/Substance Abuse History:** The minor's mother admitted to a long history of crack cocaine use. She stated she last used before returning to prison in February of this year. The mother completed 9th grade and made attempts to complete a GED.

**Criminal Record:** The minor's mother has an extensive history of drug and property offenses. She has been committed to state prison on four occasions. The minor's mother was released from prison on July 1, 2005, and immediately absconded from parole supervision. In February she was arrested and detained until May 6, 2007, and she was released back on parole. Her prospective parole release date is May 2009.

**SIBLINGS:**

<b>Name</b>	<b>DOB/Age</b>	<b>Living With</b>	<b>Record/Custody</b>
Richard England	Age 16	Group Home	Placement/Ward/PC 288(a)
Alice England	Age 11	Father	None reported
Edward England	Age 7	Father	None reported
Jon England	Age 6	Father	None reported
Raymond England	Age 2	Father	None reported

**MINOR'S HISTORY:**

**Living with:** Karen Laidley, Mother  
**Address:** 121 N. Commercial, Apt 22, Canyon, CA 83128  
**Phone:** (419) 276-1672  
**Citizenship:** U.S.

**Sex:** M      **Race:** H      **Height:** 5'6"      **Weight:** 110      **Hair:** BRO      **Eyes:** BRO  
**Age:** 14 yrs 10 mos.      **Social Security #:** Unknown      **CDL #:** None

**Physical Health:**

- The minor's health was reported to be good.

**Educational History:**

- **Behavior:** Good attendance, with absences primarily in his first and second period classes. As noted above, Darryl has been molested, has molested a minor 6 years his younger, has been living in an home environment regularly filled with at least references to violence, and with gang and drug activities, and is regularly placed in the middle of familial disputes. In addition, Darryl has just experienced a change of placement from his father's home to his mother's home. Darryl's most stable environment, and the environment most free from violence and abuse, is his school. Based on conversations with Darryl's counselor, Darryl, and Darryl's mother, his behavior at school is generally quiet with partial participation. The instability, violence, and his own perpetrating behavior has not been displayed at the school. However, this officer will continue to check on his school behavior and will try to provide supports, when necessary, if Darryl's behavior at school changes.
- **Educational and developmental achievement:** Darryl has successfully completed the first semester of 8th grade and is in his second semester of 8th grade. This probation officer did speak with Darryl's counselor and learned that Darryl's grades are barely passing because he does not turn in his work. The counselor also noted that the school has tried to meet with the parents to initiate a special education assessment because Darryl's English teacher has voiced repeated concerns about Darryl's ability to read and believes he needs remedial reading classes and has voiced concerns that Darryl's ADD is not being addressed through an IEP. However, neither the mother nor the father have responded to the school's requests to meet.
- **Participation in developmentally appropriate extracurricular and social activities:** During the interview with Darryl, he mentioned his interest in basketball and that he missed playing at the Boys and Girls Club, which he used to do when he lived with his father. In addition, Darryl's counselor mentioned a reading tutoring service available at the school after school 3 days a week.
- **Attendance at a comprehensive, regular, public, or private school:** The child is currently attending Central Middle School, a comprehensive regular public school.
- **Physical, mental health, or learning-related disabilities or other special education needs:** Darryl has asthma and must carry his asthma inhaler at school. His mother reported he has ADD and a learning disability but did not have any information about what his learning disability is or what services, if any, he is receiving. This probation officer will

investigate this matter with his school and provide an interim report to the court within two weeks.

- **Special education and related services needs:** Unknown at this time. See request below.
  - Is the child receiving appropriate services through a current IEP? Not at this time.
  - Is the child eligible for regional center services? Not known.
- **Education needs (general and special):** Based on interviews with Darryl's counselor, it seems that Darryl at least needs assistance with reading and an assessment of any learning disabilities.
- **Case plan goals for meeting education needs:** This officer will talk with the parents about Darryl's educational needs and will direct them to address any needs. This officer is requesting a hearing be set in two weeks to address Darryl's educational needs. If the parents have not responded to this officer's request within two weeks, this officer will, at the education hearing to be set in two weeks, ask that their educational rights be limited and a responsible adult be appointed as Darryl's educational representative.
- **Holder of educational rights:** Currently Darryl's parents hold educational rights. However, assuming the court orders an out-of-home placement for Darryl, this officer is asking that, under 34 C.F.R. § 300.300, the court temporarily limit the parents' educational rights and appoint this officer to represent Darryl for the sole purpose of initiating an I.D.E.A. evaluation.
- **Limitation on parents' educational rights:** The parents' educational rights should be temporarily limited at today's hearing for the sole purpose of initiating an I.D.E.A. assessment. A request to limit their educational rights and appoint an education representative on a long-term basis will be presented to the court if the parents have not begun to address Darryl's educational needs by the time of the education hearing to be set in two weeks.
- **Educational, physical, mental health and developmental needs:** As previously mentioned, Darryl needs to carry a working asthma inhaler with him at all times—at school and during extracurricular activities. If Darryl is placed in a group home, he will need to have this medication at the time he is placed and appropriate refills provided during his placement. Darryl needs therapy to address his own victimization, his victimization of his younger cousin, and to address the violence, drug, and gang activity in his home environment. Darryl has not presented with any developmental delays according to his school counselor. This officer is not an expert in assessing this issue and will ask that this be determined in the IEP process.
- **Needs not being met (describe & address all):** Currently, Darryl's physical, mental health, and developmental needs are not being met. Since moving to his mother's house, Darryl's asthma inhaler prescription has not been filled and he is carrying with him an expired inhaler. Darryl has not, though it's been recommended by his school, been assessed for special education needs and has not received any assistance with his reading. Darryl's parents have not responded to the school's concern in anyway, either with cooperation for an assessment or to meet and discuss other options if they do not want him assessed. Darryl is not currently receiving any therapeutic services.
- **Needed services, assessments, and evaluations the child and responsibilities:**
  - Probation officer:
    - Appointed to represent Darryl regarding the initial assessment.

- To begin initial assessment and to immediately meet with Darryl and his parents and interested family members and school representative(s) familiar with Darryl to determine his educational needs.
- To work with school and family to begin Darryl's participation in a reading program.
- To work with family to resume Darryl's participation in basketball.
- Parents to meet with probation officer within seven days of today's court hearing for the purposes described above.
- Darryl to meet with probation officer within seven days of today's court hearing for the purposes described above.
- **Change in educational placement** during the reporting period:  Yes  No  
Provide reason if placement change occurred.

**Psychological History:**

- It was reported by the minor's mother that the minor has a learning disability, is ADD, and thus receives SSI.
- The minor is enrolled at Central Middle School and is in the 8th grade. The school reports the minor's attendance is fairly good, although he is often reported absent from his first and second period classes. Darryl's grades are barely passing because he does not turn in his work and the school believes he would benefit from remedial reading classes. School officials have tried to contact the parents to discuss the need for special education services and possibly scheduling an IEP, but they have had no luck getting the minor's mother or father to respond.

**Employment:**

- The minor reported no history of gainful employment.

**Substance Abuse:**

- The minor denied any use of drugs or alcohol.

**Gang Involvement:**

- The minor denied any involvement in gang activity.

**Prior Legal Contacts:**

- The minor does not have a prior record.

**Minor's Behavior:**

- The minor's mother reported no problems with the minor since his release from Juvenile Hall. She stated that the minor is now happy and eating well. She reported that the minor "is not stressed anymore." The minor's mother added that she and her parents are constantly monitoring the minor and reminding him to do well.

**CPS HISTORY:**

- On February 8, 1997, the minor's father was investigated for physical abuse against the minor, his brother Richard, and sister Alice. The abuse was unsubstantiated.

- On February 22, 2002, the minor's father was investigated for general neglect with the minor, his brothers Edward and Richard and sister Alice as the CVs. This abuse was substantiated. The minor's father requested counseling for Alice, as he stated she was a CV of sexual abuse while in her mother's care. He was given a referral.
- On April 1, 2005, the minor's brother, Richard England, was accused of molesting the minor, and his brother Jon. That abuse was substantiated by CPS. At the same time of this incident the minor's father was investigated for general neglect, which was inconclusive.
- On April 19, 2005, after a report of sexual abuse on the minor and his two siblings was founded and the perpetrator had been removed from the home, CPS followed up on the case. The Social Worker spoke with the stepmother, Margaret. She stated that the family was willing to provide counseling for the CVs in the case. CPS provided referrals and bus tokens to the family to take the children to counseling. It is unknown if they followed through; however, per the minor, the was not placed in counseling.
- On July 11, 2005, the minor's father was investigated for general neglect with Jon, Alice, Edward and Darryl as the CVs. This investigation was inconclusive. On this same date both the minor and his brother Edward were investigated for sexual abuse on their brother Raymond. The abuse was inconclusive.
- On April 17, 2007, the minor was again investigated for sexual abuse on his brother Raymond. The abuse was unfounded.

### **FAMILY ISSUES:**

The minor currently resides with his mother, his maternal grandparents, his mother's boyfriend, the boyfriend's father, and his mother's two sisters. Prior to the current offense the minor resided with his father, his father's girlfriend and four of his five siblings. The father's cousin and her son, the CV, also reside in the home. The minor's older brother is placed in a group home program for sexual offenders as a ward of Canyon County Juvenile Court.

The minor's mother was released from prison on June 7, 2007, after serving three months for a parole violation. Since this time she has resided with her parents. It should be noted that on her presentence report dated March 6, 2003, she reported she was deaf in one ear because of abuse she endured from her father, Joseph Laidley.

The minor's mother reported that the minor's father used to be an active gang member and reported that most of his family members are still active gang members. Further, she reported that he was her drug supplier and is now the drug supplier for his live-in girlfriend, Margaret. She added that he does not use drugs, but Margaret does.

The minor's mother spent most of the interview defaming the minor's father's girlfriend. Both she and the minor reported that the minor's father's girlfriend, Margaret, beat the minor and his siblings (a CPS report was done by Deputy Probation Officer Steven Hartford, as the family had disclosed the same information a week earlier during an interview). The minor's mother

stated that she cannot stand Margaret and would like to beat her. She added several times that since she is on parole, she understands she cannot hit Margaret, and thus will depend on the police and CPS to handle the situation. Ms. Laidley gave numerous stories/accounts of the minor's being beaten, as she stated he has told her.

Ms. Laidley went on to add that Margaret "turned Darryl against Richard." This was in reference to the fact that the minor's brother Richard is now on probation for a violation of Penal Code 288(a) in which the minor was one of the victims. Ms. Laidley stated that the minor's father and Margaret have, "put things on her kids." She added that, "Donald had my other son locked up as well," again making reference to Richard England, the minor's older brother.

The minor's mother reported that she was "doing drugs" when her son Richard was arrested, thus she could not help him. She reported that now she would like to help both Richard and the minor by having them reside with either her or her parents. She stated if she can get Richard, she will have one son live with her and one son live with her parents. She stated that she is aware she will have to find a place to live, as she now resides with her parents, and she is willing to do this.

The minor added during this interview, that Margaret has advised everyone in his apartment complex that he is a "molester." He said his friends live in the same complex and now he feels everyone will make a big deal of this and it really isn't. He stated that he is not a molester.

This officer does not want to overstate the minor's mother's accusations against the minor's father and his girlfriend, however, it is noteworthy to report that she accused the minor's father and his girlfriend of starving the children, beating the children, and making up stories to have the children arrested, including the minor's current charge. Throughout the interview, as Ms. Laidley was telling this officer of incidents, the minor continually interjected and added both details to the stories, as well as new stories. The minor's mother noted she has never seen any abuse, she has only heard of the abuse from her children, primarily the minor since his release.

The minor's family support from the father is uncertain. As previously discussed, the father failed to appear for an interview with this officer regarding this incident as well as a similar incident involving the minor's older sibling. The father's failure to appear for these probation interviews indicate a strong lack of follow-through on his part.

**ADDITIONAL INFORMATION:**

Per Probation records on August 4, 2005, the minor's brother Richard disclosed in counseling at his group home that he had molested his younger sister and cousin as well as the minor. The Canyon Police Department, CPS and CV services were all notified. A referral was completed. The group home noted that the family had failed to get counseling for the younger siblings because of transportation issues, even though they were aware of the molestation.

### **ANALYSIS AND PLAN:**

Darryl England, 14 years, 10 months of age, is making his first appearance before the Canyon County Juvenile Court for disposition on a violation of section 288(a) of the Penal Code.

For the best interest and well-being of the minor, it is this officer's opinion that a group home placement is more than warranted at this time. This officer considered placement in the home of a parent with out-patient sexual offender treatment, but this is not a viable alternative for the reasons discussed below.

- The minor entered an admission to molesting his 8-year-old male cousin, a child six years younger than the minor. The CV also stated that the minor threatened physical harm to him if he told anyone of the incident. Although the minor did not withdraw his admission, his responses at this officer's interview with him regarding the DEJ program, is indicative of his current inability to take responsibility for his actions and to fully understand the serious nature of those actions.
- The minor has been a victim of sexual abuse committed by his older brother, who is currently in a group home placement for sexual offenders.
- Currently, the minor is residing with his mother. However, this officer feels that this arrangement is not the best placement for the minor at this time. First, the minor's mother resides with her father, who she has previously reported abused her physically, causing deafness in one of her ears. Secondly, she was released from prison on May 6, 2007, and has not maintained a drug free lifestyle for any significant period of time other than the last month and a half. Third, and of the utmost concern, is her adamant belief in the minor's innocence and her blaming of the minor's father for all of his "problems." Thus, there are a number of risk factors in the minor's mother's home that this officer feels will hinder the minor's chances of doing well on probation and in counseling.
- The father's residence is not a good placement for the minor because the CV as well as the minor's younger siblings reside there. Further, the minor's father has failed to meet with this officer and does not appear to be willing to participate in the minor's care and treatment. Furthermore, this officer is unsure what to make of all the accusations, both founded and unfounded, of sexual abuse in the family. It appears the problems that have only been addressed with the minor and his older brother Richard, go much further within the family. CPS referrals have been made and a referral was done; however, the problem appears to persist, as these referrals happened before the current offense. As of the week of June 5, yet another CPS referral was submitted by this department. It is unknown at this point the status of that investigation; however, it is the opinion of this officer that removal from the home and placement in a group home may be the safest place for the minor at this time, as there is clearly a lack of adult supervision in the father's home.

The minor's placement in a group home program for sexual offenders will provide:

- The minor with treatment needed to address the issues associated with being both the victim and perpetrator of sexual abuse, and to return to the community as a productive young person.



- The minor's mother with the opportunity to continue on what appears to be a drug-free lifestyle and to find a residence of her own, which she previously reported was her goal. Further, through family counseling, she will be able to better grasp all of the family dynamics that are taking place and thus she will be a more suitable candidate to care for the minor.
- The minor's father with an opportunity through family counseling to understand the dynamics of sexual abuse within a family unit and address the issues present within the family that may allow the minor's return to the family setting or, in the alternative, to at least participate in family gatherings.

### **RECOMMENDATIONS**

#### **IT IS RECOMMENDED THE COURT FIND THAT:**

Credit be given for 38 days already spent in custody, to be credited against the maximum period of confinement of 8 years.

The parent or guardian is incapable of providing or has failed or neglected to provide maintenance, training, and education for the minor.

The welfare of the minor requires that the physical custody be taken from the parent/guardian, as continuation in the home of parent/guardian would be contrary to the minor's welfare.

Reasonable efforts have been made to prevent or eliminate the need for removal of the minor from the home and to make it possible for the minor to return to the home.

The likely date the minor will be returned home is June 27, 2007, or the court will adopt an alternative permanent plan.

The parent/guardian's right to participate in educational decisions for the minor remains intact.

#### **IT IS RECOMMENDED THAT THE COURT ORDER:**

The minor be adjudged a ward of the juvenile court, under the supervision of the probation officer, until further order of the court.

The minor be temporarily removed from custody of the parent and be remanded to custody.

Authorize the probation department to offer the minor community service or Community Service Work Program up to a cumulative total of 10 days as an option to work off alleged probation violations in lieu of being brought back before the Court.

The minor to provide buccal swab samples, right thumbprint, and a full palm print impression of each hand, and any blood specimens or other biological samples as required by Penal Code sections 295 and 296.

The minor submit to testing under Penal Code Section 1202.1.

The minor pay a restitution fine payable to the restitution fund in Count One in the amount of \$100.00 under Welfare and Institutions Code section 730.6.

The probation officer may release the names and addresses of the minor and parent to the victim(s) on request for the purpose of civil action.

Absent objection, the court authorize the probation officer to determine the amount of restitution to be paid by the minor to the victim(s).

That court consent is given to the release and exchange of information to and between the probation officer and all other qualified individuals or agencies, public or private, involved in the physical, psychological, or psychiatric testing, evaluation, or treatment of the minor.

The minor shall be under the care, custody, control and supervision of the Probation Officer for suitable placement pursuant to Welfare and Institutions Code Section 727(a) and which meets the physical, social, and psychological needs of the minor.

The minor be detained in the Juvenile Justice Campus (JJC) pending suitable placement. The probation officer is authorized to release the minor for placement as appropriate; the minor must obey all rules of staff of the Juvenile Justice Campus (JJC) and the probation officer; and the director of the Juvenile Justice Campus (JJC) or the probation officer is authorized to approve needed medical and dental care for the minor while in placement.

A preplacement review is set for July 14, 2007, at 8:30 a.m. in Department C and every two weeks thereafter until the minor is suitably placed.

A periodic review hearing is set for December 27, 2007, at 8:30 a.m. in Department C.

The minor must obey all rules, directives, and orders of the placement facility and staff, foster home parents ,or relatives while in placement.

**IT IS RECOMMENDED THAT THE COURT ORDER THE MINOR TO OBEY THE FOLLOWING CONDITIONS OF PROBATION:**

Report to the probation officer when notified, and thereafter as directed by the probation officer.

Obey all laws, all orders of the probation officer and of the court.

Notify the probation officer of any change of address or school within 48 hours.

Attend school as required by the California Education Code.

Obey curfew as ordered by the Probation Officer (8 p.m. to 6 a.m.).

Not to associate with Confidential Victim as described in the circumstances of the offense or anyone whom the minor knows to be disapproved of by the minor's parents or the probation officer.

Not to associate with children under 14 years of age, except in the presence of a responsible adult, and with the approval of the probation officer.

Not to consume any alcoholic beverage; not to frequent any place where the primary purpose is to engage in the sale of alcoholic beverages.

Not to use or possess narcotics, other controlled substances, related paraphernalia, or poisons, and to stay away from places known by the minor to be frequented by drug users.

Submit to chemical testing to detect the use of narcotics, alcohol, and other controlled substances.

Submit person or property to search and seizure at any time by the probation officer or peace officer with or without a warrant.

Attend psychological/substance abuse assessment, counseling, or treatment as ordered by the probation officer.

Enroll and complete the following programs as directed by the probation officer: Sex Offender Treatment Program.

**PARENTS' RESPONSIBILITY-IT IS RECOMMENDED THAT THE COURT ORDER:**

Parents must participate in counseling with minor, and cooperate fully with the reunification efforts of the placement facility as directed by the Probation Officer pursuant to Welfare and Institutions Code Section 727(c).

Father to:

- Cooperate with and actively participate in child's treatment program;
- Successfully complete Comprehensive Youth Services Parenting Class;
- Participate in family counseling;
- Complete a substance abuse assessment and successfully complete all recommended treatment programs; and
- Comply with all conditions of current probation.

Mother to:

- Cooperate with and actively participate in child's treatment program;
- Successfully complete Comprehensive Youth Services Parenting Class;
- Participate in Family Counseling;
- Successfully complete substance abuse treatment program;
- Comply with all conditions of parole; and
- Obtain appropriate housing.

Respectfully submitted on behalf of,

Allison Green  
CHIEF PROBATION OFFICER

BY: \_\_\_\_\_  
Samantha Loyaltan,  
Deputy Probation Officer

Dated: 6/26/2007

\_\_\_\_\_  
David Daniels,  
Probation Services Manager

\*\*\*\*\*

- The foregoing has been read and considered.
- The foregoing has been read and considered and the Court adopts the recommendations and findings.  as amended.

Dated: \_\_\_\_\_

By: \_\_\_\_\_  
Judge

This sample report is based on the report writing of Ms. Aimee Leyva, a Fresno County Probation Officer, with editing by the Judicial Review and Technical Assistance Project of the Administrative Office of the Courts, Center for Families, Children & the Courts.

December 29, 2009

ALL COUNTY LETTER NO. 09-86

TO: ALL COUNTY WELFARE DIRECTORS  
ALL COUNTY CHILD WELFARE PROGRAM MANAGERS  
ALL CHIEF PROBATION OFFICERS  
ALL COUNTY JUVENILE COURT JUDGES  
ALL TITLE IV-E AGREEMENT TRIBES

SUBJECT: NOTIFICATION OF RELATIVES

REFERENCE: ASSEMBLY BILL (AB) 938 (CHAPTER 261, STATUTES OF 2009);  
WELFARE AND INSTITUTIONS CODE (W&IC) SECTIONS 309, 319,  
361.3 AND 628; FAMILY CODE (FC) SECTION 7950; PUBLIC LAW  
(PL) 110-351

This All County Letter (ACL) is to advise county child welfare and probation departments of the requirement to provide notification to relatives of children being placed into out-of-home care. Enactment of AB 938, which becomes effective January 1, 2010, amends W&IC sections 309 and 628. These changes implement federal law (PL 110-351), which requires social workers and probation officers to exercise due diligence to identify and engage relatives and to provide notice to those relatives when a child is removed from their home. Provisions in AB 938 reinforce the requirement in FC 7950 that diligent efforts must be exercised in locating relatives when a child is in need of out-of-home placement. This policy underscores the importance of relative participation and support in all aspects of a child's life.

The changes to W&IC sections 309 and 628 require that within 30 days of a child's removal from the home, the county must exercise due diligence to conduct an investigation to identify and locate all grandparents, adult siblings and other adult relatives, including those suggested by the parents. Due diligence efforts shall include asking the child in an age-appropriate manner about relatives important to the child and obtaining information regarding the location of the child's adult relatives. In accordance with W&IC section 319(f)(3), parents are required to disclose to the social worker the names, addresses and any known identifying information of any maternal or paternal

relatives of the child. The W&IC section 319(f)(2) states that preferential consideration for placement is given to an adult who is a grandparent, aunt, uncle or sibling of the child. The social worker or probation officer shall provide written and oral notification to all adult relatives who are located, except when that relative's history of family or domestic violence makes notification inappropriate.

The contents of the notification shall include:

- (1) That the child has been removed from the custody of his or her parent(s) or guardian(s);
- (2) Information about providing care for the child while the family receives reunification services with the goal of returning the child to the parent or guardian;
- (3) How to become a foster family home or approved relative or nonrelative extended family member;
- (4) Additional services and supports that are available in out-of-home placements; information regarding the Kinship Guardianship Assistance Payment program, the California Work Opportunity and Responsibility to Kids (CalWORKs) program for approved relatives, and Adoption Assistance Program. Charts containing details and comparisons of permanency options are available at the California Social Work Education Center (CalSWEC) website, [http://calswec.berkeley.edu/CalSWEC/OtherTraining\\_b.html](http://calswec.berkeley.edu/CalSWEC/OtherTraining_b.html);
- (5) Options for contact with the child, including, but not limited to, visitation; and
- (6) Any options that may be lost by failing to respond.

The required written information is contained in the "Important Information for Relatives" (Attachment B). This required document is to be sent to all located relatives. A sample of a cover letter to relatives is also attached (Attachment A). Counties may develop their own cover letter as a county template in the Child Welfare Services/Case Management System (CWS/CMS) for the interim while a statewide template is being developed. The cover letter should contain the following core elements:

- (1) Letter to be sent on county agency letterhead;
- (2) The name and address of the relative;
- (3) The names of the child(ren) involved (multiple children may be covered in the same letter);
- (4) A statement that this may be their only notification if they fail to respond; and
- (5) Agency information to ensure that the relative can make contact with the appropriate county personnel.

### For Probation Cases Only

When a minor is detained and the probation officer has reason to believe that the minor is at risk of entering foster care, the probation officer has 30 days to identify, locate and notify, in writing, all adult relatives located. When oral notification is provided by a probation officer, detailed information about the various options to help with the care and placement of the child is not required. If the probation officer did not conduct the identification and notification of relatives, but the court orders foster care placement, the probation officer shall conduct the investigation to find and notify relatives within 30 days of the placement order. Nothing in this instruction shall be construed to delay foster care placement for an individual child.

Each county welfare and probation department shall create and make public a procedure by which relatives of a child who has been removed from his or her parents or guardians may identify themselves to the department and be provided with the notices required by statute. This process may include use of an 800 number or an email address and may be added to the "Information for Relative" cover letter.

All oral and written contacts with relatives are to be documented in the CWS/CMS in the Client or Collateral notebook. The next CWS/CMS update (6.4 Release) will provide the ability to record the search and engagement efforts in the Collateral notebook. As relative search and engagement is an ongoing process, continually adding updated information of family relationships is essential to ensure that all children have the greatest chance to establish lifelong relationships with family and friends for care and support.

If you have any questions about this ACL, please contact the Kinship Care Policy and Support Unit at (916) 657-1858.

Sincerely,

GREGORY E. ROSE  
Deputy Director  
Children and Family Services Division

Attachments

c: County Welfare Directors Association of California  
Chief Probation Officers of California

bc: Karen B. Gunderson, Branch Chief (CYPB)	8-13-73
Sharon A. DeRego, Bureau Chief (PPB)	8-13-66
Carole A. Minchew, Program Manager (KCPSU)	8-13-66
Bill Fuser, Program Analyst (KCPSU)	8-13-66

CYPB Chron

[ACL 09-86 AB 938 Notification of Relatives.docx](#)

[Attachment A-Relative Cover Letter.docx](#)

[Attachment B-Important Information for Relatives.docx](#)



Date

Name of relative  
Address

Re: Name of child(ren)

Dear Mr./Ms.:

I am a social worker for the child welfare services unit/probation officer for \_\_\_\_\_ County/Tribe. I am sending you this letter to let you know that proceedings have been started to remove (Child's Name) from his or her parent/guardian and may be/has been temporarily placed in foster care.

California law requires that when a child is removed from their home, relatives should be located, contacted and told about the child's removal and how the relative can choose to help the child during this difficult time. Because you are related to (Child's Name), I am sending you information about ways you can be of help, if you choose to, and how you can contact me about that. A few of the ways that you can help include being involved with helping (Child's Name) get back together with their parent, letting me know about other relatives who may want to help, visiting (Child's name) at their foster care home, or having (Child's Name) live with you. You may also provide information to the juvenile court verbally or in writing. You may have other ideas about how you can help that we can talk about.

I've enclosed some additional information about this situation and foster care. I would be very pleased to speak with you and answer any questions you have. Your reply to this letter does not obligate you in any way, but please know that this may be the only notification you receive, and failure to respond may result in the child's placement and care without your input. Please contact me or my supervisor at the numbers listed below as soon as you can. If you are calling long distance, you may make the call a "collect call."

Sincerely,

Child Welfare Worker/Probation Officer  
Address  
Telephone #  
Email Address  
Supervisor's Name  
Telephone #  
Email Address

Q1: I am the relative of a child who is being removed from his or her home. What should I do?

A1: If you want to be involved in helping the child or family, please contact the child's social worker, probation officer or their supervisor.

Q2: What can I do to help?

A2: Connections with relatives and family friends are important for all children, especially for children whose families are in crisis. You can give the family support and encouragement as the parents try to resolve the problems that led to the child being removed from them. You can also help by calling and visiting the child, inviting them to your home for holidays and other occasions, remembering birthdays, etc. You can assist the child's social worker or probation officer in locating other relatives and family friends who might be able to help the child and family, including those who live out of state. You may also want to consider having the child live with you until the child can safely return home.

Q3: What about the child's brothers and sisters?

A3: In most cases, the goal is to keep brothers and sisters together, but this is not always possible. Even if brothers and sisters have to live in separate homes, you may be able to help them keep in touch through visits and family events.

Q4: If I want the child to live with me, what do I need to do?

A4: You may request to be approved as a relative caregiver. Consider if you can provide for the child on a long-term basis if the child is not able to return to the home of his or her parents. By law, preferential consideration for placement of the child is given to adult grandparents, aunts, uncles, brothers and sisters. Certain requirements must be met:

- Criminal record clearances are obtained for all adults living in the home;
- All adults are screened for prior child abuse histories;
- The home must meet health and safety standards;
- There must be a demonstrated ability to care for and supervise the child; and,
- The relative must agree to ensure the child's personal rights are protected

Q5: There is someone in my household who has a criminal background. Does that mean the child can't live with me?

A5: No, you can still be considered. Some crimes may be exempted allowing for placement in your home. Each case is reviewed carefully. The social worker or probation officer will give you detailed options based on the findings of the case.

Q6: What kind of financial and social support will I receive if I choose to be a caregiver?

A6: Once a child is placed in your home you are eligible to apply for financial support which may be available either through the California Work Opportunity and Responsibility to Kids Act (CalWORKs) program or foster care funding. The child's social worker or probation officer will do the following things:

- Assist you in obtaining financial and medical assistance;
- Work with you to access health and dental care for the child;
- Give you information on what to do and who to call if problems occur;
- Have contact with you and the child at least once a month;
- If eligible, provide a yearly clothing allowance for the child;
- Provide assistance with emergencies; and
- Help arrange parent-child visits, counseling and other services the child may need.

Q7: If my home is approved will the child get to live with me?

A7: Not necessarily. You and other relatives may be assessed and approved. This allows the county to have a group of interested relatives to choose from. Where the child will live will be carefully considered based on many factors. The approved home should meet the child's best interests without further disrupting the child's life and activities.

Things that must be considered are the child's proximity to the following:

- Their current school;
- Their friends, brothers and sisters, parents, other relatives; and
- The programs and activities the child currently participates in.

The caregiver's willingness to work with the social worker and the birth parents with the goal of reuniting the child with the birth family is another important factor when deciding about who will care for the child.

Q8: What about visits between the child and the birth parents? How does that work?

A8: The social worker/probation officer and the court will determine how often the child and parent can visit. Relatives and other caring adults may help in many ways to ensure that visits are safe and productive. They may be able to provide a safe space for visits, transport parents and the child to and from visits, and be a supportive familiar presence for the parent and child.

Q9: What happens if the child cannot return home?

A9: Living with a family permanently is the primary goal. When a child isn't able to return to the parents, the family the child is living with is usually considered first as a permanent family. You may be asked about becoming the child's legal guardian or adopting the child. Ongoing financial and medical assistance may be available through the Adoption Assistance Program, the Kinship Guardianship Assistance Payment program or CalWORKs. Information about these programs is available online at <http://www.dss.cahwnet.gov/cdssweb/entres/forms/English/pub344.pdf> and from the child's social worker or probation officer.

Q10: I live out of state. How can I get involved?

A10: In some circumstances, a child may be placed with a relative out of state. The social worker or probation officer can discuss this option with you. You can also be supportive by maintaining contacts and visits.

Q11: If the child has American Indian heritage, how can I help the child maintain connections with his or her cultural heritage?

A11: The social worker/probation officer is required to ask all relatives about the child's connections with American Indian tribes so the child can benefit from any services available to American Indian children. If you can help answer questions about yourself and other relatives who may be enrolled members of American Indian tribes, please let the social worker/probation officer know.

Q12: If I want to give information to the court about the child, how do I do that?

A12: You may write a letter to the judge. The letter will also be seen by everyone in the case (parents, social workers, and lawyers). You can tell the court how you know the child, what things you have done with the child, and share your concerns about the child. Beginning in January 2011, there will be a Relative Information Form you can give to the court. You can ask the social worker or probation officer to give you this form, or you can ask for it at the court clerk's office.

**UNDER CALIFORNIA LAW, THE COUNTY MUST EXERCISE DUE DILIGENCE TO IDENTIFY AND LOCATE ALL RELATIVES IN THE FIFTH DEGREE. THIS INCLUDES:**

**First Degree:** Mother, Father, Stepmother, Stepfather

**Second Degree:** Siblings, Stepsiblings, Grandparents

**Third Degree:** Aunts, Uncles, Nephews, Nieces, Great Grandparents

**Fourth Degree:** Cousins, Great Aunts & Uncles (Grandparents' siblings), Great-great Grandparents

**Fifth Degree:** First cousin once removed (Parents' cousins), Great Great Aunts & Uncles (Great grandparents' siblings), Great-great-great grandparents

**Relatives by Marriage:** All persons married at one time to one of the persons listed above (even if marriage ended due to death or divorce.)

\*\*WIC 319(f)(2)

Added by the Judicial Review and Technical Assistance Project, at the Center for Families, Children & the Courts, Administrative Office of the Courts for informational purposes.

## **Family Finding and Engagement**

### **Rule 5.637. Family Finding (§§ 309(e), 628(d))**

- (a) Within 30 days of a child's removal from the home of his or her parent or guardian, if the child is in or at risk of entering foster care, the social worker or probation officer must use due diligence in conducting an investigation to identify, locate, and notify all the child's adult relatives.
- (b) The social worker or probation officer is not required to notify a relative whose personal history of family or domestic violence would make notification inappropriate.

### **Rule 5.690. General conduct of disposition hearing**

#### **(a) Social study (§§ 280, 358, 358.1, 360, 361.5)**

The petitioner must prepare a social study of the child. The social study must include a discussion of all matters relevant to disposition and a recommendation for disposition.

- (1) The petitioner must comply with the following when preparing the social study:
  - (A)—(B) \*\*\*
  - (C) The social study should include a discussion of the social worker's efforts to comply with rule 5.637, including but not limited to:
    - (i) The number of relatives identified and the relationship of each to the child;
    - (ii) The number and relationship of those relatives described by item (i) who were located and notified;
    - (iii) The number and relationship of those relatives described by item (ii) who are interested in ongoing contact with the child; and
    - (iv) The number and relationship of those relatives described by item (ii) who are interested in providing placement for the child.

# PARENTAGE CHECKLIST

## General

The court has a duty to inquire about parentage and the clerk is obligated to provide notice to all alleged parents. (Welf. & Inst. Code §§ 316.2(a)-(b), 726.4(a)-(b); Cal. Rules of Court, rule 5.635(a), (g).) The court must take judicial notice of a prior determination of parentage. (Cal. Rules of Court, rule 5.635(d)(4).) The court must determine whether or not a person is a biological parent or a presumed parent if a person appears and requests a judgment of parentage. (Welf. & Inst. Code §§ 316.2(d), 726.4(d); Cal. Rules of Court, rule 5.635(h).) An executed and filed voluntary declaration of paternity under Family Code section 7570 et seq. has the same force and effect as a paternity judgment. (Cal. Rules of Court, rule 5.635(c).) If paternity has not already been established, then the juvenile court has exclusive jurisdiction to hear a paternity action. (Welf. & Inst. Code §§ 316.2(e), 726.4(e); Cal. Rules of Court, rule 5.635(a).) The agency (probation department or child protective services) must assist the court in determining parentage and ensuring that parents have an opportunity to be heard at each hearing.

## Parentage Inquiry

Ask any parent present and other family members as appropriate:

- Has there been a judgment of parentage?
- Was the mother married or did she have a registered domestic partner at or after the time of conception?
- Did the mother believe she was married or believe she had a registered domestic partner at or after the time of conception?
- Was the mother cohabiting with another adult at the time of conception or birth?
- Has the mother received support or been promised support during her pregnancy or after the birth of the child?
- Has any man formally or informally acknowledged the child as his own?
- Has the child lived with a man who has held himself out as the child's father?
- Have genetic tests been administered, and, if so, what were the results?
- Has the child been raised jointly with another adult or in any other co-parenting arrangement?

The inquiry must be made at the initial hearing and at all following hearings including the dispositional hearings and status review hearings until parentage is established. (Welf. & Inst. Code §§ 316.2, 726.4; Cal. Rules of Court, rule 5.635.)

## Genetic Tests

Court may order genetic tests pursuant to Family Code section 7550 et. seq. (Cal. Rules of Court, rule 5.635(e)(2).)

## Documentation at Hearings

The agency (probation department or child protective services) must provide the court with a report of parentage investigation efforts and the results of the inquiries.

## Communicate with Child Support Enforcement Office

The court must direct the clerk to prepare and submit *Parentage Inquiry-Juvenile* (form JV-500) to the county office of child support enforcement, requesting an inquiry into whether or not parentage was established through any superior court order or judgment, or through a voluntary declaration establishing paternity. (Cal. Rules of Court, rule 5.635(d)(2).)

### Notice

<b>To</b>	All alleged parents.
<b>Content</b>	<input type="checkbox"/> Allegation that he or she is or could be the parent; <input type="checkbox"/> A copy of the petition; <input type="checkbox"/> A statement that the child is the subject of the petition; <input type="checkbox"/> A statement that the proceedings could result in termination of parental rights and the child's adoption; <input type="checkbox"/> Notice of the next scheduled hearing; <input type="checkbox"/> A blank copy of <i>Statement Regarding Paternity</i> (form JV-505)
<b>How</b>	<input type="checkbox"/> By certified mail, return receipt requested; <input type="checkbox"/> To last known address  (Welf. & Inst. Code §§ 316.2(b), 726.4(b); Cal. Rules of Court, rule 5.635(g).)

### Non-Traditional Families

Parentage inquiries should be sensitive to the potential for non-traditional families. California appellate courts have found that an individual, such as a sibling or grandparent, who has been raising a child and holding that child out as his or her birth child may qualify as a presumed parent. Children of same-sex couples are protected under California law through recognition of second parent adoptions and by a presumption of parentage for children born to registered domestic partners.

This checklist is based on laws in effect at the time of publication – September 2010. Federal and state laws can change at any time. The chart was compiled by the Judicial Review and Technical Assistance project of the Administrative Office of the Courts' Center for Families, Children & the Courts, 455 Golden Gate Avenue, San Francisco, California 94102, 415-865-7739.



# Questions About Paternity

1. Does a judgment of paternity already exist?
2. Was the mother married or believed she was married at the time of conception of the child?
3. Was the mother living with a man at the time of the birth of the child?
4. Did the mother receive support payments with respect to the child?
5. Did the mother receive support payments in connection with the pregnancy?
6. Were paternity tests completed? What were the results?

Questions adapted from Welfare and Institutional Code Section 726.4

Material developed by Mary Tysor-Tetley, LCSW 2000, The Center for Human Services, Placement and Supervision of Children: Laws, Practices and Dilemmas for Probation Officers.

# Suggestions on how to comply with the requirements for an Absent Parent Search showing "due diligence"

## The basics

1. Try to get the full name and birth date, social security number, service branch, AKAs, last known whereabouts of the absent parent.
2. Follow up leads and document contacts made.
3. Check the following:
  - MediCal records.
  - Call the State DMV office.
  - Mail an address verification from the postmaster.
  - Mail CA-5 form to the Veteran's Administration.
  - Check State Inmate Locator Number.
  - Check Federal Inmate Locator/Parole Information Number.
  - Non-resident or illegal absent fathers will be referred to the INS for whereabouts.
  - Check the State MEDS machine.
  - Call the District Attorney's office and do an arrest/warrant check.
  - Check with the local jail or out-of-county jail when appropriate.
  - Do a Department of Justice check (for this a physical description of the absent parent is required).
  - Check local phone directory and call long distance assistance when appropriate.
4. Forty-five days before the periodic review, re-check. Some items will not require a repeat check (e.g., if the parent is not a veteran then don't do a veteran's check).
5. If you have a valid address for an absent parent then send a letter indicating that they are either the presumed, legal, or alleged father/mother of the child. Let them know whom to contact for further information. Send this letter every 3 months by certified, return receipt requested mail if you receive no response. Send Notices of Hearings and Court reports to the valid address. Document this activity in the case record.
6. If you do not have a valid address for the absent parent, periodically ask the custodial parent and known relatives if they have any new or helpful information about the absent parent. Prior to status reviews, ask again and record the responses in the case record.
7. Document current search efforts at each status review under the appropriate report heading and list specific tasks performed and outcomes.

## Once the case goes into permanent placement

1. Upon receipt of cases scheduled for a 366.26 Hearing, check that the case record contains documented efforts to locate the absent parent.
2. Check the prior Findings and Orders—they should indicate reasonable efforts made to locate the absent parent.
3. If the location of the absent parent is known then serve Notice based on legal requirements.
4. If the identity or whereabouts of the absent parent are unknown, the probation officer should file an affidavit 75 days prior the 366.26 Hearing and schedule a "Review of Affidavit" court date.
5. The Judge will direct the worker as to how to proceed. Usually the Judge will order publication.
6. The probation officer is responsible for seeing that the correct information is published.
7. If the identity/whereabouts of the absent parent is known, then the probation officer must serve the parent.

CHILD'S NAME:	CASE NUMBER:
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**CUSTODIAL AND OUT OF HOME PLACEMENT DISPOSITION ATTACHMENT**

**THE COURT FINDS AND ORDERS**

1.  The maximum time the child may be confined
  - a.  in secure custody for the offenses sustained in the petition before the court is (*specify*):
  - b.  in the petition before the court, with the terms of all previously sustained petitions known to the court aggregated, is (*specify*):
  
2.  The child is committed to (*specify*):  days  months  in juvenile hall  on electronic monitoring
  - a.  and is remanded forthwith.
  - b.  and is to report to (*name*): \_\_\_\_\_ by  a.m.  p.m. on (*date*): \_\_\_\_\_
  - c.  with credit for (*specify*): \_\_\_\_\_ days served.
  
3.  The welfare of the child requires that physical custody be removed from the parent or guardian. (*Check only if applicable*):
  - a.  The child's parent or guardian has failed or neglected to provide, or is incapable of providing, proper maintenance, training, and education for the child.
  - b.  The child has been on probation in the custody of the parent or guardian and has failed to reform.
  
4.  Probation is granted the authority to authorize medical, surgical or dental care pursuant to Welfare & Institution Code §739.
  
5.  Reasonable efforts to prevent or eliminate the need for removal
  - a.  have been made.
  - b.  have not been made.
  
6. a.  The probation officer will ensure provision of reunification services, and the following are ordered to participate in the reunification services specified in the case plan:
 

Mother    Biological father    Legal guardian    Presumed father  
 Alleged father    Indian custodian    Other (*specify*): \_\_\_\_\_
  
- b.  Reunification services do not need to be provided to (*name*): \_\_\_\_\_ as the court finds by clear and convincing evidence that (*check one*):
  - (1)  reunification services were previously terminated for that parent or not offered under section 300 et seq. of the Welfare and Institutions Code.
  - (2)  that parent has been convicted of  murder of another child of the parent  voluntary manslaughter of another child of the parent  aiding, abetting, attempting, conspiring, or soliciting to commit murder or manslaughter of another child of the parent  felony assault resulting in serious bodily injury to the child or another child of the parent.
  - (3)  the parental rights of that parent regarding a sibling of the child have been terminated involuntarily.
  
- c.  The child is  ordered to  continued in the care, custody, and control of the probation officer for placement in a suitable relative's home or in a foster or group home.
  
- d.  The following are ordered to meet with the probation officer on a monthly basis:
 

Mother    Biological father    Legal guardian    Presumed father  
 Alleged father    Indian custodian    Other (*specify*): \_\_\_\_\_
  
- e.  The child is ordered to obey all reasonable directives of placement staff and probation. The child is not to leave placement without the permission of probation or placement staff.

CHILD'S NAME:	CASE NUMBER:
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6. f.  The child is to be placed out of state at the following (*name and address*):
- (1)  In-state facilities are unavailable or inadequate to meet the needs of the child.
  - (2)  The state Department of Social Services or its designee has performed initial and continuing inspection of the facility and has certified that it meets all California licensure standards, or has granted a waiver based on a finding that there is no adverse impact to health and safety.
  - (3)  The requirements of section 7911.1 of the Family Code are met.
- g.  Pending placement, the child is
- (1)  detained in juvenile hall. If being housed in another county, please specify county:
  - (2)  detained on home supervision in the home of
    - (a)  parent (*name*):  mother  father
    - (b)  parent (*name*):  mother  father
    - (c)  legal guardian (*name*):
    - (d)  other (*name and address*):
    - (e)  and is subject to electronic monitoring.
- h.  The parent or legal guardian must cooperate in the completion and signing of necessary documents to qualify the child for any medical or financial benefits to which the child may be entitled.
- i.  The county is authorized to pay for care, maintenance, clothing, and incidentals at the approved rate.
- j.  The likely date by which the child may be returned to and safely maintained in the home or another permanent plan selected is (*specify*): \_\_\_\_\_
- k.  The right of the parent/guardian to make educational decisions for the child is specifically limited. *Order Limiting Parent's Right to Make Educational Decisions for the Child and Appointing Responsible Adult as Educational Representative—Juvenile* (form JV-535) will be completed and transmitted.
7.  The child has been ordered into a placement described by title IV-E of the Social Security Act.
- a.  The date the child entered foster care is \_\_\_\_\_, which is 60 days after the day the child was removed from his or her home.
  - b.  An exception applies to the standard calculation of the date the child entered foster care because:
    - (1)  The child has been detained for more than 60 days. Therefore, the date the child entered foster care is today's date of \_\_\_\_\_.
    - (2)  The child has been in a ranch, camp, or other institution for more than 60 days and is now being ordered into an eligible placement. The date the child enters foster care will be the date he or she is moved into the eligible placement facility, which is anticipated to be \_\_\_\_\_.
    - (3)  At the time the wardship petition was filed, the child was a dependent of the juvenile court and in an out-of-home placement. Thus, the dated entered foster care is unchanged from the date the child entered foster care in dependency court. That date is \_\_\_\_\_.
8.  The child is committed to the care, custody, and control of the probation office for placement in the county juvenile ranch, camp, forestry camp, or \_\_\_\_\_
- a.  for \_\_\_\_\_ months \_\_\_\_\_ days
  - b.  until the requirements of the program have been satisfactorily completed.
  - c.  If being housed in another county, please specify:
9.  The child is committed to the Department of Corrections and Rehabilitation, Division of Juvenile Justice, and *Commitment to the California Department of Corrections and Rehabilitation, Division of Juvenile Facilities* (form JV-732) will be completed and transmitted.

Date:

\_\_\_\_\_  
JUDICIAL OFFICER

CHILD'S NAME:  	CASE NUMBER:  
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### FINDINGS AND ORDERS AFTER SIX-MONTH PREPERMANENCY HEARING—DELINQUENCY

1. **The court has read and considered and admits into evidence:**

- a.  Report of probation dated:  
b.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS**

2. a.  Notice of the date, time, and location of the hearing was given as required by law.  
b.  **For child who is not present:** The child received proper notice of his or her right to attend the hearing and voluntarily gave up that right to attend this hearing.
3. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.  
b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

**Child returned home**

4.  The return of the child to his or her parent or legal guardian would not create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Out-of-home placement is no longer necessary or appropriate. The agency has complied with the case plan by making reasonable efforts to return the child safely home and to complete whatever steps are necessary to finalize the permanent placement of the child.

**Child remaining in out-of-home placement**

5.  By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
6.  The child's out-of-home placement is necessary.
7. a.  The child's out-of-home placement is appropriate.  
b.  The child's current placement is not appropriate. This hearing is continued for a report by the agency on the progress made to locate an appropriate placement.
8.  The child has run away from placement. Out-of-home placement continues to be necessary. The placement was appropriate. Probation has made reasonable efforts to locate the child. Probation has complied with the case plan by making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent plan.
9.  The child is placed outside the state of California and that out-of-state placement:  
a.  continues to be the most appropriate placement and is in the child's best interest. There are no available and adequate in-state facilities to meet the child's needs. All licensure requirements have been met or a waiver granted. The placement complies with the requirements of Family Code section 7911.1.  
b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued for a report by the county agency on the progress made toward finding an appropriate placement for the child.
10.  Probation  has  has not complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child, and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent plan.
11.  **The child is an Indian child**, and by clear and convincing evidence active efforts  were  were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.
12.  **The child has no known Indian heritage.**

CHILD'S NAME:	CASE NUMBER:
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12.  The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:
- |  | None                     | Minimal                  | Adequate                 | Substantial              | Excellent                |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| a. <input type="checkbox"/> Child            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. <input type="checkbox"/> Mother           | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. <input type="checkbox"/> Father           | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d. <input type="checkbox"/> Legal guardian   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e. <input type="checkbox"/> Other (specify): | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| f. <input type="checkbox"/> Other (specify): | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

13.  The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in an identified placement with a specific goal is (date):

**Case planning and visitation**

14.  **The child is 16 years or older.** The services set forth in the case plan include those needed to assist the child in making the transition from foster care to independence and adulthood.
15. a.  The following were actively involved in the case plan development, including the plan for permanent placement:  
 child  mother  father  legal guardian  tribal representative  other:
- b.  The following were NOT actively involved in the case plan development, including the plan for permanent placement. The probation officer is ordered to actively involve them and submit an updated case plan within 30 days from today.  
 child  mother  father  legal guardian  tribal representative  other:
- c.  The following were NOT actively involved in the case plan development, including the plan for permanent placement. The probation officer is not required to involve them because they are unable, unavailable, or unwilling to participate.  
 child  mother  father  legal guardian  tribal representative  other:
16.  The court finds that the child's:
- |  |  |
|--|--|
| a. developmental needs <input type="checkbox"/> are <input type="checkbox"/> are not being met | c. physical needs <input type="checkbox"/> are <input type="checkbox"/> are not being met  |
| b. mental health needs <input type="checkbox"/> are <input type="checkbox"/> are not being met | d. education needs <input type="checkbox"/> are <input type="checkbox"/> are not being met |
17.  The additional services, assessments, and/or evaluations the child requires and the person(s) or agency ordered to take the steps necessary for the child to receive these services, assessments, and/or evaluations are:
- a.  set forth on the record.
- b.  as follows:
18. a.  The following are ordered by the court to participate with the child in a counseling or education program as directed by probation:  Mother  Father  Legal guardian  Other (specify):
- b.  The participation by the following is deemed by the court to be inappropriate or potentially detrimental to the child and their participation with the child in a counseling or education program is NOT ordered:  
 Mother  Father  Legal guardian  Other (specify):
19.  The child has siblings under the court's jurisdiction and all of the siblings are NOT placed together in the same home.
- a.  Visitation between the child and child's siblings who are not placed together is appropriate and ordered.
- b.  The court finds by clear and convincing evidence that visitation between the siblings who are not placed together would be detrimental to at least one of the children. No visitation is ordered.
20.  Visitation with the child is ordered:
- a.  As set forth in *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).
- b.  As follows (specify):

CHILD'S NAME:	CASE NUMBER:
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**Health and education**

21.  The  parent(s)  legal guardian(s) are  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welfare & Institution Code section 739 and vested with the probation department.
22.  A limitation on the  parents  legal guardians to make educational decisions for the child
- a.  is NOT necessary. The parents or legal guardians hold educational rights and responsibilities, including those listed in California Rules of Court, rule 5.650(e) and (f).
- b.  is necessary. Those rights are limited as ordered and as set forth in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535).
23.  The child's school placement has changed since the dispositional hearing.
- a.  The child's educational records, including any evaluation regarding a disability, were transferred to the new school placement within two business days.
- b.  The child is  enrolled in  attending school.

**Parentage**

24. a.  The court inquired of  the mother  others (*names and relationships*):
- as to the identity and address of all presumed or alleged fathers. All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding Paternity (Juvenile)* (form JV-505) were provided with and ordered to complete the form and submit it to the court.
- b.  The  court clerk  probation department shall provide the notice required by Welfare and Institutions Code section 726.4 to:
- (1) alleged father (*name*):
- (2) alleged father (*name*):

**Advisement**

25. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred under Welfare and Institutions Code section 727.31 to a selection and implementation hearing **that could result in the termination of parental rights and the adoption of the child.**
26. **All prior orders not in conflict with this order remain in full force and effect.**
27.  Other findings and orders:
- a.  See attached.
- b.  (*Specify*):
28.  The date the child entered foster care is (*specify*):
29.  **The next hearings will be:**

Date:	Time:	Dept:	Type of hearing:
Date:	Time:	Dept:	Type of hearing:

30.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved.
31.  The sealing process has been explained to the youth, and the youth has received any materials relevant to the sealing process, and the name of his or her attorney who can assist with sealing records.
32. Number of pages attached: \_\_\_\_\_

Date:

\_\_\_\_\_  
JUDICIAL OFFICER



CHILD'S NAME: _____	CASE NUMBER: _____
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**FINDINGS AND ORDERS AFTER PERMANENCY HEARING—DELINQUENCY**

12 MONTH

18 MONTH (only if reunification services extended at 12 months)

**1. The court has read and considered and admits into evidence:**

- a.  Report of probation dated:  
b.  Other (specify):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS**

2. a.  Notice of the date, time, and location of the hearing was given as required by law.  
b.  **For child who is not present:** The child received proper notice of his or her right to attend the hearing and voluntarily gave up that right to attend this hearing.
3. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.  
b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

**Child returned home**

4.  The return of the child to his or her parent or legal guardian would not create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Out-of-home placement is no longer necessary or appropriate. The agency has complied with the case plan by making reasonable efforts to return the child safely home and to complete whatever steps are necessary to finalize the permanent placement of the child.

**Child remaining in out-of-home placement:**

5.  By a preponderance of the evidence, the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The factual basis for this conclusion is stated on the record.
6.  The child's out-of-home placement is necessary.
7. a.  The child's out-of-home placement is appropriate.  
b.  The child's current placement is not appropriate. This hearing is continued for a report by the agency on the progress made to locate an appropriate placement.
8.  The child has run away from placement. Out-of-home placement continues to be necessary. The placement was appropriate. Probation has made reasonable efforts to locate the child. Probation has complied with the case plan by making reasonable efforts to return the child to a safe home and to complete whatever steps are necessary to finalize the permanent plan.
9.  The child is placed outside the state of California and that out-of-state placement:  
a.  continues to be the most appropriate placement and is in the child's best interest. There are no available and adequate in-state facilities to meet the child's needs. All licensure requirements have been met or a waiver granted. The placement complies with the requirements of Family Code section 7911.1.  
b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued for a report by the county agency on the progress made toward finding an appropriate placement for the child.
10.  The agency  has  has not complied with the case plan by making reasonable efforts to return the child to a safe home through the provision of reasonable services designed to aid in overcoming the problems that led to the initial removal and continued custody of the child, and by making reasonable efforts to complete whatever steps are necessary to finalize the permanent plan.
11.  **The child is an Indian child**, and, by clear and convincing evidence, active efforts  were  were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.
12.  **The child has no known Indian heritage.**

CHILD'S NAME:	CASE NUMBER:
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13.  The following persons have made the indicated level of progress toward alleviating or mitigating the causes necessitating placement:
- |  | None                     | Minimal                  | Adequate                 | Substantial              | Excellent                |
|--|--------------------------|--------------------------|--------------------------|--------------------------|--------------------------|
| a. <input type="checkbox"/> Child            | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| b. <input type="checkbox"/> Mother           | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| c. <input type="checkbox"/> Father           | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| d. <input type="checkbox"/> Legal guardian   | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| e. <input type="checkbox"/> Other (specify): | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |
| f. <input type="checkbox"/> Other (specify): | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> | <input type="checkbox"/> |

14.  Reunification services are  continued  terminated.

15.  The following is appropriate and ordered as the permanent plan (choose only one plan):

- a.  Return the child home immediately.
- b.  Return the child to the physical custody of the  mother  father  legal guardian after an additional 6 months of reunification services. The minor and the parent or guardian have demonstrated the capacity and ability to complete the objectives of the case plan. **There is a substantial probability that the child will be returned to and safely maintained in the home within 18 months of the initial removal date.** The court advises all parents that if the child is not returned to the custody of a parent within the next six months, a hearing under Welfare & Institution Code section 727.31 may be held which could result in the termination of their parental rights and the child's adoption. The case is continued for a subsequent permanency planning hearing.
- c.  Adoption. The court finds by clear and convincing evidence that reasonable services have been provided or offered to the parents. A hearing is set under the procedures described in Welfare and Institutions Code section 727.31 and an adoption assessment report ordered.  
The likely date by which the child will be placed for adoption is (specify):
- d.  Legal guardianship. A hearing is set under Welfare and Institutions Code section 728(c).  
The likely date by which the child will be placed for guardianship is (specify):
- e.  Placement on a permanent basis with (name): \_\_\_\_\_, a fit and willing relative.  
The likely date by which the child will be placed for adoption or guardianship is (specify):  
 The relative is authorized to provide consent for the child's medical, surgical, and dental care as provided in *Order Granting Authority to Consent to Medical, Surgical, and Dental Care* (form JV-448).
- f.  By clear and convincing evidence, there is a compelling reason for determining that a hearing under Welfare and Institutions Code section 727.31 is not in the best interest of the child based on evidence that (specify all that apply):  
 Adoption is not in the child's best interest and not an appropriate permanency goal.  
 No grounds exist to file for termination of parental rights.  
 The probation department did not make reasonable efforts to reunify the minor with the family.  
 The child is an unaccompanied refugee minor or foreign policy reasons preclude terminating parental rights.

The permanent plan is placement with (name or indicate placement is confidential):  
with a specific goal of

- (1)  returning home.
- (2)  adoption.
- (3)  legal guardianship.
- (4)  permanent placement with a fit and willing relative.
- (5)  a less restrictive foster care setting.
- (6)  independent living with identification of a caring adult to serve as a lifelong connection for the youth.

The likely date by which the child's specific goal will be achieved is (specify date):

CHILD'S NAME:	CASE NUMBER:
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**Case planning and visitation**

16.  **The child is 16 years or older.** The services set forth in the case plan include those needed to assist the child in making the transition from foster care to independence and adulthood.
17. a.  The following were actively involved in the case plan development, including the plan for permanent placement:  
 child  mother  father  legal guardian  tribal representative  other:
- b.  The following were NOT actively involved in the case plan development, including the plan for permanent placement. The probation officer is ordered to actively involve them and submit an updated case plan within 30 days from today.  
 child  mother  father  legal guardian  tribal representative  other:
- c.  The following were NOT actively involved in the case plan development, including the plan for permanent placement. The probation officer is not required to involve them because they are unable, unavailable or unwilling to participate.  
 child  mother  father  legal guardian  tribal representative  other:
18.  The court finds that the child's:
- a. developmental needs  are  are not being met    c. physical needs  are  are not being met  
b. mental health needs  are  are not being met    d. education needs  are  are not being met
19.  The additional services, assessments, and evaluations the child requires and the person or agency ordered to take the steps necessary for the child to receive these services, assessments, and evaluations are:
- a.  set forth on the record.  
b.  as follows:
20. a.  The following are ordered by the court to participate with the child in a counseling or education program as directed by probation:  Mother  Father  Legal guardian  Other (*specify*):
- b.  The participation by the following is deemed by the court to be inappropriate or potentially detrimental to the child and their participation with the child in a counseling or education program is NOT ordered:  
 Mother  Father  Legal guardian  Other (*specify*):
21.  The child has siblings under the court's jurisdiction and all of the siblings are NOT placed together in the same home.
- a.  Visitation between the child and child's siblings who are not placed together is appropriate and ordered.  
b.  The court finds by clear and convincing evidence that visitation between the siblings who are not placed together would be detrimental to at least one of the children. No visitation is ordered.
22.  Visitation with the child is ordered:
- a.  As set forth in *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400) and attached.  
b.  As follows (*specify*):

**Health and education**

23.  The  parent  legal guardian are  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welfare and Institutions Code section 739 and vested with the probation department.
24.  A limitation on the  parent  legal guardian to make educational decisions for the child
- a.  is NOT necessary. The parents or legal guardian hold educational rights and responsibilities, including those listed in California Rules of Court, rule 5.650(e) and (f).  
b.  is necessary. Those rights are limited as ordered and as set forth in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535).
25.  The child's school placement has changed since the last hearing.
- a.  The child's educational records, including any evaluation regarding a disability, were transferred to the new school placement within two business days since the placement change.  
b.  The child is  enrolled in  attending (*specify school*):

CHILD'S NAME:	CASE NUMBER:
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**Parentage**

26. a.  The court inquired of  the mother  others (*names and relationships*):

as to the identities and addresses of all presumed or alleged fathers. All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding Paternity (Juvenile)* (form JV-505) were provided with and ordered to complete and submit the form to the court.

b.  The  court clerk  probation department shall provide the notice required by Welfare and Institutions Code section 726.4 to:

- (1) alleged father (*name*):
- (2) alleged father (*name*):

**Advisement**

27. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing set on a date within 12 months from the date the child entered foster care, the case may be referred under Welfare and Institutions Code section 727.31 to a selection and implementation hearing **that could result in the termination of parental rights and the adoption of the child.**

28. **All prior orders not in conflict with this order remain in full force and effect.**

29.  Other findings and orders:

- a.  See attached.
- b.  (*Specify*):

30.  The date the child entered foster care is (*specify*):

31.  **The next hearings will be:**

Date:	Time:	Dept:	Type of hearing:
Date:	Time:	Dept:	Type of hearing:

32.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved.

33.  The sealing process has been explained to the youth, and the youth has received any materials relevant to the sealing process and the name of his or her attorney who can assist with sealing records.

34. Number of pages attached: \_\_\_\_\_

Date:

\_\_\_\_\_  
JUDICIAL OFFICER

CHILD'S NAME:	CASE NUMBER:
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### FINDINGS AND ORDERS AFTER POSTPERMANENCY HEARING—DELINQUENCY

1. **The court has read and considered and admits into evidence:**

- a.  Report of probation dated:  
 b.  Other (*specify*):

**BASED ON THE FOREGOING AND ON ALL OTHER EVIDENCE RECEIVED, THE COURT FINDS AND ORDERS**

2. a.  Notice of the date, time, and location of the hearing was given as required by law.  
 b.  **For child who is not present:** The child received proper notice of his or her right to attend the hearing and voluntarily gave up that right to attend this hearing.
3. a.  The child  is  may be an Indian child, and notice of the proceeding and the right of the tribe to intervene was provided as required by law. Proof of such notice was filed with this court.  
 b.  There is reason to believe that the child may be of Indian ancestry, and notice of the proceedings was provided to the Bureau of Indian Affairs as required by law. Proof of such notice was filed with this court.

**Child returned home**

4.  The return of the child to his or her parent or legal guardian would not create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. Out-of-home placement is no longer necessary or appropriate. The agency has complied with the case plan by making reasonable efforts to return the child safely home and to complete whatever steps are necessary to finalize the permanent placement of the child.

**Child remaining in out-of-home placement**

5.  Continued out of home care is in the best interest of the child.  
 6.  The child's out-of-home placement is necessary.
7. a.  The child's out-of-home placement is appropriate.  
 b.  The child's current placement is not appropriate. This hearing is continued for a report by the agency on the progress made to locate an appropriate placement.
8.  The child has run away from placement. Out-of-home placement continues to be necessary. The placement was appropriate. Probation has made reasonable efforts to locate the child. Probation has complied with the case plan by making reasonable efforts to complete whatever steps are necessary to finalize the permanent plan
9.  The child is placed outside the state of California and that out-of-state placement:  
 a.  continues to be the most appropriate placement and is in the child's best interest. There are no available and adequate in-state facilities to meet the child's needs. All licensure requirements have been met or a waiver granted. The placement complies with the requirements of Family Code section 7911.1.  
 b.  does not continue to be the most appropriate placement for the child and is not in the best interest of the child. The matter is continued for a report by the county agency on the progress made toward finding an appropriate placement for the child.
10.  The agency  has  has not complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent placement of the child.
11.  **The child is an Indian child**, and by clear and convincing evidence, active efforts  were  were not made to provide remedial services and rehabilitative programs designed to prevent the breakup of this Indian family.
12.  **The child has no known Indian heritage.**
13.  The following is appropriate and ordered as the permanent plan (*choose only one plan*):  
 a.  Return the child home immediately.  
 b.  Adoption. The court finds by clear and convincing evidence that reasonable services have been provided or offered to the parents. A hearing is set under the procedures described in Welfare & Institution Code section 727.31 and an adoption assessment report ordered.  
 The likely date by which the child will be placed for adoption is (*specify*):  
 c.  Legal guardianship. A hearing is set under Welfare and Institutions Code section 728(c).  
 The likely date by which the child will be placed for guardianship is (*specify*):

CHILD'S NAME:	CASE NUMBER:
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13. *continued*

d.  Placement on a permanent basis with (*name*): \_\_\_\_\_, a fit and willing relative.

The likely date by which the child will be placed for adoption or guardianship is (*specify*):

The relative is authorized to provide consent for the child's medical, surgical, and dental care as provided in *Order Granting Authority to Consent to Medical, Surgical, and Dental Care* (form JV-448).

e.  By clear and convincing evidence there is a compelling reason for determining that a hearing under Welfare and Institutions Code section 727.31 is not in the best interest of the child based on evidence that (*specify all that apply*):

Adoption is not in the minor's best interest and not an appropriate permanency goal.

No grounds exists to file for termination of parental rights.

The probation department did not make reasonable efforts to reunify the minor with the family.

The child is an unaccompanied refugee minor or foreign policy reasons preclude terminating parental rights.

The permanent plan is placement with (*name or indicate placement is confidential*): \_\_\_\_\_ with a specific goal of:

(1)  returning home.

(2)  adoption.

(3)  legal guardianship.

(4)  permanent placement with a fit and willing relative.

(5)  a less restrictive foster care setting.

(6)  independent living with identification of a caring adult to serve as a lifelong connection for the youth.

The likely date by which the child's specific goal will be achieved is (*date*): \_\_\_\_\_

**Case planning and visitation**

14.  **The child is 16 years or older.** The services set forth in the case plan include those needed to assist the child in making the transition from foster care to independence and adulthood.

15. a.  The child was actively involved in the development of his or her case plan, including the plan for permanent placement.

b.  The child was NOT actively involved in the development of his or her case plan, including the plan for permanent placement.

1.  Probation is ordered to involve the child and submit an updated case plan within 30 days.

2.  Probation is NOT required to involve the child because the child is unable, unavailable, or unwilling to participate.

16.  The court finds that the child's:

a. developmental needs  are  are not being met      c. physical needs  are  are not being met

b. mental health needs  are  are not being met      d. education needs  are  are not being met

17.  The additional services, assessments, and/or evaluations the child requires and the person(s) or agency ordered to take the steps necessary for the child to receive these services, assessments, and/or evaluations are:

a.  set forth on the record.

b.  as follows:

18.  The child has siblings under the court's jurisdiction and all of the siblings are NOT placed together in the same home.

a.  Visitation between the child and child's siblings who are not placed together is appropriate and ordered.

b.  The court finds by clear and convincing evidence that visitation between the siblings who are not placed together would be detrimental to at least one of the children. No visitation is ordered.

19.  Visitation with the child is ordered:

a.  As set forth in *Visitation Attachment: Parent, Legal Guardian, Indian Custodian, Other Important Person* (form JV-400).

b.  As follows (*specify*): \_\_\_\_\_

CHILD'S NAME:	CASE NUMBER:
---------------	--------------

**Health and education**

20.  The  parent  legal guardians are  unable  unwilling  unavailable to make decisions regarding the child's needs for medical, surgical, dental, or other remedial care, and the right to make these decisions is suspended under Welfare and Institutions Code section 739 and vested with the probation department.
21.  A limitation on the  parents  legal guardians to make educational decisions for the child
- a.  is NOT necessary. The parents or legal guardians hold educational rights and responsibilities, including those listed in rule 5.650(e) and (f) of the California Rules of Court.
- b.  is necessary. Those rights are limited as ordered and as set forth in *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* (form JV-535).
22.  The child's school placement has changed since the last review hearing.
- a.  The child's educational records, including any evaluation regarding a disability, were transferred to the new school placement within two business days of the change in placement.
- b.  The child is  enrolled in  attending school.

**Parentage**

23. a.  The court inquired of  the mother  others (*names and relationships*):
- as to the identities and addresses of all presumed or alleged fathers. All alleged fathers present during the hearing who had not previously submitted a *Statement Regarding Paternity (Juvenile)* (form JV-505) were provided with and ordered to complete and submit the form to the court.
- b.  The  court clerk  probation department shall provide the notice required by Welfare and Institutions Code, section 726.4 to:
- (1) alleged father (*name*):
- (2) alleged father (*name*):

**Advisement**

24. The court informed all parties present at the time of the hearing and further advises all parties that if the child is not returned to the home at the permanency hearing, the case may be referred under Welfare and Institutions Code section 727.31 to a selection and implementation hearing **that could result in the termination of parental rights and the adoption of the child.**
25. **All prior orders not in conflict with this order remain in full force and effect.**
26.  Other findings and orders:
- a.  See attached.
- b.  (*Specify*):

27.  The date the child entered foster care is (*specify*):

28.  **The next hearings will be:**

Date:	Time:	Dept:	Type of hearing:
Date:	Time:	Dept:	Type of hearing:

29.  **The petition is dismissed.** Jurisdiction of the court is terminated. All appointed counsel are relieved.
30.  The sealing process has been explained to the youth, and the youth has received any materials relevant to the sealing process and the name of his or her attorney who can assist with sealing records.
31. Number of pages attached: \_\_\_\_\_

Date:

\_\_\_\_\_ JUDICIAL OFFICER

<b>Date</b> February 7, 2013	<b>Action Requested</b> N/A
<b>To</b> Interested Parties	<b>Deadline</b> N/A
<b>From</b> Ann Gilmour, Attorney	<b>Contact</b> Ann Gilmour, Attorney, Judicial and Court Operations Services Division 415-865-4207 phone 415-865-7217 fax ann.gilmour@jud.ca.gov
<b>Subject</b> ICWA in Delinquency Cases	

On August 6, 2012 the California Supreme Court issued its decision in *In re W.B.*. You can read the full text of the case at [www.courts.ca.gov/opinions/documents/S181638.PDF](http://www.courts.ca.gov/opinions/documents/S181638.PDF)

In *W.B.*, the court held that other than inquiry, most requirements of the Indian Child Welfare Act (ICWA) do not apply to a delinquency case where the child comes within the jurisdiction of the court based on conduct that would be criminal if committed by an adult.

ICWA continues to apply to cases where the child is either in foster care or at risk of entering foster care as a result of conduct that would not be criminal if committed by an adult (all 601 cases and some 602 cases such as a child in possession of alcohol or tobacco).

Inquiry about possible Indian heritage must still be made in all cases where the child is either in foster care or at risk of entering foster care. In “criminal conduct” cases, however, the other requirements of ICWA such as notice, active efforts, etc. are only required if:

- the court is setting a hearing to terminate parental rights, or
- the court is contemplating a foster care placement based solely on conditions within the child’s home.



Proposed amendments to rules 5.480, 5.481, 5.482 of the California Rules of Court and other related provisions have been recommended to the Judicial Council to conform to the *W.B.* decision. You can find the proposal on the court's website at <http://www.courts.ca.gov/documents/W13-08.pdf>. If approved by the Judicial Council, those revised rules will be effective July 1, 2013.

Please note that other provisions of the Welfare and Institutions Code such as §§ 727.1, 727.4 and 16501.1 may still mandate outreach to tribes and culturally appropriate services for Indian children and families even where formal ICWA notice is not required.

For more information on ICWA, please visit our website at <http://www.courts.ca.gov/3067.htm>. The AOC's Tribal/State Programs Unit has limited grant funding to provide training and technical assistance on ICWA. Please do not hesitate to contact us if we can be of service to your court.

## 300 TO 600 TRANSITION

When a dependent foster child is picked up for a criminal activity, and the court determines it is best for the dependent to become a ward, there are some steps that must be taken to assure the child's continuing eligibility to the Aid to Families with Dependent Children-Foster Care (AFDC-FC) Program. In order to treat a case which transitions from dependency to wardship status as a single out-of-home placement episode, it is necessary that all federal AFDC-FC eligibility requirements are maintained. There are four steps the court must take in order to ensure continued AFDC-FC eligibility.

### Linkage

Special attention is needed to maintain the original AFDC linkage determination. To maintain the original AFDC linkage determination, dismissal of the dependency and establishment of the wardship should occur on the same day.

### Court Order Findings

To continue the original out-of-home placement court findings, the new court order needs to restate or refer to the original court findings and indicate that they remain in effect.

### Removal

The court order should make it clear that the child continues to be removed from the original parent or relative rather than from the foster care provider.

### Placement and Care

The new court order should also indicate that responsibility for placement and care is being transferred from the Department of Social Services to the Probation Department.

If these procedures are followed, the child should continue to be eligible for AFDC-FC payments.

Prepared by California Department of Social Services, Funding and Eligibility Unit staff person.

Youth in Placement: Safety, Services and Supervision

177 Cal.App.4th 645  
Court of Appeal, First District, Division 5, California.

In re L.M., a Person Coming Under the Juvenile  
Court Law.  
The People, Plaintiff and Respondent,  
v.  
L.M., Defendant and Appellant;  
Contra Costa County Probation Department,  
Objector and Respondent.

No. A124299. | Sept. 9, 2009.

### Synopsis

**Background:** After minor's permanency plan had been identified as "return home," in a **delinquency** proceeding, minor filed motion requesting financial assistance to allow father to visit minor at minor's residential treatment center. The Superior Court, Contra Costa County, No. J07-01041, *George V. Spanos, J.*, denied motion. Minor appealed.

**Holdings:** The Court of Appeal, *Needham, J.*, held that:

[1] juvenile courts may order payment of a parent's travel expenses for visitation in an appropriate **case**, but

[2] minor failed to justify his motion for payment of such travel expenses.

Affirmed.

West Headnotes (9)

[1] **Infants**  
—Particular Dispositions

Adequate visitation with a parent is a necessary and integral component of **reunification**, in a **delinquency** proceeding. *West's Ann.Cal.Welf. & Inst.Code § 727.2(a)*; *Cal.Rules of Court, Rule 5.790(e)*.

1 Cases that cite this headnote

[2] **Infants**  
—Correctional or Punitive Order or Disposition

In a **delinquency** proceeding the juvenile court may, in an appropriate **case**, order the probation department to financially assist a parent's travel to and from visitation when necessary to promote the goal of returning the minor to parental custody, so long as appropriated funds are reasonably available, under the juvenile court's broad statutory power to make "any and all reasonable orders for the care, supervision, custody, conduct, maintenance and support of the minor, including medical treatment, subject to further order of the court." *West's Ann.Cal.Welf. & Inst.Code §§ 202(b), 727.2(a)*.

*See Cal. Jur. 3d, Delinquent and Dependent Children, § 309; 10 Witkin, Summary of Cal. Law (10th ed. 2005) Parent and Child, §§ 897, 898.*

1 Cases that cite this headnote

[3] **Constitutional Law**  
—Juvenile Justice

Though a **delinquent** minor has a constitutionally based due process right to visitation with family members while placed outside the home, this does not translate into a corresponding constitutional right to have the travel to and from those visits funded by the state. *U.S.C.A. Const.Amend. 14*.

[4] **Infants**  
—Liability of parents  
**Infants**  
—Correctional or Punitive Order or Disposition

In a **delinquency** proceeding, an order for the

probation department to financially assist father's travel to and from visitation when necessary to promote the goal of returning the minor to parental custody would not conflict with the obligations imposed on father under **case** plan requiring father to "assist in financial obligations" and "assist with transportation," and with the statute requiring parents to pay for the ordinary costs of supporting their **delinquent** children while they are placed in state custody. West's Ann.Cal.Welf. & Inst.Code §§ 727.2(a), 903.

[5]

#### Infants

##### 🔑Correctional or Punitive Order or Disposition

A nonexhaustive list of factors that may be relevant to a juvenile court's determination of whether to order a probation department to assist a parent of a **delinquent** child with travel costs for visitation would include the parent's financial circumstances and ability to pay the necessary travel costs considering the parent's income, assets, expenses, and other support obligations; the methods of transportation available and their respective costs; the nature and stage of the minor's **case** plan and whether family **reunification** is contemplated; the parent's conduct and participation in other aspects of any **reunification** plan ordered; the frequency of visits ordered and the degree to which the minor is likely to benefit from face-to-face visits; and the availability and adequacy of other forms of parent-child contact such as telephone calls, letters, and email. West's Ann.Cal.Welf. & Inst.Code § 727.2(a).

2 Cases that cite this headnote

[6]

#### Infants

##### 🔑Correctional or Punitive Order or Disposition

Assuming that factors relevant to a **delinquent** minor's **case** support a request for financial assistance with a parent's travel expenses for visitation, a court may only require the probation department to pay the expenses if

funds have been appropriated that may be used for that purpose. West's Ann.Cal.Welf. & Inst.Code § 727.2(a).

2 Cases that cite this headnote

[7]

#### Infants

##### 🔑Correctional or Punitive Order or Disposition

It would have been an abuse of the juvenile court's discretion to grant a **delinquent** minor's motion for the probation department to financially assist minor's father's travel to and from visitation at a residential treatment center several hundred miles from minor's home, where minor's motion was unaccompanied by any declaration or other competent evidence providing details about father's financial circumstances or the likely cost of his travel, and absent evidence that father was actually seeking the money requested; minor's counsel merely informed the court that father did not have money for transportation because he was currently unemployed. West's Ann.Cal.Welf. & Inst.Code § 727.2(a).

[8]

#### Infants

##### 🔑Liabilities of care and maintenance

After a **delinquent** minor's 18-month period for **reunification services** had ended, the juvenile court could consider a motion for the probation department to financially assist minor's father's travel to and from visitation at a residential treatment center, under the juvenile court's broad power to make orders for the minor's care and maintenance. West's Ann.Cal.Welf. & Inst.Code § 727.2(a).

[9]

#### Infants

##### 🔑Liabilities of care and maintenance

A **delinquent** minor's family's inability to **reunify** within the 18-month period for **reunification services** was a circumstance the juvenile court could consider in ruling on any request for travel expenses to assist minor's father's travel to and from visitation at minor's residential treatment center, under the juvenile court's power to make orders for the minor's care and maintenance. [West's Ann.Cal.Welf. & Inst.Code §§ 727.2\(a\), 727.3.](#)

## I. BACKGROUND

In May 2007, when he was 12 years old, appellant touched the vagina of his three-year-old stepsister. He himself had been repeatedly molested by his older brothers and sisters when he lived with his mother in Michigan before moving to his father's home in Contra Costa County in 2004. Upon discovering that appellant had molested his stepsister, his father contacted the police. Father had already put appellant **\*\*353** in counseling for his sexual abuse issues and did not know what else to do.

The district attorney filed a juvenile wardship petition alleging that appellant had committed a lewd act upon a child under 14. ([Pen.Code, § 288, subd. \(a\).](#)) On May 29, 2007, the petition was amended and appellant admitted one count of sexual battery in exchange for the dismissal of the lewd conduct charge. ([Pen.Code, § 243.4.](#))

In its report prepared for the disposition hearing held on June 11, 2007, the Department recommended a highly structured residential treatment program, **\*649** noting that appellant suffered from a number of behavioral problems stemming from sexual abuse and attention deficit hyperactivity disorder. The court ordered appellant removed from his father's custody and placed under the Department's supervision in the Gateway Residential Program for a maximum period of four years. The **case** plan for the minor contemplated family **reunification** with his father, and the court ordered visitation as a component of the plan. (See [§ 727.2, subd. \(a\)](#) [**reunification services** in wardship **case**].) Father's responsibilities under the plan required him to "assist in financial obligations" and "assist with transportation."

Appellant's placement in the Gateway program was continued at the six-month review hearing held in November 2007. (See [§ 727.2, subd. \(c\).](#)) Monthly visitation with father continued, and family **reunification** with father remained the goal of the plan.

In its report prepared for the permanency planning hearing set for May 14, 2008 (see [§ 727.3, subd. \(a\)\(1\)](#)), the Department advised the court that appellant was no longer progressing in his treatment at Gateway and recommended that he be moved to the Children's Therapeutic Community (CTC) in Riverside, California, several hundred miles away from father's home. The court adopted the recommendation after finding there were no local alternatives that would provide the sex offender counseling that appellant needed. The permanent plan was identified as "return home" and monthly visits with father were continued.<sup>2</sup> Appellant was moved to CTC on May 21, 2008.

### Attorneys and Law Firms

**\*\*352** Francia M. Welker, under appointment by the Court of Appeal, for Defendant and Appellant.

No appearance for Plaintiff and Respondent.

[Silvano B. Marchesi](#), County Counsel, Esther Milbury, Deputy County Counsel, for Objector and Respondent Contra Costa County Probation Department.

### Opinion

[NEEDHAM, J.](#)

**\*648** Appellant L.M. was declared a ward of the juvenile court under [Welfare and Institutions Code section 602'](#) and was placed in a Southern California residential treatment program several hundred miles away from his home. The goal of his **case** plan was **reunification** with his father, and monthly visits were ordered as part of the plan. Appellant filed a motion to require the Contra Costa County Probation Department (Department) to pay his father's transportation costs to and from the monthly visits. The motion was denied and this appeal follows.

We agree with appellant that a juvenile court hearing a **delinquency case** has the power, under the appropriate circumstances, to order a supervising agency to financially assist a parent who lacks the financial means to travel to and from visitation. We affirm the juvenile court's order denying the motion for travel expenses in this **case** because appellant failed to make a threshold showing that his father was unable to afford the cost of the trips to and from visitation.

A status review hearing was held on November 20, 2008. Placement at CTC continued, the permanent plan remained “return home,” and monthly visitation was to continue between appellant and his father. Father remained obligated under the **case** plan to “assist in financial obligations” and “assist with transportation.” The court found that father’s progress under the plan had been poor.

On January 9, 2009, appellant filed a “Motion In Support of Family Financial Assistance With Travel to Child Visitation,” which sought an order requiring the Department to pay for father’s travel costs to and from the monthly visits in Riverside County. The Department filed written opposition to the motion, arguing that the **case** plan approved by the court did not **\*650** require it to pay for travel costs and in any event, there was no statutory authority on which such an order could be based.<sup>3</sup> **\*\*354** The court denied the motion for the reasons stated in the opposition papers.

## II. DISCUSSION

Appellant’s **case** plan included monthly visits with his father at CTC in Riverside County, and he raises no challenge to either the frequency of the visitation ordered or the suitability of his placement. His only argument in this appeal is that the court should have granted his motion for an order requiring the Department to pay for his father’s travel costs to and from the visits.

“Although dependency law and **delinquency** law are clearly not identical, the Legislature has expressly set forth the purposes of the juvenile court law with regard to both dependency and **delinquency** in a single section, in which it recognizes the importance of the preservation and strengthening of family relationships for both dependent and **delinquent** minors.” (*In re James R.* (2007) 153 Cal.App.4th 413, 430, 62 Cal.Rptr.3d 824, fn. omitted (*James R.*)) Section 202, subdivision (b) refers to “family preservation and family **reunification**” as “appropriate goals” in the **delinquency** context where consistent with the best interests of the **delinquent** minor and the public.

[1] [2] Consequently, when a minor is removed from his parents’ custody after being declared a ward under **section 602**, “the juvenile court shall order the probation department to ensure the provision of **reunification services** to facilitate the safe return of the minor to his or her home or the permanent placement of the minor, and to

address the needs of the minor while in foster care ....” (§ **727.2**, subd. (a); see also Cal. Rules of Court, rule 5.790(e).) Adequate visitation with a parent is “ ‘a necessary and integral component’ ” of **reunification**. (*James R.*, *supra* 153 Cal.App.4th at p. 435, 62 Cal.Rptr.3d 824.) If a parent lacks the ability to pay the transportation costs necessary to visit a child placed under probation department supervision outside the home, reasonable efforts to **reunify** the family may include financial assistance with respect to a parent’s travel costs. As we explain, we conclude that a juvenile court may, in an appropriate **case**, order the probation department to financially assist a parent’s travel to and from visitation when necessary to promote the goal of returning the minor to parental custody. (See §§ 202, subd. (b), **727.2**, subd. (a).)

[3] **\*651** This is not to say that parents of **delinquent** children—even those of limited financial means—are entitled to transportation costs during the **reunification** period as a matter of constitutional right. Though a minor has a constitutionally based right to visitation with family members while placed outside the home (*James R.*, *supra*, 153 Cal.App.4th at p. 417, 62 Cal.Rptr.3d 824), this does not translate into a corresponding constitutional right to have the travel to and from those visits funded by the state. (See *In re Cleopatra D.* (1987) 193 Cal.App.3d 694, 697–698, 238 Cal.Rptr. 426 [mother living out of state was not constitutionally entitled to air fare to attend hearing on petition to terminate parental rights].) However, the statutory scheme concerning **delinquent** minors broadly grants the juvenile court the power to make “any and all reasonable orders for the care, supervision, custody, conduct, maintenance and support of the minor, including medical treatment, subject to further order of the court.” (§ **727**, subd. **\*\*355** (a).) We construe this broad statutory power to include the ability to order the payment of travel costs for a parent, so long as “appropriated funds are reasonably available.” (*In re Samuel G.* (2009) 174 Cal.App.4th 502, 513, 94 Cal.Rptr.3d 237 (*Samuel G.*) [upholding court order directing county health and human **services** agency to pay travel costs of dependent child’s educational representative].)

[4] The Department suggests that payment of a parent’s travel expenses would conflict with the obligations imposed on father as part of his **case** plan and with **section 903**, which requires parents to pay for the ordinary costs of supporting their **delinquent** children while they are placed in state custody. We disagree. **Section 903** concerns a parent’s liability for costs actually incurred by the government to support a child placed outside the home and does not on its face appear to apply to travel

expenses for visitation. In any event, a parent’s duty to support a child under that section is subject to the parent’s ability to pay. (§ 903, subd.(c).)

<sup>151</sup> <sup>161</sup> Having concluded that a juvenile court *may* order an agency to assist a parent of a **delinquent** child with travel costs for visitation, we next consider the circumstances in which a juvenile court *should* make such an order. While we do not attempt to anticipate all the factors that may be relevant to this determination, a nonexhaustive list would include the parent’s financial circumstances and ability to pay the necessary travel costs (considering the parent’s income, assets, expenses, and other support obligations); the methods of transportation available and their respective costs; the nature and stage of the minor’s **case** plan and whether family **reunification** is contemplated; the parent’s conduct and participation in other aspects of any **reunification** plan ordered; the frequency of visits ordered and the degree to which the minor is likely to benefit from face-to-face visits; and the availability and adequacy of other forms of parent-child contact (such as telephone calls, letters and email). Then, assuming these and/or other factors support a request for financial assistance with a parent’s travel expenses, a court may require **\*652** the agency to pay the expenses only if funds have been appropriated that may be used for this purpose. (See *Mandel v. Myers* (1981) 29 Cal.3d 531, 539–540, 174 Cal.Rptr. 841, 629 P.2d 935 [separation of powers doctrine forbids court from ordering legislative branch to enact a specific appropriation, but once funds have been appropriated, court may order that expenditures be made from those funds]; *Samuel G., supra*, 174 Cal.App.4th at p. 513, 94 Cal.Rptr.3d 237 [same].)

<sup>171</sup> While it does not appear the trial court in this **case** considered such factors, it properly denied appellant’s motion for travel costs based on the record before it. Appellant’s counsel informed the court at the hearing that father did not have the money for transportation because he was currently unemployed, but the motion was unaccompanied by any declaration or other competent evidence providing details about father’s financial circumstances or the likely cost of his travel. Counsel also represented that she was “not sure the father would actually follow through and utilize his opportunity to visit because he has not been really good in [*sic*] staying in

touch with us or with probation. It takes a lot of phone calls to reach him.” Absent some evidentiary showing that father could not afford a monthly trip to Riverside County, or that he was actually seeking the money requested, the court would have abused its discretion in ordering the Department to fund the travel to and from the visits. Even if we assume the trial court erroneously assumed it lacked the statutory authority **\*\*356** to order the expenses requested, its denial of the motion was correct and must be affirmed on appeal. (See *In re Zamer G.* (2007) 153 Cal.App.4th 1253, 1271, 63 Cal.Rptr.3d 769.)

<sup>181</sup> <sup>191</sup> Nothing in our decision today precludes appellant or his father from bringing a new motion seeking the payment of travel costs based on additional information. Although the 18–month period for **reunification services** has ended and visitation is no longer an aspect of **reunification services** per se (§§ 727.3, subd. (b)(2), 727.2, subd. (g)), the court has the obligation to specify “the nature and frequency of visiting arrangements with the parents” when selecting a permanent plan (§ 727.3, subd. (a)(3)) and may still consider the payment of travel expenses under its broad power to make orders for the minor’s care and maintenance (§ 727, subd. (a)).<sup>4</sup>

### **\*653 III. DISPOSITION**

The judgment (order denying motion for financial assistance/travel costs) is affirmed.

We concur. JONES, P.J., and SIMONS, J.

### **Parallel Citations**

177 Cal.App.4th 645, 09 Cal. Daily Op. Serv. 11,638, 2009 Daily Journal D.A.R. 13,454

### Footnotes

<sup>1</sup> Further statutory references are to the Welfare and Institutions Code unless otherwise specified.

<sup>2</sup> When a **delinquent** minor has been placed in foster care, the court must hold a permanency planning hearing within 12 months and must select one of several possible permanent plans, in descending order of preference: (1) return to parent; (2) six months of additional **reunification services** with the goal of return to parent; (3) adoption; (4) guardianship; (5) relative placement; or (6) placement in a planned permanent living arrangement with a goal of return home, emancipation, guardianship or permanent

placement with a relative. (§ 727.3, subs. (a), (b).)

- 3 The Department has been represented by County Counsel both in the trial court and on appeal. The District Attorney took no position on the issue of father's transportation costs and the Attorney General has likewise declined to do so in this appeal.
- 4 Section 727.3, subdivision (b)(2) provides, "The court shall not continue the case for further reunification services if it has been 18 months or more since the date the minor was originally taken from the physical custody of his parent or legal guardian." Section 727.2, subdivision (g) provides that at all status review hearings subsequent to the original permanency planning hearing, "the court shall not order a permanent plan of 'return to the physical custody of the parent or legal guardian after further reunification services are offered....' " At the post-permanency planning hearing in this case, the court identified the permanent plan as "return home" notwithstanding the expiration of the 18-month period. While the propriety of this order is not before us, the family's inability to reunify within the 18-month period is a circumstance the court may consider in ruling on any future request for travel expenses. (See *Los Angeles County Department of Children and Family Services v. Superior Court* (1997) 60 Cal.App.4th 1088, 1093, 70 Cal.Rptr.2d 658 [father living in California was not entitled to air fare for visitation with child placed in Georgia after court reversed order improperly extending reunification services beyond the 18-month reunification period in a dependency case].)



153 Cal.App.4th 413  
Court of Appeal, First District, Division 2, California.

In re JAMES R., a Person Coming Under the  
Juvenile Court Law.  
The People, Plaintiff and Respondent,  
v.  
James R., Defendant and Appellant.

Nos. A114530, A115595. | July 17, 2007.

### Synopsis

**Background:** Minor was adjudged to be a ward of juvenile court in the Superior Court, Contra Costa County, No. J05-01283, *Jill C. Fannin, J.*, following his plea of no contest to allegations of continuous child sexual abuse and commission of nonforcible lewd act, and he was placed in custody of probation officer for out-of-home placement, and replaced at residential sexual offender treatment program. He appealed.

**Holdings:** The Court of Appeal, *Kline, P.J.*, held that:

- [1] minor preserved his due process challenge to juvenile court's refusal to set minimum schedule of visitation;
- [2] minor had fundamental constitutional right to visitation by family members;
- [3] juvenile court had sole authority to determine whether visitation would occur;
- [4] juvenile court did not abdicate its authority at initial status review hearing; but
- [5] juvenile court abdicated its authority at permanency planning hearing.

Affirmed in part, reversed in part, and remanded.

West Headnotes (10)

- [1] **Infants**  
—Objections and motions and rulings thereon

Minor, adjudged to be ward of juvenile court for sex offenses and placed in out-of-home placement, preserved his due process challenge to court's refusal to set minimum schedule of visitation; minor's counsel objected at both review hearings, citing statutes, rules, and relevant **case** authority, to court's failure to set mandatory minimum visitation. *U.S.C.A. Const.Amend. 14.*

1 Cases that cite this headnote

- [2] **Constitutional Law**  
—Juvenile Justice

A juvenile placed out of home under the state **delinquency** laws has a fundamental constitutional due process right to visitation by family members. *U.S.C.A. Const.Amend. 14; West's Ann.Cal.Welf. & Inst.Code §§ 726, 727. See 10 Witkin, Summary of Cal. Law (10th ed. 2005) Parent and Child, § 942 et seq.; Cal. Jur. 3d, Delinquent and Dependent Children, § 28 et seq.*

1 Cases that cite this headnote

- [3] **Parent and Child**  
—The relation in general

The interest of a parent in the companionship, care, custody, and management of his children is a compelling one, ranked among the most basic of civil rights.

1 Cases that cite this headnote

- [4] **Constitutional Law**  
—Child custody, visitation, and support

Any order concerning child custody and visitation must comport with due process. *U.S.C.A. Const.Amend. 14.*

[5] **Parent and Child**  
🔑The relation in general

The child's interest in the parent-child relationship is at least as important and as worthy of protection as the parent's interest.

1 Cases that cite this headnote

[6] **Infants**  
🔑Disposition

Considering the juvenile **delinquency** statutory framework as a whole in light of its legislative purpose, it is clear that these laws are designed to provide the juvenile court maximum flexibility to craft suitable orders aimed at rehabilitating the particular ward before it. [West's Ann.Cal.Welf. & Inst.Code §§ 726, 727](#).

3 Cases that cite this headnote

[7] **Infants**  
🔑Particular Dispositions

Where a permanent plan envisions return of the **delinquent** minor to his home, adequate visitation is a necessary and integral component of **reunification**. [West's Ann.Cal.Welf. & Inst.Code § 727](#) et seq.

1 Cases that cite this headnote

[8] **Constitutional Law**  
🔑Delegation of Powers by Judiciary  
**Infants**  
🔑Placement or custody in general

In **delinquency cases** in which the minor is placed out of home, the power to decide whether any visitation occurs belongs to the juvenile court alone; when the court abdicates its discretion in this regard and permits a third party

to determine whether any visitation will occur, the court violates the separation of powers doctrine. [West's Ann.Cal. Const. Art. 3, § 3; Art. 6, § 1; West's Ann.Cal.Welf. & Inst.Code § 727](#) et seq.

6 Cases that cite this headnote

[9] **Constitutional Law**  
🔑Delegation of Powers by Judiciary  
**Infants**  
🔑Determination, findings, and statement of reasons  
**Infants**  
🔑Sex offenders

At the initial status review hearing for minor, adjudged to be ward of juvenile court for sexual offenses and placed at private residential sexual offender treatment program, juvenile court did not abdicate its judicial authority to determine whether family visitation would occur, where court inquired about reasons for program's limitation of parental visitation to one per month, reviewed program's response, and concluded that it was not going to alter program's process. [West's Ann.Cal. Const. Art. 3, § 3; Art. 6, § 1; West's Ann.Cal.Welf. & Inst.Code § 727](#) et seq.

3 Cases that cite this headnote

[10] **Constitutional Law**  
🔑Delegation of Powers by Judiciary  
**Infants**  
🔑Determination, findings, and statement of reasons  
**Infants**  
🔑Sex offenders

At the permanency planning hearing for minor, adjudged to be ward of juvenile court for sexual offenses and placed at private residential sexual offender treatment program, juvenile court abdicated its judicial authority to determine whether family visitation would occur; program was limiting minor to one parental visit per month, and court clearly believed that more frequent visitation was warranted, but it refused to specify minimum visitation. [West's Ann.Cal. Const. Art. 3, § 3; Art. 6, § 1; West's](#)

Ann.Cal.Welf. & Inst.Code §§ 727, 727.2, 727.3.

11 Cases that cite this headnote

### Attorneys and Law Firms

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### Opinion

[KLINE](#), P.J.

### \*417 INTRODUCTION

On this appeal, we determine that a juvenile placed out of home under the **delinquency** laws of this state has a fundamental constitutional right to visitation by family members and that the trial court unlawfully delegates its judicial power over visitation when it effectively delegates *all* decisions regarding family visits to the private program placement.

Appellant James R. was adjudged to be a ward of the juvenile court under [Welfare and Institutions Code section 602, subdivision \(a\)](#),<sup>1</sup> following his plea of no contest to allegations of continuous child sexual abuse ([Pen.Code, § 288.5](#)) and commission of a nonforcible lewd act ([Pen.Code, § 288, subd. \(a\)](#).) He was placed in the custody of the probation officer for out-of-home placement, and on January 18, 2006, he was re-placed at a residential sexual offender treatment program in Fair Oaks, California. He appeals from orders of the juvenile court emanating from the six-month review hearing (May 26 and June 23, 2006) and a 12-month permanency planning review hearing (October 17, 2006) denying his request that the court set mandatory minimum visitation between appellant and his father while he is in out-of-home placement. The program at which appellant is placed had limited his visitation with his father to once a month.

Appellant asserts on appeal that the juvenile court denied him his constitutional due process right to meaningful visitation when it refused to set mandatory minimum visitation with his father. He further argues that this failure constituted an unlawful delegation of judicial power and a failure to **\*418** provide reasonable **services**. Respondent counters that appellant has waived his constitutional challenge by failing to raise it in the trial court and that, in any event, the trial court did not abuse its discretion in allowing the residential treatment program to set the schedule for appellant's paternal visitation.

We shall conclude that at the permanency planning hearing, the juvenile court unlawfully delegated all determinations regarding family visitation to a private therapeutic program. In so doing, the court abused its discretion and violated the constitutional separation of powers.

### FACTS AND PROCEDURAL BACKGROUND

#### *Underlying Offenses*

On March 29, 2005, a report was filed involving nine-year-old Lauren R., a friend of appellant's stepsister Melissa S. During an October 2004 sleepover, while the adults watched a World Series game upstairs and appellant was babysitting the children downstairs, appellant sat next to Lauren as she lay on the couch to sleep. He began rubbing his hand on her thigh and kissing her. Lauren pushed him away, but he got behind her and pressed his body against hers. Appellant took her hand and made her touch his crotch area. Lauren locked herself in the bathroom.

**\*\*827** On March 30, 2005, it was reported that appellant had sexually molested his stepsiblings, then nine-year-old Melissa and eight-year-old Ryan S., over a period of almost a year. Melissa reported that appellant "had been touching her on 'private places' for approximately a year." One time when he was babysitting Melissa and Ryan, he "tried to touch her breast and her vagina over her clothing." When Melissa pushed his hand away, he called her a " 'fucking bitch,' " before she left the room. According to Melissa, appellant "had continuously touched her inappropriately which included telling 'nasty stories,' making her and her brother [Ryan] touch his penis over his clothing, asking her to 'suck' his penis, rubbing his penis on her, and forcing her and her brother to touch his bare penis with their hands." Melissa could

not recall details and dates of all the incidents except for two specific ones. “She also reported about 5–10 times when [appellant] would expose his penis and masturbate in front of her while watching sex scenes in a movie. [Melissa] stated [appellant] had attempted to touch her vagina about five times. Melissa said she did not tell anyone about the molestation because [appellant] had told her not to tell anyone about the incidents or they both would be in trouble.”

Appellant admitted Melissa touched his exposed penis at his request. He also said he had taught Melissa and Ryan to “‘jack him off’ ” by touching his \*419 exposed penis, and they had done so a minimum of 10 times. Appellant also admitted that on an unspecified number of occasions he would have Melissa or Ryan straddle his lap as he sat on the floor and the child not seated would count the number of pelvic thrusts of the stepsibling who was seated on appellant’s lap. Ryan reported similar incidents, but was not able to relay the details. He, too, was told by appellant not to reveal the incidents or they would be in trouble. Appellant also reported incidents of mutual masturbation with Ryan. Appellant’s six-year-old cousin Tyler (appellant’s stepmother’s nephew) also reported that appellant had touched him in his private area during a sleepover in October 2004. Tyler said appellant made Tyler touch appellant’s genitals over the clothing and told Tyler not to tell anyone to avoid trouble. Tyler “reported one other similar incident in January 2005, but chose not to speak about it.”

Appellant stated that he did what he did to the children as retaliatory acts against his stepmother because he was angry with her.

### ***The Wardship Adjudication and Disposition***

***The petition.*** On July 22, 2005, the People filed a **delinquency** petition (§ 602, subd. (a)), alleging that appellant had committed continuous child sexual abuse (Pen.Code, § 288.5; counts one through three), and a forcible lewd act upon a child (Pen.Code, § 288, subd. (b)(1); count four). At the time of the filing of the original petition, appellant was 16 years old and he was not detained in out-of-home custody. On November 21, 2005, count one was amended to add two additional victims and count five was added, alleging a nonforcible lewd act (Pen.Code, § 288, subd. (a).) Appellant pleaded no contest to counts one and five. Counts two through four were dismissed. The court sustained the petition as to count one as amended and count five and ordered appellant detained in juvenile hall, finding that continuance in the home was contrary to his welfare.

***Psychological reports.*** Psychotherapist Arthur Paull prepared a psychosocial evaluation and risk assessment based upon four separate sessions with appellant. The report noted it was significant that appellant, \*\*828 after a period of “considerable shame” and reluctance, described the details of the offenses to him, as he had previously to his father and to the police. Appellant “clearly recognized that his behavior with these four children was wrong” and appeared “committed to the goal of not repeating the behavior.” Appellant had no previous contact with law enforcement. Appellant also informed the psychotherapist that at age 11 or 12 he was molested by the father of one of his friends, who was also a neighbor. There were several incidents that included skin-to-skin contact with genitals. At the time of the evaluation, the identity of the neighbor was unknown.

\*420 The evaluation noted that appellant’s parents are divorced. Appellant had major difficulties after the divorce. His schoolwork suffered. Appellant’s father had remarried and the stepsister and stepbrother victims were the children of his new wife, Deena P. Appellant described ongoing conflict with his stepmother. Appellant described his father as “sometimes mean” when around Deena P. After his arrest, appellant moved to live with his mother in order to not have contact with the stepsiblings. Appellant expressed positive feelings about his biological mother. He continued to see his father on a daily basis through contact at his sports activities, which appellant enjoyed and in which he actively participated.

The psychotherapist recommended that, if found to have committed the offenses, appellant be placed in a community setting under strict conditions of probation. The recommendation was based on appellant’s admission of the offenses, his expressions of remorse and a desire to not reoffend, and “the availability and presence of two positive care givers,” his assessment as having a “low to moderate risk of committing another sexual offense,” a lack of other severe behavioral or criminal problems, and his having a stable home and school environment, and the availability of good community based adolescent sex offender treatment in the county.

Appellant was also assessed by marriage and family therapist Larry Stone, who met with appellant nine times between April 28 and August 30, 2005. Stone reported appellant was “somewhat depressed.” According to Stone, appellant did “not appear to show any evidence of sexual fixation, but is in considerable emotional distress due to his family situation. [¶] His sense of alienation from his stepmother and strong belief that his father never takes his side or stands up for him, has left him feeling alone and isolated. He is afraid to tell his father anything about how

he feels, and apparently expects only a negative response if he does attempt to communicate with him.” Appellant was unwilling to talk to his father about his feelings, but agreed to Stone talking to the father, with appellant not in the room. This suggested “a serious lack of trust in his father’s reactions, and a great deal of emotional pain about them.” Stone opined that appellant was “acting out his hurt and isolation in the family, and that what he did was most likely a cry for help. The fact that his stepmother’s children were involved might also suggest it was his way of expressing the hurt and anger he was feeling in the family.” Stone related that there were “still serious issues with his father, and much hurt about feeling rejected by him,” but that Stone had been unsuccessful in getting appellant’s father to schedule a therapy session where he could be included. Stone opined that full involvement by appellant’s father in family therapy with appellant “is essential in order for [appellant] to have a successful outcome.” Stone did not see appellant as being a serious danger to the community, but believed it \*421 would be helpful for appellant \*\*829 to go through a teenage offender program and ongoing personal and family therapy, primarily with the participation of his father.

**Adjudication and disposition.** On December 16, 2005, the court adjudged appellant to be a ward of the court and placed him in the custody of the probation officer for out-of-home placement. The court imposed conditions, including no contact with the victims, and no contact with children under the age of 14 without adult supervision approved by the probation officer. The court ordered a family visit at juvenile hall to occur on that day. No other provision regarding visitation was made by the court. The court set a five-and-one-half-month placement review hearing for May 2006. (See § 727.2, subd. (c); Cal. Rules of Court, rule 5.810(a).)<sup>2</sup>

On January 18, 2006, appellant was placed at Breaking the Cycle residential sexual offender treatment program in Fair Oaks.

#### **Six-month Review and Request for More Frequent Visitation**

**Probation report/case plan.** At the May 26, 2006 review hearing, the court received and reviewed the report and recommendation of the probation department. The report recommended a permanent plan of “return home,” and recommended that the court find that the extent of progress made by appellant, his mother and his father “toward alleviating or mitigating the causes necessitating placement has been: fair.” The report identified the “likely date” for return home to be January 18, 2008, and

that the department had made reasonable efforts to enable appellant’s safe return home and that the “services set forth in the case plan [also included] those needed to assist the minor in making the transition from foster care to independent living.”

As to appellant’s “progress in placement,” the report related: “The program reports that the minor continues to struggle with the rules and policies of the program. On May 22, 2006, this deputy spoke to a program staff and was told that [appellant] presents himself as a ‘sneaky boy’ and at times is non-responsive to treatment. The program reported the most recent incident that occurred the week of May 15, 2006. The minor was a member of a group from the program attending a[n] independent living skills class when he deliberately acted out and disrupted the class causing the other students to miss information from the instructor. [¶] This deputy met with the minor on April 11, 2006. The minor appeared to be in good health and did not complain of any medical problems. The minor has regular phone contact with his father; his family appears to be supportive of the goals and expectations \*422 of the program. [¶] The minor attends school and is performing well; the school staff has not reported negative behavior.”

The assessment, attached to the report, assessed the strengths of the minor and his family in a checklist fashion as: appropriate housing; *available family to work with probation*; *commitment to making positive changes*; community involvement; employment/financial stability; *extended family available*; health insurance; minor acknowledges/understands problems/issues; *parent acknowledges/understands problems/ issues*; *parental supervision/support*; *strong emotional bonds*; *supportive relatives or friends*; transportation; willing to participate in counseling/programs.” (Italics added.) In assessing the needs of appellant and his family, the “supporting information” narrative \*\*830 stated: “Anger, resentment, and isolation seemed to be an issue affecting the minor’s emotional well being. Family counseling should occur simultaneously to ensure rehabilitation. The minor appeared to be emotionally alienated from both sides of his family. Academics must be emphasized and the minor needs tutoring.”

In the section regarding “[p]lacement services that will reduce or eliminate the need for placement and/or return the minor safely home,” various types of counseling, including mental health, anger management and family counseling were checked. However “[f]amily conferencing/regular visitation” *was not checked*. The “supporting information” narrative stated: “Minor needs to be in a structured environment to identify and address

any emotional issues. Behavioral modification programs combined with sex offender treatment program, individual and family counseling will increase the success rate exponentially.” “Home on Probation” was checked as the updated **case** plan goal and a concurrent alternative goal, should efforts to **reunify** fail, was listed as “[a]nother planned permanent living arrangement.” The **case** plan checklist assessment of the minor’s needs, identified, among other things, the need for individual counseling, sex offender counseling, family counseling and “[m]aintain close proximity to family.” (Italics added.) The “Placement” section of the plan stated that the type of placement will be selected based on the following: “Consideration of the minor’s need for the least restrictive, most family like environment; the minor’s age, sex and cultural background; *the planned parent/guardian contacts during the separation* and the specific actions to be taken by the parent/guardian/minor which will facilitate **reunification**;...The placement selection will be a safe setting that is the closest proximity to the parent/guardian’s home, consistent with the minor’s needs and best interests.” (Italics added.)

Among the responsibilities of the probation officer listed in the **case** plan **service** objectives section of the report, was a checked box for “*Monthly visits with the minor’s parent(s) or guardian(s).*” (Italics added.) Among the \*423 responsibilities tasked to appellant was resolving issues of “family conflict.” Appellant’s mother and father were each tasked with responsibility to “[c]onsistently, appropriately and adequately parent your child” and to “resolve issues of family conflict/instability.” The projected completion dates for these responsibilities were stated to be “ongoing.”

**Request for minimum visitation order.** At the May 26, 2006 five-and-one-half-month status review hearing, appellant’s counsel advised the court that the program was permitting visitation only once per month and only one 10-minute phone call in and one out per week.<sup>3</sup> Specifically, counsel advised the court that appellant was afforded visitation with his father only once a month, despite his father’s willingness to participate in visitation and his \*\*831 father’s concern that this was appellant’s first time away from home and that the father was his primary support. Counsel requested that “the Court order visitation a minimum of twice a month and that the Court authorize phone contact more frequently than once a week for ten minutes.” The court expressed its reluctance to set minimum visitation, stating, “I can’t really—I don’t see how I can tell the program what they need to do.” Counsel argued that other children in the program were able to see their parents twice a month as a reward for good behavior and that, although the program could allow passes for

good behavior, it should not prevent parents willing to travel the distance to see their children from visiting twice a month, particularly as **reunification** was the goal for appellant. The court then stated it wanted to hear in writing from the program as to why they were not allowing greater contact. Therefore, the court ordered all prior orders to remain in effect, but deferred finding on the probation department’s “reasonable efforts” until it received information from the program regarding phone contact and visitation.

**Program response.** On June 9, 2006, the executive director of Breaking the Cycle treatment programs addressed the court’s query in writing. The letter states in relevant part:

“It has been a policy since our doors opened, 10 years now, to be very cautious about the visitation of family and friends. Our young men come to us with various secrets, most times with more victims. It usually isn’t until a juvenile sex offender feels safe in his environment, feels \*424 surrounded by rules and structure, and feels the confrontation by the treatment team and peers that the juvenile allows himself to open up and divulge information he had been suppressing. [¶] Often this information is about the victimization of other family members; sometimes the parents have known about this and have hid the information, and sometimes they don’t know. Until the offender has ‘bought into’ the values and goals of the program, the agency believes that the offender is not safe to be out of the treatment team[’]s influence and control. It is sometimes several months before the offender admits to additional victims. A victim being in the presence of his/her offender is traumatizing. The victim has been traumatized enough. [¶] We also find several of our juveniles have been victimized by family members and the child has protected the adult, so it is very risky to allow for unsupervised visits; at least until we have explored the situation more closely. Sometimes this process just takes time, time to get to know the offender and know the family. [¶] Our third reason for our cautious policy with visits, is that sometimes it is difficult for the offender to settle in, to believe that he is in a group home and he does have to follow rules, that the rules he will follow, will be that of Breaking the Cycle. Some offenders fight total structure and regulations, and when they see family, they attempt, desperately to manipulate and fight the system; which makes it more difficult when the family leaves. It sets the offender back in his program. [¶] It is pointed out in several journals, that at different times during their treatment, juveniles may require different levels of supervision and treatment intensity. It is stressed that to be most effective, the components of the continuum should have consistent treatment philosophies

and approaches and, whenever possible, should provide stability in treatment providers. And, much of the literature argues that adequate family support can help reduce recidivism and, that it takes some time to distinguish if that parent is adequate. [¶] Next, it is important to point out that [appellant] has been disclosing \*\*832 other victims, 2 separate times, and we don't know if this is the end of it. At this point in his program, he is considered very high risk. [Appellant] has great difficulty in opening up and talking about issues, so we are moving forward with caution. [¶] Within our system, we allow for more visits when the offender works more diligently in the program and up in the level scheme. We have four levels, all are quite attainable, the young man just has to be motivated to get healthy. [¶] So, in closing, we do have a 'cautious' policy when it comes to visitation, but we do involve family, we are just vigilant. Our treatment team here at Breaking the Cycle try to stay educated in this field to give the juvenile the best treatment that can be obtained."

In forwarding the letter, the probation department also forwarded copies of the suspected child abuse forms related to two friends of appellant's stepsister that he had disclosed as victims and further advised that appellant had disclosed another family member victim and that a suspected child abuse \*425 form would be forthcoming. The probation department stated "the need for caution and diligence is due to the fact that the minor continues to disclose family members as his victims of sexual abuse."

**Court's ruling.** At the June 23, 2006 continuation of the five-and-one-half-month review hearing, counsel for appellant reiterated that appellant was not asking for off-site visits, for unsupervised visits, or for visits with any of his stepsiblings. Rather counsel requested "that the Court set a mandatory minimum visitation schedule" for visits with appellant's father. Counsel argued that the program's letter responded in generalities about issues involving treatment of juvenile sex offenders, but argued that there was "no evidence that any of those apply in this particular **case**." Counsel urged that appellant's disclosure of new victims evidenced that he was "invested enough in the program." Counsel urged that in the absence of authority in the **delinquency** area, the court should take guidance from juvenile dependency **cases** involving visitation that recognized regular and frequent visitation, consistent with the well-being of the child, was a prerequisite to **reunification**. Counsel also argued that in line with the dependency **cases**, it was inappropriate for the court to delegate that authority to the placement program or to probation.

The court observed that "right now there is one visit a

month. So you're saying I should set it at a different level?" Counsel responded, "Well, the program is setting it because he's ... minimally compliant." Counsel urged that in the dependency scheme two visits per month was usual and that in this **case** visitation "should be at least twice a month" in order to accomplish **reunification**—the goal for appellant. Counsel also pointed out that the parents can make little progress toward reuniting with the child without participating in visitation. Counsel advised the court that appellant's father was willing to comply with counseling, willing to be interviewed at length and willing to take a polygraph if required.

Counsel made it clear that appellant was seeking both "increased telephone contact and ... minimum twice-a-month visits." The probation department representative stated, "In general, I don't have an objection to having minors visit their parents regularly. It's important if there's going to be **reunification**. However, in this **case** we don't know whether or not **reunification** is going to be a possibility or not." However, he urged the court to defer to the experts running the program.

\*\*833 The court then stated: "Okay. I'm not going to alter the program's process. They have provided a thorough letter about their policy. They have reasons for what they're doing with regard to the minor, especially since he has disclosed two new victims in the meantime. And they are providing visitation, and they are prepared to provide more when the time is right. But as \*426 they say, their philosophy is to proceed cautiously. [¶] This isn't a standard dependency **case**. It's a **delinquency**. Not only that, it's a sex offender matter, and so there are different policies involved in that. [¶] So I am not going to alter it. It seems that the program is proceeding appropriately, and so I'll leave it where it is."

The court found that reasonable **services** had been provided, continued appellant in his placement, and set the matter for a review on October 17, 2006. Appellant filed a timely appeal (No. A114530) from the order issuing from the June 23, 2006 status review hearing, challenging the court's reasonable **services** finding and the failure to make a visitation order.

#### ***October 17, 2006 Permanency Planning Hearing and Status Review***

A permanency planning hearing was held October 17, 2006. The probation department's permanency planning hearing report recommended that the court find that the extent of the mother's and father's progress toward alleviating or mitigating the causes necessitating

placement had been “fair,” and appellant’s progress toward alleviating or mitigating the causes necessitating placement had been “good.” It identified the permanent plan of “return home” and the likely date by which this goal would be achieved as December 22, 2007. The report related that since the last report, “the minor’s attitude and behavior have improved. The minor has begun to participate more in individual and group therapy. [¶] On September 25, 2006, this deputy met with the minor and therapist at the program. The therapist reported that [appellant] had disclosed more victims.” The child abuse report and written statements by appellant were attached. The probation officer stated that he had found appellant “to be more committed to treatment in the last month.” Also, appellant’s father had informed the program that he was willing to resume family counseling. The probation officer had been “assured by the program that they are advocating for counseling to begin sooner rather than later.” Appellant “attends school on a regular basis and appears to be doing well in his academic endeavors.” The probation officer recommended that appellant remain in placement and that a post-permanency planning hearing be scheduled. A program treatment summary, dated September 2006, confirmed that appellant “continues to do well overall in program with only minimal point loss for behaviors not atypical for any adolescent.” Appellant was “working solidly” in the second phase of the program and had “completed the necessary steps of disclosure, identification of contributing factors, and exploration of distortions in thinking that allowed him to act out sexually.” Appellant was “working on integrating new skills on a daily basis that demonstrate a shift in values identification, and more mature decision making based on conscience driven behavior.” The probation case plan attached to \*427 the report appears to be virtually identical to that previously prepared, except that the projected completion date was advanced from January 18, 2008 to December 22, 2007.

At the hearing, appellant’s counsel again requested the court to “set a mandatory minimum visitation” so that appellant’s father could visit more than once a month. Counsel referred to \*\*834 section 727.3, subdivision (a)(3), as requiring the court at a permanency planning hearing to “specify the nature and frequency of visiting arrangements with the parents” or legal guardians. (§ 727.3, subd. (a)(3).) At that point, the court stated its belief “that the placement did not want to have more visits until he disclosed additional matters, which he’s now done. So I’m assuming the placement is going to start additional visitation, now that that’s occurred.” The court asked the probation officer whether that was his understanding and the probation officer responded: “It is. I’ll speak to Mr. Alice to make sure that happens or get an

update as to if that will happen.” The court and probation officer both acknowledged that the “program is advocating for counseling to begin sooner rather than later,” and the court then stated: “I’m not going to mandate them how many visits it is because I believe visits are considered also a privilege, and there may be interference with their point system if I do that. But I do want the visits to start happening more frequently, now that he’s complied with their request.” In its minute order, the court adopted its previous findings and again found the probation department “has complied with the case plan by reasonable efforts to enable the minor’s safe return home and to complete whatever steps are necessary to finalize the permanent placement of the minor.” It found December 22, 2007 was the likely date by which the agency would finalize the permanent plan or achieve the planned permanent living arrangement goal.

Appellant filed a timely appeal (No. A115595) from the minute order issued at this review, challenging the court’s reasonable services finding and its failure to make a visitation order.

On January 4, 2007, we consolidated the appeals.

## DISCUSSION

### I. Waiver

<sup>[1]</sup> Respondent contends that appellant has waived or forfeited his due process challenge to the court’s refusal to set a minimum schedule of visitation on the grounds that the claim is made for the first time on appeal. We disagree.

Appellant’s counsel clearly objected at both review hearings below to the court’s failure to set mandatory minimum visitation. Counsel argued, based \*428 upon statutes and rules governing delinquency proceedings and cases in the dependency context, that the court was obligated to set mandatory minimum visitation under California law and that the court was precluded from delegating visitation to the complete discretion of the program. As support, counsel cited several cases, including *In re Julie M.* (1999) 69 Cal.App.4th 41, 81 Cal.Rptr.2d 354, which discusses visitation rights as “aris[ing] from the very ‘fact of parenthood’ and the constitutionally protected right ‘to marry, establish a home and bring up children,’ ” and which viewed the question of delegation of visitation as one of



constitutional separation of powers. (*Id.* at pp. 49–52, 81 Cal.Rptr.2d 354.) Counsel also cited *In re Danielle W.* (1989) 207 Cal.App.3d 1227, 255 Cal.Rptr. 344, which addressed challenges to the court’s limited delegation of control over visitation to the department of children’s **services** as both issues involving the constitutional requirement of separation of powers and the denial of due process. (*Id.* at pp. 1233, 1235–1238, 255 Cal.Rptr. 344.) Although *In re Danielle W.* found no violation of the separation of powers in a limited delegation, the court pointed out “that a visitation order granting the Department *complete* and *total discretion* to determine whether or not visitation occurs would be invalid.” \*\*835 (*Id.* at p. 1237, 255 Cal.Rptr. 344.) In arguing that delegating all authority over visitation to the therapist or program was unlawful, counsel below also cited *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 270 Cal.Rptr. 326, which discusses the delegation of power to determine visitation in the context of due process, recognizing that “[p]arents have the right of visitation from the fact of parenthood” and that “[t]he parental right to have children and to the custody of those children is included among the liberties protected by the due process clause....” [Citation.]” (*Id.* at p. 756, 270 Cal.Rptr. 326.)

Moreover, were we to conclude that appellant had forfeited his specific due process challenge to the court’s refusal to set minimum mandatory visitation, we would nevertheless address the inextricably connected questions of whether the court abused its discretion in refusing to set mandatory minimum frequency of visitation and in delegating visitation to the program.

## II. Visitation

### *Visitation Impacts a Fundamental Right—the Parent–Child Relationship*

[2] [3] Respondent agrees that “the interest of a parent in the companionship, care, custody, and management of his children is a compelling one, ranked among the most basic of civil rights [citations]....” (*In re B.G.* (1974) 11 Cal.3d 679, 688, 114 Cal.Rptr. 444, 523 P.2d 244; see *Hoversten v. Superior Court* (1999) 74 Cal.App.4th 636, 641, 88 Cal.Rptr.2d 197 (*Hoversten* ).) The United States Supreme Court has repeatedly recognized that the “Due Process Clause of the Fourteenth Amendment protects the fundamental right \*429 of parents to make decisions concerning the care, custody, and control of their children.” (*Troxel v. Granville* (2000) 530 U.S. 57, 66, 120 S.Ct. 2054, 147 L.Ed.2d 49.)

[4] The fundamental nature of the right as it affects even an incarcerated parent’s visitation was recognized in *Hoversten, supra*, 74 Cal.App.4th 636, 88 Cal.Rptr.2d 197. There, the appellate court held that an incarcerated parent is entitled to a hearing to determine his right to legal custody and visitation of his minor children. (*Id.* at p. 638, 88 Cal.Rptr.2d 197.) The court said: “Inmates retain the right of reasonable visitation with their children. (*In re Smith* (1980) 112 Cal.App.3d 956, 968–969 [169 Cal.Rptr. 564]; see also *In re Brittany S.* [ (1993) ] 17 Cal.App.4th 1399, 1402 [22 Cal.Rptr.2d 50].)” (*Hoversten*, at p. 640, 88 Cal.Rptr.2d 197.) “As to visitation, ‘[t]he relationship between parent and child is so basic to the human equation as to be considered a fundamental right, and that relationship should be recognized and protected by all of society, no less jailers. [Citations.] Interference with that right should only be justified by some compelling necessity, i.e., a parent dangerously abusing a child....’ [Citation.] It is elemental that any order concerning child custody and visitation must comport with due process. [Citation.] [¶] ‘[C]hildren have strong emotional ties to even the “worst” of parents. [Citations.]’ [Citation.] ‘While “use a gun, go to prison” may well be an appropriate legal maxim, “go to prison, lose your child” is not....’ (*In re Brittany S., supra*, 17 Cal.App.4th 1399, 1402 [22 Cal.Rptr.2d 50].) ‘Visitation rights arise from the very “fact of parenthood” and the constitutionally protected right “to marry, establish a home and bring up children.” ’ [Citation.]’ (*In re Julie M.*, *supra*,] 69 Cal.App.4th 41, 49 [81 Cal.Rptr.2d 354].)” (*Hoversten*, at p. 641, 88 Cal.Rptr.2d 197.)

[5] Nor can it be doubted that the child’s interest in the parent-child relationship \*\*836 is at least as important and as worthy of protection as the parent’s interest.<sup>4</sup>

### \*430 *Delinquency Cases as Guides*

Absent pertinent **case** law in the **delinquency** context regarding the contours of the right to visitation, appellant urges that our analysis should be guided by **cases** in the dependency area. Respondent counters that dependency **cases** are of limited relevance in the **delinquency** context because “[o]ther fundamental considerations besides family unification are also at play in making any **delinquency** dispositional order (including when the court is periodically reviewing its ward’s status in an out-of-home placement).” Although dependency law and **delinquency** law are clearly not identical,<sup>5</sup> the Legislature has expressly set forth the purposes of the juvenile court law with regard to both dependency and **delinquency** in a single section, in which it recognizes the importance of the preservation and strengthening of family relationships

for both dependent and **delinquent** minors.

Section 202, subdivision (a), provides as follows: “The purpose of this chapter is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court *and to preserve and strengthen the minor’s family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public.* When removal of a minor is determined by the juvenile court to be necessary, **reunification** of the minor with his or her family shall be a primary objective. When the minor is removed from his or her own family, it is the purpose of this chapter to secure for the minor custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents. This chapter shall be liberally construed to carry out these purposes.” (Italics added.)

Section 202 also refers to “family preservation and family **reunification**” as “appropriate goals” in the **delinquency** context where consistent with the best interests of **\*\*837** the minor and the public (§ 202, subd. (b)),<sup>6</sup> and **\*431** recognizes the duty of a parent to support and maintain the minor, even during a period of removal (§ 202, subd. (c)).<sup>7</sup>

The statutory framework for juvenile **delinquency** law was considered recently by another division of this court in *In re Antoine D.* (2006) 137 Cal.App.4th 1314, 40 Cal.Rptr.3d 885.<sup>8</sup> In describing that statutory framework, the court first focused on “its purpose: ‘(1) to serve the “best interests” of the **delinquent** ward by providing care, treatment, and guidance to rehabilitate the ward and “enable him or her to be a law-abiding and productive member of his or her family and the community,” and (2) to “provide for the protection and safety of the public....” ’” (*In re Charles G.* [ (2004) ] 115 Cal.App.4th [608.] 614–615 [9 Cal.Rptr.3d 503], quoting § 202, subs. (a), (b), & (d).)” (*In re Antoine D.*, at pp. 1321–1322, 40 Cal.Rptr.3d 885.)

The *In re Antoine D.* court observed that the Legislature has provided the juvenile court many statutory tools to accomplish the law’s stated purposes. “Under section 202, subdivision (b), for example, the court may order **delinquent** wards to ‘receive care, treatment and guidance which is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances.’ (See also *In re Eddie M.* (2003) 31 Cal.4th 480, 507 [3 Cal.Rptr.3d 119, 73 P.3d 1115] [acknowledging the juvenile court’s ‘broad discretion to choose probation and/or various forms of

custodial confinement in order to hold juveniles accountable for their behavior, and to protect the public’].)”

**\*\*838** <sup>161</sup> **\*432** “More specifically, section **727**, subdivision (a), permits the court to make ‘any and all reasonable orders for [a ward’s] care, supervision, custody, conduct, maintenance, and support ... *subject to further order of the court.*’ (§ **727**, subd. (a), italics added [by *Antoine D.* court].) ... ‘Section **726** explicitly acknowledges “the power of the court to retain jurisdiction over a minor and to make appropriate orders pursuant to Section **727** for the period permitted by Section 607.” ’ (*In re Charles G.*, *supra*, 115 Cal.App.4th at p. 615 [9 Cal.Rptr.3d 503], quoting § 726.)” (*In re Antoine D.*, *supra*, 137 Cal.App.4th at p. 1322, 40 Cal.Rptr.3d 885.) “Considering this statutory framework as a whole in light of its stated legislative purpose, it is clear juvenile **delinquency** laws are designed to provide the juvenile court maximum flexibility to craft suitable orders aimed at rehabilitating the particular ward before it. [Citation.]” (*Id.* at p. 1323, 40 Cal.Rptr.3d 885.)

This flexibility is not unique to **delinquency** law; it is a hallmark of juvenile court law in general and of dependency law as well. Indeed, section **727** has been termed “the **delinquency** analogue to section 362, subdivision (a),” which, in the dependency context, provides the juvenile court similar flexibility to craft reasonable orders for the care of the dependent child. (*In re Carmen M.* (2006) 141 Cal.App.4th 478, 489, fn. 8, 46 Cal.Rptr.3d 117.)

Other sections of the **delinquency** laws also illustrate the importance of the family connection in the care and rehabilitation of the minor. Section **727.1**, subdivision (a), provides that “[w]hen the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for foster care placement pursuant to subdivision (a) of Section **727**, the decision regarding choice of placement shall be based upon selection of a safe setting that is the least restrictive or *most family like, and the most appropriate setting that is available and in close proximity to the parent’s home*, consistent with the selection of the environment best suited to meet the minor’s special needs and best interests....” (Italics added.)

Section **727.2** specifically addresses **reunification services** or the establishment of an alternative permanent plan for **delinquent** youth. In relevant part it provides: “The purpose of this section is to provide a means to monitor the safety and well-being of every minor in foster care who has been declared a ward of the juvenile court

pursuant to Section 601 or 602 and to ensure that everything reasonably possible is done to facilitate the safe and early return of the minor to his or her home or to establish an alternative permanent plan for the minor. [¶] (a) If the court orders the care, custody, and control of the minor to be under the supervision of the probation officer for placement pursuant to subdivision (a) of Section 727, the juvenile court shall order the probation department to ensure the provision of reunification services to \*433 facilitate the safe return of the minor to his or her home or the permanent placement of the minor, and to address the needs of the minor while in foster care....”

At status reviews prior to the first permanency planning hearing, the court is required to make findings and orders determining the “continuing necessity for and appropriateness of the placement” (§ 727.2, subd. (e)(1)) and, among other things, the extent of the probation department’s “reasonable efforts to safely return the minor to the minor’s home or to complete whatever steps are necessary to finalize the permanent placement of the minor” (§ 727.2, subd. (e)(2)) and the “extent of progress” by both the minor and parent toward alleviating the causes necessitating \*\*839 placement in foster care (§ 727.2, subd. (e)(4)). Moreover, section 727.2, subdivision (e), also requires that “[t]he court shall make these determinations on a case-by-case basis and reference in its written findings the probation officer’s report and any other evidence relied on in reaching its decision.” (Italics added.)

Section 727.3, requiring that a “permanency planning hearing shall be conducted within 12 months of the date the minor entered foster care” (*id.*, subd. (a)(1)), contains the same statement of purpose as section 727.2: “The purpose of this section is to provide a means to monitor the safety and well-being of every minor in foster care who has been declared a ward of the juvenile court pursuant to Section 601 or 602 and to ensure that everything reasonably possible is done to facilitate the safe and early return of the minor to his or her home or to establish an alternative permanent plan for the minor.” Section 727.3, subdivision (a)(3) provides: “If the minor has a continuing involvement with his or her parents ..., the parents ... shall be involved in the planning for a permanent placement. *The court order placing the minor in a permanent placement shall include a specification of the nature and frequency of visiting arrangements with the parents or legal guardians.*” (Italics added.) Rule 5.810(b)(4) provides in this regard that “[t]he permanent plan order must include an order regarding the nature and frequency of visitation with the parents or guardians.”

Section 727.3, subdivision (a)(4) provides: “At each

permanency planning hearing, the court shall order a permanent plan for the minor, as described in subdivision (b). The court shall also make findings, as described in subdivision (e) of Section 727.2. In the case of a minor who has reached 16 years of age or older, the court shall, in addition, determine the services needed to assist the minor to make the transition from foster care to independent living. The court shall make all of these determinations on a case-by-case basis and make reference to the probation officer’s report, the case plan, or other evidence relied upon in making its decisions.” (Italics added.)

\*434 Section 727.3, subdivision (b)(1), provides: “At all permanency planning hearings, the court shall determine the permanent plan for the minor. The court shall order one of the following permanent plans, which are, in order of priority: [¶] (1) Return of the minor to physical custody of the parent or legal guardian....”

Although public safety and the rehabilitation of the minor (presumed to serve the best interests of the delinquent minor) are the preeminent goals of the juvenile law relating to delinquent minors, it is also true that family reunification and the reintegration of the minor into his family are statutorily recognized to be important and complementary goals. We see no persuasive reason that dependency cases cannot provide an appropriate guide for analysis of the visitation issues raised here.

### Standard of Review

As previously emphasized, the issue of visitation implicates fundamental constitutional rights. Those rights may be limited, but only on the basis of compelling interests, such as the protection and safety of the public, the rehabilitation of the delinquent minor, and the minor’s “best interests” in receiving the type of care that would “enable him or her to be a law-abiding and productive member of his or her family and the community.” (§ 202, subs. (a), (b), & (d); see *In re Antoine D.*, *supra*, 137 Cal.App.4th at pp. 1321–1322, 40 Cal.Rptr.3d 885; *In re Charles G.*, *supra*, 115 Cal.App.4th at pp. 614–615, 9 Cal.Rptr.3d 503.)

\*\*840 Respondent contends that in the dependency context, the cases analyze the issues under the deferential “abuse of discretion” standard. However, the cases respondent relies upon involve review of a juvenile court’s placement decisions and commitment orders, such as *In re B.G.*, *supra*, 11 Cal.3d 679, 699, 114 Cal.Rptr. 444, 523 P.2d 244, and *In re Robert H.* (2002) 96 Cal.App.4th 1317, 1329–1330, 117 Cal.Rptr.2d 899. The visitation cases cited by the parties analyze the issue in

the first instance as one relating to the separation of powers—that is, whether the trial court has unlawfully delegated its power over visitation to some other agency, person or entity. (See, e.g., *In re Chantal S.* (1996) 13 Cal.4th 196, 213–214, 51 Cal.Rptr.2d 866, 913 P.2d 1075; *In re Julie M.*, *supra*, 69 Cal.App.4th 41, 43, 48–51, 81 Cal.Rptr.2d 354; *In re Donovan J.* (1997) 58 Cal.App.4th 1474, 1476–1478, 68 Cal.Rptr.2d 714; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008–1011, 57 Cal.Rptr.2d 861; *In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1373–1377, 28 Cal.Rptr.2d 705; *In re Jennifer G.*, *supra*, 221 Cal.App.3d 752, 756–758, 270 Cal.Rptr. 326; *In re Danielle W.*, *supra*, 207 Cal.App.3d 1227, 1235–1237, 255 Cal.Rptr. 344.) This is the issue we address. *In re Julie M.* did use abuse of discretion language in determining that an order giving the children discretion to decide whether their mother could visit with them “essentially delegated judicial power to the children—an abdication of governmental responsibility....” (*Id.* at pp. 48–49, 81 Cal.Rptr.2d 354.) Whatever the language used, an \*435 improper delegation of judicial power over visitation will necessarily be found to constitute an abuse of discretion.

#### **Limits on Delegation in Dependency Cases**

In the dependency context, it is recognized that “[v]isitation is a necessary and integral component of any reunification plan. [Citations.] ‘An obvious prerequisite to family reunification is regular visits between the noncustodial parent or parents and the dependent children “as frequent[ly] as possible, consistent with the well-being of the minor.”’ (*In re Julie M.*, *supra*, 69 Cal.App.4th [at pp.] 49–50 [81 Cal.Rptr.2d 354]....” (*In re S.H.* (2003) 111 Cal.App.4th 310, 317, 3 Cal.Rptr.3d 465, fn. omitted.)<sup>9</sup>

<sup>[7]</sup> Similarly, where, as here, the permanent plan envisions return of the delinquent minor to his home, adequate visitation is a “necessary and integral component” of that reunification. Respondent argues that the majority of dependency cases draw a clear distinction between delegation of the decision of whether visitation will occur (impermissible) and delegation of the responsibility over management of visitation, including the frequency of visitation (permissible). Although generally correct, this neat division does not fully describe the case law.

\*\*841 The Court of Appeal, in *In re S.H.*, *supra*, 111 Cal.App.4th 310, 3 Cal.Rptr.3d 465, described the competing considerations involved in the assessment of whether a particular visitation order constitutes an invalid delegation of judicial authority:

“It is the juvenile court’s responsibility to ensure regular parent-child visitation occurs while at the same time providing for flexibility in response to the changing needs of the child and to dynamic family circumstances. (*In re Moriah T.*, *supra*, 23 Cal.App.4th [at pp.] 1374, 1376 [28 Cal.Rptr.2d 705] [“Visitation arrangements demand flexibility to maintain and improve the ties between a parent or guardian and child while, at the same time, protect the child’s well-being”]; *In re Danielle W.*, *supra*, 207 Cal.App.3d [at pp.] 1234–1235 [255 Cal.Rptr. 344].) To sustain this balance the child’s social worker may be given responsibility to manage the actual details of the visits, including the \*436 power to determine the time, place and manner in which visits should occur. (E.g., *In re Jennifer G.*, *supra*, 221 Cal.App.3d [at p.] 757 [270 Cal.Rptr. 326].)....

<sup>[8]</sup> “Nonetheless, the power to decide whether any visitation occurs belongs to the court alone. (*In re Christopher H.*, *supra*, 50 Cal.App.4th [at pp.] 1008–1009 [57 Cal.Rptr.2d 861] [“The juvenile court has the sole power to determine whether visitation will occur and may not delegate its power to grant or deny visitation to the [Department of Social Services]”]; *In re Jennifer G.*, *supra*, 221 Cal.App.3d at p. 757, 270 Cal.Rptr. 326.) When the court abdicates its discretion in that regard and permits a third party, whether social worker, therapist<sup>10</sup> or the child, to determine whether any visitation will occur, the court violates the separation of powers doctrine. (*In re Julie M.*, *supra*, 69 Cal.App.4th at p. 51 [81 Cal.Rptr.2d 354], [order giving child the option to either consent or refuse visits with mother unconstitutionally abdicated court’s discretion to determine whether visitation would occur to child who essentially held veto power to ensure there would be no visits].)<sup>11</sup> The discretion to determine whether any visitation occurs at all ‘must remain with the court, not social workers and therapists, and certainly not with the children.’ (*Ibid.*; see also *In re Christopher H.*, at p. 1009 [57 Cal.Rptr.2d 861]; \*\*842 *In re Jennifer G.*, at p. 757 [270 Cal.Rptr. 326].)” (*In re S.H.*, *supra*, 111 Cal.App.4th at pp. 317–318, 3 Cal.Rptr.3d 465.)

In *In re S.H.*, the appellate court reversed a portion of the jurisdictional order where the order appeared to determine that mother had a right to visit, but in fact made visitation contingent upon the children’s approval. The visitation order stated, “ ‘if the children refuse a visit, then they shall not be forced to have a visit.’ ” (*In re S.H.*, *supra*, 111 Cal.App.4th at p. 318, 3 Cal.Rptr.3d 465.) The appellate court agreed with the mother’s claim that, as in *In re Julie M.*, *supra*, 69 Cal.App.4th at pages 46, 49–51, 81 Cal.Rptr.2d 354, “the order grants the child de facto veto power to ensure no visitation will occur absent the child’s consent. [citation.]” \*437 (*In re S.H.*, at p. 318, 3

Cal.Rptr.3d 465.) The court recognized that the order did “differ from that in *Julie M.* in that it affirmatively determines there is a right to visitation rather than making visitation entirely contingent on the child’s consent.” (*Ibid.*, fn. omitted.) The juvenile court also issued companion orders aimed at encouraging visitation by requiring counseling for the children and the mother and by directing the department to describe to the children the safeguards in place to reduce the children’s fears of visiting with the mother. (*Id.* at pp. 318–319, 3 Cal.Rptr.3d 465.) Despite these additional characteristics, the court concluded that “by failing to mandate any minimum number of monitored visits per month or even to order that some visitation must occur each month, the court’s abstract recognition of [the mother’s] right to visitation is illusory, transforming the children’s ability to refuse ‘a visit’ into the practical ability to forestall any visits at all.” (*Id.* at p. 319, 3 Cal.Rptr.3d 465, italics added; accord, *In re Hunter S.*, *supra*, 142 Cal.App.4th at p. 1505, 48 Cal.Rptr.3d 823 [holding that although order granting visitation “ ‘as can be arranged’ ... granted visitation in theory, none was permitted in reality”].)

*In re S.H.*, *supra*, 111 Cal.App.4th 310, 3 Cal.Rptr.3d 465, recognized that the visitation order was similar to that upheld “in *In re Danielle W.*, *supra*, 207 Cal.App.3d 1227 [255 Cal.Rptr. 344], which granted visitation ‘at the discretion’ of both the Department and the children and provided that the juvenile court ‘would not force the children’ to visit if they did not want to visit.... [T]he *In re Danielle W.* court upheld the order, concluding that it merely required the Department to take into account the children’s wishes in connection with the visitation and in no way vested the children with the power ‘to do more than express their desires in th[at] regard.’ ( [*In re Danielle W.*] at p. 1237 [255 Cal.Rptr. 344].)” (*In re S.H.*, at p. 318, fn. 12, 3 Cal.Rptr.3d 465.) *In re S.H.* noted that it shared the “serious reservations” expressed by the *In re Danielle W.* court “about visitation orders that fail to provide the Department with guidelines as to the prerequisites of visitation or any limitations or required circumstances. [Citation.]” (*In re S.H.*, at p. 318, fn. 12, 3 Cal.Rptr.3d 465, citing *In re Danielle W.*, at p. 1237, 255 Cal.Rptr. 344.)

Nevertheless, *In re S.H.* expressly stated that it was “not suggesting either that the juvenile court must always specify the frequency or length of visits (compare *In re Jennifer G.*, *supra*, 221 Cal.App.3d at p. 757, 270 Cal.Rptr. 326, [court should ‘determine whether there should be any right to visitation and, if so, the frequency and length of visitation’] with *In re Christopher H.*, *supra*, 50 Cal.App.4th at p. 1009 [57 Cal.Rptr.2d 861], [rejecting such a requirement] and *In re Moriah T.*, *supra*,

23 Cal.App.4th at p. 1376 [28 Cal.Rptr.2d 705] [same] ) or that the court may not direct that the child’s wishes with respect to the timing, length or location of visits be considered \*\*843 (see *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1138–1139 [106 Cal.Rptr.2d 465]; *In re Danielle W.*, *supra*, 207 Cal.App.3d at p. 1237 [255 Cal.Rptr. 344]). Indeed, the Department and mental health professionals working with it and with the dependent child may determine when visitation should first occur. (See *In re Chantal S.*, *supra*,] 13 Cal.4th [at pp.] 203–204 [51 Cal.Rptr.2d 866, 913 P.2d 1075].) However, in \*438 fashioning an appropriate visitation order the juvenile court must recognize that any factor that may be considered, even to a ‘limited’ extent, can become decisive (the ‘tipping factor’) in some instances in determining whether visitation will occur, otherwise it is not truly a factor at all.” (*In re S.H.*, *supra*, 111 Cal.App.4th at p. 319, 3 Cal.Rptr.3d 465.)

#### **Application To This Case**

The question here boils down to whether the juvenile court effectively delegated the determination *whether* visitation could occur to the discretion of the program. Appellant maintains he did not request that the court limit the program’s ability to administer the timing, location or length of visits—only that the court must set a *minimum* number of visits (appellant would argue that the minimum is at least two per month), absent some reason relating to him particularly and not solely to program policy. Respondent characterizes appellant’s claim as challenging the court’s delegation of the determination of the frequency of visitation, not the determination of whether there should be visitation.

**Due process claim.** To the extent appellant is seeking to have us decide that visitation of one time per month is insufficient to comport with due process, while twice per month visitation would suffice, he raises a substantive due process claim that we are unwilling to address. Doubtless, at some point reduction of visitation to a level that actually *denies* the right or renders it illusory, would constitute a denial of substantive due process, absent a **case**-specific compelling reason to so limit visitation. In this **case**, however, appellant has not asserted any specific detriment he has suffered or any particular detriment to his relationship with his father from the program’s limiting his visits with his father to once a month. Appellant cites to no **case** in either the dependency or **delinquency** context, and we have found none, holding that limiting visitation to once a month constitutes a denial of due process (or, for that matter, an abuse of discretion) absent an unlawful delegation of the power to determine visitation. We turn to the unlawful delegation

issue.

<sup>191</sup> **Unlawful delegation claim.** The record contains no written order regarding visitation other than one order for a family visit when appellant was confined at juvenile hall. The **case** plan prepared by the probation department for the May 2006 hearing contains a checked box identifying, as among the probation officer's responsibilities "[m]onthly visits with the minor's parent(s) or guardian(s)." Having never made a specific written order regarding visitation, the court's subsequent orders continuing prior orders in effect did not serve to set minimum visitation. Given the absence of a written order setting minimum visitation and the court's express deference to program policies regarding the frequency of visitation, it would be possible to construe this **case** as \*439 one in which the court conferred absolute discretion on the program to determine visitation. However, review of the two status review hearings presents a more complex picture.

**Order of June 23, 2006.** At the initial status review hearing held May 26 and June 23, 2006, the court inquired about the \*\*844 reasons for the program's limitation of visitation, reviewed the program's response, and concluded that it was not going to alter the program's process. In so ruling, the court recognized that the program had reasons for limiting visitation and observed that the program was providing visitation "and they are prepared to provide more when the time is right." Some of the reasons given by the program appear to be general ones, apparently inapplicable to appellant, such as concerns about visitation with victimized family members and unsupervised visits by parents or guardians who may have molested the minor. However, other reasons do appear to relate to appellant—that he was in the process of settling into the program, and had been disruptive and was having difficulty settling into the program's structure. Also, as the report and the program response related, appellant had recently begun disclosing previously unknown victims and it was not known whether others might also be disclosed. The program response stated that "at this point in his program, he is considered very high risk." Because appellant has difficulty in opening up and talking about issues, the program was proceeding with caution.

The court questioned counsel as to exactly what visitation appellant was seeking. Appellant asked the court to set a minimum number of visits at two per month. The court was clear that "right now there is one visit a month." Although the court did not formally set visitation at once per month, it appears that the court and the parties understood that visitation *was* required, that one visit per

month was the minimum visitation, and that more would be forthcoming as appellant progressed through the program. Moreover, the court did not merely defer absolutely to the program, but identified reasons relating to appellant that it believed supported the once-a-month visitation limit in light of the program's justifications for its policies. Specifically, the court stated that appellant's disclosure of two new victims supported the program's policy to proceed cautiously with visits at the outset. The court agreed that "that the program is proceeding appropriately, and so I'll leave it [visitation] where it is."

The delegation of visitation at this point appears somewhat analogous to that at issue in *In re Chantal S.*, *supra*, 13 Cal.4th 196, 51 Cal.Rptr.2d 866, 913 P.2d 1075, which has been characterized as permitting delegation of the decision when to *begin* visitation. (See *In re S.H.*, *supra*, 111 Cal.App.4th at p. 319, 3 Cal.Rptr.3d 465.) There, the California Supreme Court rejected a father's argument that the court had improperly delegated judicial authority to two therapists in its order specifying that \*440 visitation was to be " 'facilitated' " by the child's therapist, and that it begin when father's therapist determined father had made " 'satisfactory progress.' " (*In re Chantal S.*, at p. 213, 51 Cal.Rptr.2d 866, 913 P.2d 1075.) The court viewed the order as giving the child's therapist no discretion, but directing that the therapist cooperate with the court's order that visitation occur upon certain conditions being met. Thus, it was not an unlawful delegation of judicial power. The court acknowledged that the order vested some discretion in the father's therapist to determine when " 'satisfactory progress' " had been made. However, because in the circumstances the court could have denied father visitation entirely, the less restrictive order specifying that visitation could begin when the therapist determined the father had made adequate progress did not unlawfully delegate judicial authority. (*Id.* at pp. 213–214, 51 Cal.Rptr.2d 866, 913 P.2d 1075.) In the alternative, *In re Chantal S.* held the order did not prejudice father, as the facts justified denying visitation \*\*845 altogether. (*Id.* at p. 214, 51 Cal.Rptr.2d 866, 913 P.2d 1075.)

Here, of course, there is no evidence that would support the complete denial of visitation. Moreover, as the court observed in *In re Donovan J.*, *supra*, 58 Cal.App.4th 1474, 68 Cal.Rptr.2d 714, the juvenile court's "delegation to a private therapist, as in this **case**, raises additional concerns. Unlike a child protective **services** agency, a private therapist is not statutorily bound to 'act as a cooperative arm of the juvenile court.' (*In re Chantal S.* [, *supra*,] 13 Cal.4th [at p.] 213 [51 Cal.Rptr.2d 866, 913 P.2d 1075].) A private therapist is not accountable to the court in the same manner as a child protective **services**

agency.” (*In re Donovan J.*, at p. 1476, 68 Cal.Rptr.2d 714.)

“Although the court upheld the order in *Chantal S.*, it implicitly recognized that an order may be improper for delegating judicial authority to a private therapist. This is consistent with findings of improper delegations of judicial authority to private individuals in other contexts, and with the prohibition in the California Constitution against delegation of duties other than subordinate judicial duties. (See Cal. Const., art. VI, § 22; *De Guere v. Universal City Studios, Inc.* (1997) 56 Cal.App.4th 482, 496 [65 Cal.Rptr.2d 438] [“The California Constitution, article VI, section 22, prohibits the delegation of judicial power except for the performance of subordinate judicial duties”]; *In re Edgar M.* (1975) 14 Cal.3d 727, 735 [122 Cal.Rptr. 574, 537 P.2d 406] [without judicial review, referee’s finding juvenile ward of the court would constitute unlawful delegation].)” (*In re Donovan J.*, *supra*, 58 Cal.App.4th at p. 1477, 68 Cal.Rptr.2d 714.) The Court of Appeal in *In re Donovan J.* found the order before it significantly different from that reviewed in *In re Chantal S.* The order stated that the father had no visitation rights without the permission of the children’s therapists and consequently “neither requires that the therapists manage visitation ordered by the court, nor sets criteria (such as satisfactory progress) to inform the therapists when visitation is appropriate. Instead it conditions visitation on the children’s therapists’ sole discretion.” (*In re Donovan J.*, at p. 1477, 68 Cal.Rptr.2d 714.) Because under the order the therapists had \*441 unlimited discretion to decide whether visitation was appropriate, it constituted an improper delegation of judicial power. (*Id.* at pp. 1477–1478, 68 Cal.Rptr.2d 714.) “Although a court may base its determination of the appropriateness of visitation on input from therapists, it is the court’s duty to make the actual determination.” (*Id.* at p. 1478, 68 Cal.Rptr.2d 714.) The appellate court refused to speculate that the juvenile court intended to allow visitation upon father’s progress or that of the children. Because the order was “open to numerous interpretations,” it did not provide the therapists the necessary guidelines. (*Ibid.*) The court therefore reversed the order and remanded to allow the juvenile court to exercise its discretion in determining the conditions of visitation. (*Ibid.*)

We are persuaded that the juvenile court here did not unlawfully delegate its power over visitation by refusing to set minimum visitation at the June 23, 2006 hearing. Although we are troubled by the absence of *any* order regarding visitation, in the circumstances, it does not appear the court delegated to the program the determination of whether to allow visitation. As we have

observed, the court and all the parties apparently understood that one visit per month was the minimum permitted; the program and the court had articulated reasons relating to appellant for setting the frequency at one time per month; and it was understood by all and specified by the court that more frequent \*\*846 visitation would be allowed once appellant settled into the program and finished the victim disclosure step. Although close to the line, we cannot determine that the court unlawfully delegated its power over visitation at this stage.

<sup>[10]</sup> *Order from the permanency planning hearing of October 17, 2006.* At the permanency planning hearing, held October 17, 2006, the report prepared by the probation department related that appellant had made progress since the last report. His attitude and behavior had improved, he had begun to participate more in therapy, he was more committed to treatment than previously and was doing well academically. Furthermore, the program believed appellant had “completed the necessary steps of disclosure, identification of contributing factors, and exploration of distortions in thinking that allowed him to act out sexually.” Despite this improvement, appellant’s visitation with his father was still limited to once a month.

At the permanency planning hearing, counsel once again sought to have visitation increased. Counsel argued, among other things, that section 727.3, subdivision (a)(3), required the court to “specify the nature and frequency of visiting arrangements with the parents or legal guardians” at the permanency planning stage. However, the statutory requirement is less clear about the timing of the requirement than counsel’s characterization indicates. Section 727.3, subdivision (a)(3), mandates that “[t]he court order placing the minor in a permanent placement shall include a specification of the nature and \*442 frequency of visiting arrangements with the parents or legal guardians.” (§ 727.3, subd. (a)(3), italics added.) The trial court did not place appellant in a permanent placement at the permanency planning hearing of October 17, 2006. Rather, it ordered that the permanent plan remain “return home,” and found the projected or likely date for finalizing the permanent plan or achieving the permanent living arrangement was December 22, 2007. Had the court placed appellant in a permanent placement at that time, it would have been statutorily required to specify the nature and frequency of visiting arrangements with appellant’s parents, if the placement were other than return to his parents. However, the rule of court implementing the statute does not track the language of the statute. Rule 5.810(b)(4) provides in relevant part: “The permanent plan order must include an order regarding the nature and frequency of visitation with the

parents or guardians.” (Italics added.) It appears that the failure to specify the frequency of visitation with appellant’s father violated the rule, if not the actual language of the statute. Moreover, both the statute and the rule indicate the importance placed upon an express order regarding visitation in the permanent placement process.

At the October 17, 2006 permanent plan hearing, the court clearly believed that more frequent visitation was warranted under the program’s own explanation of the need for proceeding cautiously with visitation. The court stated its assumption that “the placement is going to start additional visitation, now that [additional disclosures had] occurred.” The probation officer agreed and stated he would speak to someone “to make sure that happens or get an update as to if that will happen.” Nevertheless, the court refused to specify minimum visitation, stating, “I’m not going to mandate them how many visits it is because I believe visits are considered also a privilege, and there may be interference with their point system if I do that. But I do want the visits to start happening more frequently, now that he’s complied with their request.” Unlike the prior status review hearing, the court did not indicate \*\*847 any circumstance or conduct by appellant that would support the program’s once-a-month visitation limit. Indeed, the court indicated that more frequent visitation was warranted and stated it “wanted the visits to start happening more frequently.” Nevertheless, the court refused to set minimum visitation because “there may be interference with their point system if I do that.” In so ruling, the court completely delegated to the program all determinations regarding visitation, despite the fact that none of the reasons given by the program for limiting visits then applied to appellant and despite the court’s stated understanding that more visitation would now occur.

The importance of an individualized determination of the visitation question for each minor is highlighted by the **delinquency** statutes requiring that the reasonable efforts determinations be based upon findings made on a **case-by-case** basis. Both **section 727.2, subdivision (e)**, applicable to status review hearings prior to the first permanency planning hearing, and **\*443 section 727.3**, applicable at the permanency planning hearing, require that the findings and determinations made by the court, including the “extent of the probation department’s ... reasonable efforts to safely return the minor to the minor’s home” (§ **727.2, subd. (e)**), shall be made on a “**case-by-case** basis ....” (§§ **727.2, subd. (e)**, **727.3, subd. (a)(4)**). At the permanency planning review hearing, the juvenile court did not make an individualized determination based upon the application of the program’s policies to this minor, but appears to have

completely deferred to the program the question of visitation.

It is arguable that the court delegated to the program only the issue of the *frequency* of visitation and not the decision *whether* to allow visits. However, unlike its determination at the first status review hearing, where it expressly agreed that certain of the rationales for the program’s “cautious” policy relating to visitation applied to this minor, the court refused at the permanency planning hearing to order increased visitation and did not anchor that decision in any particular finding relating to this appellant. The court simply refused to interfere with the program’s point system. Nor did the court provide the program with guidelines regarding visitation. The court simply *assumed* that the program would begin to apply its *own* policies to allow more visitation.

An additional relevant consideration is that the delegation here was to a private program, rather than “to a public entity statutorily bound to act as a cooperative arm of the juvenile court.” (*In re Chantal S.*, *supra*, 13 Cal.4th at p. 213, 51 Cal.Rptr.2d 866, 913 P.2d 1075; *In re Donovan J.*, *supra*, 58 Cal.App.4th [at p.] 1476, 68 Cal.Rptr.2d 714; see *In re Moriah T.*, *supra*, 23 Cal.App.4th at pp. 1374–1376, 28 Cal.Rptr.2d 705.)

Nor can we view the court at this hearing as providing “guidelines” for visitation. Although it assumed more visits would occur now that the program’s stated conditions were met, the court did not so order. Indeed, based upon our inquiry of appellant’s counsel, it appears that visits remained at one time per month through the most recent status review hearing of April 3, 2007 and to date. The juvenile court essentially delegated visitation decisions entirely to the private program. In doing so, the court unlawfully delegated its judicial power over visits in violation of the constitutional separation of powers.

## DISPOSITION

We affirm the order from the June 23, 2006 status review hearing (A114530). The order from the October 17, 2006 hearing (A115595) is reversed insofar as it finds the probation department made reasonable efforts to safely return the minor. \*\*848 The matter is remanded for a new hearing on the issue of visitation **services** and to allow the juvenile court to determine **\*444** minimum visitation with the father and to provide visitation guidelines to the program consistent with the views set forth herein.



## Parallel Citations

### Footnotes

- 1 All statutory references are to the Welfare and Institutions Code, unless otherwise indicated.
- 2 All references to rules are to the California Rules of Court, unless otherwise indicated.
- 3 Counsel also expressed concern about the delay in beginning family therapy, advising the court that despite reports by two mental health experts stressing the importance of family involvement in this case and of the importance of family therapy, the first family therapy session had begun only a week before. Counsel also advised the court that appellant's mother had not contacted probation and that probation had advised the program not to permit contact between appellant and the mother—including denial of a phone call on Mother's Day and refusal to allow appellant to send her a card. The court indicated it was concerned about denying appellant and the mother phone calls and the probation department representative stated he would "look into it with the program." The record reveals no further information about this.
- 4 At the same time, we recognize, as did the court in *In re Holly H.* (2002) 104 Cal.App.4th 1324, 128 Cal.Rptr.2d 907, that "[t]he principle that minors and adults are treated differently is of course deeply embedded in our legal system. 'The State's interest in the welfare of its young citizens justifies a variety of protective measures. Because he may not foresee the consequences of his decision, a minor may not make an enforceable bargain. He may not lawfully work or travel as he pleases, or even attend exhibitions of constitutionally protected adult motion pictures.... The State's interest in protecting a young person from harm justifies the imposition of restraints on his or her freedom even though comparable restraints on adults would be constitutionally impermissible.' (*Planned Parenthood of Central Missouri v. Danforth* (1976) 428 U.S. 52, 102 [96 S.Ct. 2831, 49 L.Ed.2d 788].) These sentiments were echoed by our Supreme Court when it held that '[b]y no means are the rights of juveniles coextensive with those of adults. [Citation.] Minors' rights are often legitimately curtailed when the restriction serves a state's interest in promoting the health and growth of children.' (*In re Scott K.* (1979) 24 Cal.3d 395, 401 [155 Cal.Rptr. 671, 595 P.2d 105].)" (*In re Holly H.*, at pp. 1334–1335, 128 Cal.Rptr.2d 907, fn. omitted.)
- 5 "The dependency statutes embody three [p]rimary goals for children adjudged dependents of the juvenile court: (1) To protect the child (§§ 202, 300.2, 361, subd. (c)(1), 361.2, subd. (a), 361.3, subd. (a)(8), 366.21, subd. (e), 16500); (2) to preserve the family and safeguard the parents' fundamental right to raise their child, as long as these can be accomplished with safety to the child (§§ 202, 300.2, 361.5, subd. (a)); and (3) to provide a stable, permanent home for the child in a timely manner. (§§ 366.26, 358.1, subd. (b), 396, 16131, 16501.1, subd. (f)(9).)" (*In re Santos Y.* (2001) 92 Cal.App.4th 1274, 1317, 112 Cal.Rptr.2d 692.)
- 6 "Minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment and guidance consistent with their best interest and the best interest of the public. Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment, and guidance that is consistent with their best interest, that holds them accountable for their behavior, and that is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter. *If a minor has been removed from the custody of his or her parents, family preservation and family reunification are appropriate goals for the juvenile court to consider when determining the disposition of a minor under the jurisdiction of the juvenile court as a consequence of delinquent conduct when those goals are consistent with his or her best interests and the best interests of the public.* When the minor is no longer a ward of the juvenile court, the guidance he or she received should enable him or her to be a law-abiding and productive member of his or her family and the community." (§ 202, subd. (b), italics added.)
- 7 "It is also the purpose of this chapter to reaffirm that the duty of a parent to support and maintain a minor child continues, subject to the financial ability of the parent to pay, during any period in which the minor may be declared a ward of the court and removed from the custody of the parent." (§ 202, subd. (c).)
- 8 In *In re Antoine D.*, the juvenile court had refused the minor's motion to modify his California Youth Authority (CYA) commitment, despite CYA's admission that it could not keep the bisexual minor safe, could not prevent his harassment and injury by staff and other wards based on his sexual orientation, and could not provide him an adequate education. The juvenile court refused modification on the grounds that vacating or modifying the juvenile ward's CYA commitment would extinguish juvenile court jurisdiction over him. The appellate court held that the juvenile court had abused its discretion in denying the modification because it would not have lost jurisdiction over the minor by granting the motion and that, in any event, loss of jurisdiction was an

improper basis for denying the motion. (*In re Antoine D.*, *supra*, 137 Cal.App.4th at pp. 1318–1320, 40 Cal.Rptr.3d 885.)

- 9 In the dependency context, visitation is also a critical component in the constitutionality of the procedures used for termination of parental rights. “The Supreme Court has held the statutory procedures used for termination of parental rights satisfy due process requirements only because of the demanding requirements and multiple safeguards built into the dependency scheme at the early stages of the process. [Citations.] If a parent is denied those safeguards through no fault of her own, her due process rights are compromised.” (*In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1504, 48 Cal.Rptr.3d 823 [following *In re S.H.*, *supra*, 111 Cal.App.4th 310, 3 Cal.Rptr.3d 465, and holding that although order granting visitation “ ‘as can be arranged’ ... granted visitation in theory, none was permitted in reality”].)
- 10 The *In re S.H.* court noted that *In re Donovan J.*, *supra*, 58 Cal.App.4th 1474, 1477, 68 Cal.Rptr.2d 714, had “reversed a visitation order that simply stated, ‘Father has “no visitation rights without permission of minors’ therapists” ’ because it neither required the therapists to manage ordered visitation nor set any criteria (such as satisfactory progress) to inform the therapists when visitation was appropriate and gave them ‘unlimited discretion to decide whether visitation is appropriate.’ *A therapist, however, may be allowed the limited discretion to determine when court-ordered visitation should begin.* (*In re Chantal S.*, *supra*,] 13 Cal.4th [at pp.] 203–204 [51 Cal.Rptr.2d 866, 913 P.2d 1075] [order vesting discretion in therapist of parent’s choice to determine when parent had made ‘satisfactory progress’ so that ordered visitation could begin is proper].)” (*In re S.H.*, *supra*, 111 Cal.App.4th. at p. 318, fn. 10, 3 Cal.Rptr.3d 465, italics added.)
- 11 “Article III, section 3, of the California Constitution provides, ‘The powers of state government are legislative, executive and judicial. Persons charged with the exercise of one power may not exercise either of the others except as permitted by this Constitution.’ The entire judicial power of the state is vested in the constitutional courts. (Cal. Const., art. VI, § 1.) Under the separation of powers doctrine judicial powers may not be completely delegated to, or exercised by, either nonjudicial officers or private parties. (See *In re Danielle W.*, *supra*, 207 Cal.App.3d at pp. 1235–1236 [255 Cal.Rptr. 344].)” (*In re S.H.*, *supra*, 111 Cal.App.4th at p. 318, fn. 11, 3 Cal.Rptr.3d 465.)

# Written Report Requirements for Delinquency Foster Care Cases (Assembly Bills 575 and 1696)

Revised August 27, 2010

## I. Detention Report for Children at Risk of Entering Foster Care

*Timing: A detention report must be filed at the detention hearing if the probation officer believes that the child is at risk of entering foster care (§ 635).\**  
**For any child at risk of entering foster care, as defined by sections 727.4(d)(2) and 11402, the written detention report must include:**

1. The reasons for removal from parents or guardians;
2. Any prior referrals for abuse or neglect, or dependency (§ 300) actions regarding the child;
3. The need, if any, for continued detention;
4. The available services to facilitate the child's return home to the child's parents or guardians;
5. The availability of relatives who are able and willing to provide effective care and control of the child;
6. Documentation that continuance in the home is contrary to the child's welfare; and
7. Documentation that reasonable efforts were made to prevent or eliminate the need for removal of the child from home and the nature and results of the services provided (§§ 635, 636(c)).

## II. Case Plan

*Timing: When a child is detained, following a court finding that "continuance in the home is contrary to the child's welfare" a case plan must be prepared within 60 calendar days of the initial removal or by the date of the dispositional hearing, whichever occurs first (§§ 636.1(a)).*

**A. If the probation officer (PO) believes that reasonable efforts by the child, his or her parent or legal guardian, and the PO will enable the child to safely return home, the case plan must focus on the issues and activities associated with those efforts, including identifying:**

1. Strengths and needs of the child and his or her family, and
2. Services that will be provided to the child and family that will reduce or eliminate the need for placement and will make it possible for the child to safely return home (§ 636.1(b)).

**B. If, based on the information available, the PO believes that foster care placement is the most appropriate disposition, the case plan must be submitted to the court as part of or an attachment to the social study and must include but not be limited to all the information below (§§ 636.1(c), 706.5(a), 706.6).**

1. A description of the circumstances surrounding removal and placement in foster care.
2. An assessment of the child's needs and the type of placement best equipped to meet them.
3. A description of the placement, including a discussion about the safety and appropriateness of the placement.
4. Assurances of educational stability – assurances that the placement takes into account the appropriateness of the current educational setting and the proximity to the school in which the child is enrolled at the time of placement, and an assurance that the placement agency has coordinated with appropriate local educational agencies to ensure that the child remains in the school in which the child is enrolled at the time of placement, or, if remaining in that school is not in the best interests of the child, assurances by the placement agency and the local educational agency to provide immediate and appropriate enrollment in a new school and to provide all of the child's educational records to the new school.
5. Concurrent planning activities—specific time-limited goals and related activities designed to enable the safe return of the child to his or her home or if that is not possible, activities designed to result in permanent placement or emancipation. Specific responsibility for carrying out the planned activities shall be assigned to one or more of the following: the probation department, the child's parents or guardians, the child, and/or the foster parents or licensed agency providing foster care.
6. The projected date of completion of the case plan objectives and the date on which services will be terminated.
7. Scheduled visits between the child and his or her family and an explanation if no visits are made.
8. For placements at a substantial distance from home or out-of-state placements: the reasons why the placement is the most appropriate and in the best interest of the child (see *Out-of-State Placement* chart for additional case plan requirements for out-of-state placements pursuant to section 727.1 and Family Code section 7911.1).
9. A description of efforts to place siblings together, unless placement together is not in the best interest of one or more siblings.
10. A schedule of visits between the child and the probation officer, including a monthly visitation schedule for those children placed in group homes.
11. Health and education information, including:

\*All citations in this chart are to the California Welfare and Institutions Code unless otherwise indicated.

- School records, names and addresses of educational providers, the child’s grade level performance, and assurances that the child’s placement in foster care takes into account proximity to the school in which the child was enrolled at the time of placement;
  - Immunizations, known medical problems and any known medications, and names and addresses of health providers; and
  - Other relevant health and educational information.
12. A description of services to assist in reunification and services to be provided concurrently to achieve legal permanency if efforts to reunify fail.
13. For a child age 16 or older, a description of the services to be provided to help that child in making the transition from foster care to independent living.
14. A statement that the parent or legal guardian and the child have had an opportunity to participate in the development of the case plan, to review it, sign it, and receive copies of it, or an explanation about why the parent or legal guardian and the child were not able to participate or sign the plan (§ 706.6).
- C. If placement in foster care is not recommended by the PO prior to disposition, but the court orders foster care placement, the court shall order the PO to prepare and file a case plan within 30 days of the placement order. The plan must include the information in section B, above (§ 706.5(b)).**
- D. Parents, legal guardians, and the child shall have an opportunity to participate in the development of the case plan, to review and sign it whenever possible, and to receive a copy of the plan (§ 706.6(o)).**

**III. Case Plan Update**

*Timing: An updated case plan must be filed at least 10 days prior to each status review and permanency planning hearing. (§§ 727.4(b), 706.5(c) & (d))*

**A. Each updated case plan must include:**

1. All of the information in the initial case plan, as described in section II.B, above (§ 706.6);
2. A description of the services that have been provided to the minor under the plan that has been in effect (§ 706.6(n)); and
3. An evaluation of the appropriateness and effectiveness of those services (§ 706.6(n)).

**B. The updated case plan prepared for a permanency planning hearing must also include a recommendation for a permanent plan for the child.**

1. The PO must consider all of the following permanent plans and recommend one to the court: reunification, adoptive placement, guardianship, permanent placement with a fit and willing relative, or another planned permanent living arrangement (§ 706.6(m)).
2. If the PO recommends placement in a planned permanent living arrangement, the PO must document a compelling reason why termination of parental rights is not in the minor’s best interest. The compelling reasons are listed in § 727.3(c) and on the *Delinquency Foster Care Requirements* chart. (§ 706.6(m)).

**IV. Social Study**

*Timing: A social study must be prepared and filed prior to the disposition hearing (§ 706) and at least 10 days prior to each status review hearing and permanency hearing (§ 727.4(b)).*

**A. At each disposition hearing where placement in foster care is recommended by the PO, or where the child is already in placement, or is pending placement, the social study report shall include a case plan as described in Section II.B, above (§ 706.5(a)).**

**B. At each status review hearing and permanency hearing, the social study shall include the following information:**

1. An updated case plan as specified in section 706.6;
2. A discussion about the continuing necessity for and appropriateness of the placement;
3. The extent of the Probation Department’s compliance with the case plan in making reasonable efforts to safely return the child home, or to complete whatever steps are necessary to finalize the child’s permanent plan;
4. The extent of progress that has been made by the child, and by the parent or guardian toward alleviating or mitigating the causes necessitating placement in foster care;
5. A likely date by which the child will be returned to and safely maintained in the home or another permanent plan will be selected; and
6. Information about whether the child has been or will be referred to educational services, including special education; whether the parent or guardian’s educational rights should be limited by the court; and comments from the appropriate local education agency (§ 706.5(c)).

**C. At each permanency hearing, the social study must also include a recommended permanent plan for the child (§ 706.5(d)).**

**V. Adoption Assessment Report**

*Timing: An adoption assessment report must be filed at least 10 days prior to any hearing held pursuant to section 727.31 (§§ 727.31(b), 366.26 (b)).*

**A. Who prepares the assessment?**

The licensed county adoption agency or the state Department of Social Services, if it is acting as the adoption agency in that county, prepares the assessment, with input from the Probation Department (§ 727.31(b)).

**B. What must the assessment include?** There are many requirements. See section 727.31(b).

# Delinquency Foster Care (Assembly Bills 575 and 1696)— Requirements for Probation Departments

<p><b>I. Investigation/Intake Requirements</b></p>	<p>A. Immediately investigate and release any child in custody to parent, guardian, or responsible relative unless Probation can demonstrate that continuance in the home is contrary to the child’s welfare <i>and</i> one of the statutory grounds for detention in section 628(a)(1)–(7) exists.*</p> <p>B. If the probation officer has reason to believe that a child in custody is at risk of entering foster care placement, Probation must make reasonable efforts to prevent or eliminate the need for removal of the child from his or her home and determine what previous reasonable efforts were made, if any (§ 628(b)).</p> <p>C. For a child not in custody, determine whether reasonable efforts, as described in section 727.4(d)(5), have been made to prevent or eliminate the need for removal (§ 652), and whether it is appropriate to offer such services to the family (§ 653.5(a)). Make referrals to those services (§ 653.5(a)).</p> <p>D. Determine whether a petition needs to be filed (§ 652).</p>
<p><b>II. Requirements at Detention Hearing</b></p>	<p>A. Submit a written detention report to the court if the child is at risk of entering foster care (§ 635). (See <i>Written Report Requirements</i> chart.)</p> <p>1. Documentation to support the required court finding regarding “continued placement with the parent or guardian is contrary to the child’s welfare” must be included in the detention report (§ 636(c)(1)).</p> <p>2. Documentation to support the required court finding regarding “reasonable efforts to prevent removal” must be included in the detention report (§ 636(c)(2)).</p> <p>B. Make a prima facie showing that the child is a person described in section 601 or 602 (§ 635).</p>
<p><b>III. Requirements After Detention Hearing, If Child Is Detained</b></p>	<p>A. Prepare case plan within 60 days of removal or by the date of the dispositional hearing, whichever occurs first (§ 636.1). (See <i>Written Report Requirements</i> chart.)</p> <p>B. Provide notice of the disposition hearing 15–30 days prior to the hearing date to the child, parent or guardian, caregiver, and counsel of record, and file proof of notice with the court (§ 727.4(a)).</p> <p>C. Prepare and file a social study, including a case plan, to be received into evidence at the dispositional hearing (§§ 706, 706.5(a), 706.6). (See <i>Written Report Requirements</i> chart.)</p>
<p><b>IV. Placement Requirements</b></p>	<p>A. When the court orders that care, custody and control of a child be under the supervision of probation for foster care placement, the decision regarding choice of placement shall be based on selecting a safe setting that is:</p> <ol style="list-style-type: none"> <li>1. The least restrictive or most family-like setting;</li> <li>2. The most appropriate setting that is available and in close proximity to the parent’s home; and</li> <li>3. The environment best suited to meet the child’s special needs and best interests (§ 727.1(a)).</li> </ol> <p>B. Placement alternatives, in order of priority, are placement (1) with relatives; (2) with tribal members; (3) with a foster family; (4) in group care; or (5) in residential treatment (§ 727.1(a)).</p>
<p><b>V. Notice and Report Requirements, Prior to Status Review and Permanency Planning Hearings</b></p>	<p>Prior to each status review hearing and permanency planning hearing, probation must:</p> <p>A. Provide notice of the hearing 15–30 days prior to the hearing date to the child, parent or guardian, caregiver, and counsel of record, and file proof of notice with the court (§ 727.4(a)).</p> <p>B. Prepare and file a social study, including an updated case plan, at least 10 days prior to each hearing, including specific information about the child, upon which the court can base case-by-case findings (§§ 706.5(c) and (d), 727.2(c), 727.3(a)(1), 727.4(b)). (See <i>Written Report Requirements</i> chart.)</p> <p>C. Provide copies of the social study to the child, parent or guardian, and counsel of record 10 days prior to the hearing (§ 727.4(c); Cal. Rules of Court, rule 5.810(e)).</p> <p>D. Ensure that other reports from the child’s caregiver (foster parent, relative caregiver, preadoptive parent, or legal guardian) or responsible agency (community care facility, foster family agency, group home, or residential treatment program) are submitted to the court (§§ 727.2(d), 727.3(a)(2)).</p>

\*All citations in this chart are to the California Welfare and Institutions Code.

## VI. Status Review Hearing Requirements

**Timing:** The status of every ward in foster care shall be reviewed by a court or administrative review panel every 6 months from the date the child entered foster care (see section 727.4(d)(4)) or section IX below for definition (§§ 727.2(c) and (h)). The disposition hearing can be considered the first status review hearing. (§ 727.2(c)).

A. Probation must ensure the provision of services:

1. To facilitate the return of the child to a safe home (unless reunification services are not required, pursuant to § 727.2(b)), and
2. To facilitate a permanent placement of the child if the child cannot go home, and
3. To address the needs of the child while in foster care (§ 727.2(a)).

B. At each hearing, Probation must provide the court with information about the safety of the child and with information to support the court findings regarding:

1. The continuing necessity for and appropriateness of the placement;
2. The extent of the Probation Department's compliance with the case plan in making reasonable efforts to safely return the child to the child's home or to complete whatever steps are necessary to finalize the permanent placement of the child;
3. The extent of progress that has been made by the child and/or family toward alleviating or mitigating the causes necessitating placement in foster care; and
4. The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, permanently placed with a fit and willing relative, or referred to another planned permanent living arrangement (§§ 727.2(e), 727.3(a)(4)).

C. Probation must recommend services to assist any child 16 years or older in making the transition from foster care to independent living (§§ 727.2(e), 727.3(a)(4)).

D. If it has been 12 months or less since the date of entry into foster care, and Probation is recommending continued out-of-home placement, then Probation shall have the burden of proving that returning home will create a substantial risk of detriment to the safety, protection, or physical or emotional well being of the child (§ 727.2(f)).

## VII. Permanency and Postpermanency Planning Hearing Requirements

**Timing:** A permanency planning hearing must be held within 12 months of the date the child entered foster care and there must be a hearing every 6 months thereafter during the period of placement (§727.3(a)(1)). However, if no reunification services were offered to the parents, pursuant to § 727.2(b), then the first permanency planning hearing must be held within 30 days of the disposition hearing (§ 727.2(b)).

*At the permanency planning hearing:*

A. Probation must recommend to the court one of the following permanent plans for the child (listed here in priority order):

1. Return to the physical custody of the parent or legal guardian immediately (§ 727.3(b)(1)).
2. Return to the physical custody of the parent or legal guardian after 6 more months of reunification services, if it is substantially likely that the child will be able to go home at that time. This recommendation must not be used if the child has been in placement for 18 months or more (§ 727.3(b)(2)).
3. Adoption (§§ 727.3(b)(3), 727.31).
4. Legal guardianship (§§ 727.3(b)(4), 728(c)-(e)).
5. Placement with a fit and willing relative, defined as placing with an appropriate relative, on a permanent basis (§ 727.3(b)(5)).
6. A planned permanent living arrangement, such as placement in a specific, identified foster family home, program, or facility on a permanent basis, or placement in a transitional housing facility (§ 727.3(b)(6)).

B. If the recommended permanent plan is:

1. Adoption, then Probation must follow the procedures in section 727.31.
2. Guardianship, then Probation must follow the procedures in section 728.

3. A planned permanent living arrangement, then Probation must also recommend the goal of the placement, which includes but is not limited to, a goal of return home, emancipation, guardianship, or placement with a relative (§ 727.3(b)(6)), and present evidence to the court of a compelling reason, as defined in section 727.3(c), for determining that a plan of termination of parental rights and adoption is not in the child's best interest (§§ 727.3(b)(6), 727.3(c)).

C. If the child has a continuing involvement with his or her parents or guardians, Probation must include those adults in the planning for a permanent placement and must make a recommendation to the court regarding the nature and frequency of visitation between the parent or guardian and the child (§727.3(a)(3)).

D. Probation must provide the court with information about the safety of the child and with information to support the court findings regarding:

1. The continuing necessity for and appropriateness of the placement;
2. The extent of the Probation Department's compliance with the case plan in making reasonable efforts to safely return the child to the child's home or to complete whatever steps are necessary to finalize the permanent placement of the child; and
3. The extent of progress that has been made by the child and/or family toward alleviating or mitigating the causes necessitating placement in foster care. (727.2(e))

(Continued on Page 3)

## VII. Permanency and Postpermanency Planning Hearing Requirements (Continued from Page 2)

At each *postpermanency hearing*:

E. Probation must provide the court with information that the previously ordered permanent plan continues to be appropriate or recommend a new permanent plan pursuant to the procedures described in sections VII A, B, and C above (§ 727.2(g)).

F. Probation must provide the court with information about the safety of the child and with information to support the court findings regarding:

1. The continuing necessity for and appropriateness of the placement;
  2. The extent of the Probation Department's compliance with the case plan in making reasonable efforts including whatever steps are necessary to finalize the permanent placement of the child;
  3. Whether the rights of the parent/guardian to make educational decisions for the child should be limited; and
  4. The extent of progress that has been made by the child and/or family toward alleviating or mitigating the causes necessitating placement in foster care. (§§ 727.2(e)(1)-(4), 727.2(g))
- G. Probation must recommend services to assist any child 16 years or older in making the transition from foster care to independent living (§§ 727.2(e)(6), 727.3(a)(4)).
- H. After a permanent plan is ordered, the plan may be changed only by order of the court:
1. Pursuant to a section 778 petition, or at a regularly scheduled review or permanency hearing, for a child whose plan is placement with a fit and willing relative or a planned permanent living arrangement (§727.3(e)); or
  2. Pursuant to a section 728 motion, for a child whose permanent plan is guardianship.

## VIII. "Fifteen Out of 22 Months" Requirement of Termination of Parental Rights or Documentation of a Compelling Reason

**Timing:** This requirement applies to all children who have been in foster care for 15 of the most recent 22 months, as calculated from the date of entry into foster care. This includes all placements in care during that time but does not include time spent at home or on runaway status (§ 727.32).

If a child has been in foster care for 15 of the most recent 22 months, probation must follow the procedures in section 727.31 to terminate the parental rights of the child's parents, unless one of the following is true: (1) Probation has documented a compelling reason, as defined in section 727.3(c), for determining that termination of parental rights would not be in the child's interest; or (2) Probation has not provided the family with reasonable efforts necessary to achieve reunification (§ 727.32(a)).

## IX. Key Definitions

"Compelling reasons" are reasons for determining that a plan of termination of parental rights and adoption is not in the best interest of the child. The Probation Department's recommendation that adoption is not in the best interest of the child shall be based on the present family circumstances of the child and shall not preclude a different recommendation at a later date if the child's family circumstances change. A compelling reason is any of the following:

- A. Documentation by the Probation Department that adoption is not in the best interest of the child and is not an appropriate permanency goal. That documentation may include but is not limited to documentation that:
1. The child is 12 years of age or older and objects to termination of parental rights.
  2. The child is an older teen who specifically requests that emancipation be established as his or her permanent plan.
  3. The parent or guardian and the child have a significant bond, but the parent or guardian is unable to care for the child because of an emotional or physical disability, and the child's caregiver has committed to raising the child to the age of majority and facilitating visitation with the disabled parent or guardian.
  4. The child agrees to continued placement in a residential treatment facility that provides services specifically designed to address the child's treatment needs, and the child's needs could not be served by a less restrictive placement.
- B. Documentation by the Probation Department that no grounds exist to file for termination of parental rights.
- C. Documentation by the Probation Department that the child is an unaccompanied refugee child or there are international legal obligations or foreign policy reasons that would preclude terminating parental rights.
- D. A finding by the court that the Probation Department was required to make reasonable efforts to reunify the child with the family pursuant to section 727.2(a), and did not make those efforts.
- E. Documentation by the Probation Department that the child is living with a relative who is unable or unwilling to adopt the child because of exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility for the child but who is willing and capable of providing the child with a stable and permanent home environment, and the removal of the child from the physical custody of his or her relative would be detrimental to the child's emotional well being (§ 727.3(c)).

(Continued on Page 4)

**IX. Key Definitions (Continued from Page 3)**

- “Date of entry into foster care”** means the date that is 60 days after the date on which the child was removed from his or her home, unless one of the following exceptions applies:
  - A. If the child is detained pending foster care placement and remains detained for more than 60 days, then the date of entry into foster care is the date of the hearing where placement is ordered.
  - B. If, before the child is placed in foster care, he or she is committed to a ranch, camp, school, or other institution and remains in that facility for more than 60 days, then the date of entry into foster care is the date the child is physically placed in foster care.
  - C. If, at the time the wardship petition was filed, the child was a dependent of the juvenile court and in out-of-home placement, then the date of entry into foster care is the earlier of the date the juvenile court made a finding of abuse or neglect, or 60 days after the date on which the child was removed from his or her home (§ 727.4(d)(4)).
- “Foster care”** means residential care provided in any setting authorized by section 11402, including an approved relative’s home, a licensed foster home, a licensed group home, the home of a legal guardian, and a licensed transitional housing placement facility (§§ 727.4(d)(1), 11402).
- “Hearing”** means a noticed proceeding with findings and orders that are made on a case-by-case basis, heard either by a judicial officer in a courtroom, recorded by a court reporter, or by an administrative panel, provided that the hearing is a status review hearing, and the panel meets the conditions in section 727.4(d)(7)(B)(i)-(iv) (§ 727.4(d)(7)).
- “Reasonable efforts”** means efforts to prevent or eliminate the need for removing the child from his or her home, to make it possible for the child to return home, and to complete whatever steps are necessary to finalize a permanent plan (§ 727.4(d)(5)).

**This chart summarizes federal and state law governing children in foster care placements as codified by Assembly Bills 575 and 1696; it does not include all California delinquency statutory requirements.**



**I. Purpose**

To focus on the goals and services set out for a nonminor dependent (NMD) in the Transitional Independent Living Case Plan (TILCP) and Transitional Independent Living Plan (TILP) and check in on the NMD's efforts and progress toward achieving independence and establishing lifelong connections with caring and committed adults.

**II. Setting and conduct**

- A. The hearing must be conducted every six months by the court *or* by a local administrative review panel.
- B. The hearing must be placed on the appearance calendar, held before a judicial officer, and recorded by a court reporter if ANY of the following circumstances apply:
  1. It is the first hearing following the NMD's 18th birthday;
  2. It is the first hearing following the resumption of juvenile court jurisdiction under rule 5.906<sup>1</sup> of the California Rules of Court; or
  3. It has been 12 months or more since the court last conducted a review hearing.
- C. As appropriate, the hearing may be attended by participants invited by the NMD.
- D. The NMD may appear at the hearing by telephone at no cost as provided in rule 5.900.
- E. If the court determines that the social worker's or probation officer's report, the TILCP, and the TILP did not collectively provide all the required information described below in section IV and the court is unable to make all the findings and orders required below in sections V and VI, the hearing must be continued for no more than five court days for the submission of additional information by the social worker or probation officer or by the NMD.

**III. Notice of hearing**

- A. The social worker or probation officer must serve written notice of the hearing in the manner and to the persons described in Welfare and Institutions Code section 295<sup>2</sup>, EXCEPT notice to the parents is not required.
- B. The notice served on the NMD must include a statement that he or she may appear at the hearing by telephone, along with local court instructions for how to appear by telephone.
- C. Proof of service must be filed five court days before the hearing.

**IV. Written reports requirements**

- A. The social worker or probation officer must submit a report that includes the following information:
  1. The continuing necessity for the nonminor's placement and the facts supporting that conclusion;
  2. The appropriateness of the current foster care placement;
  3. The NMD's plans to remain under juvenile court jurisdiction, including criteria in section 11403(b) that have been met;
  4. The efforts made by the social worker or probation officer to help the nonminor meet the criteria in section 11403(b);
  5. Verification that the NMD was provided with the information, documents, and services required under section 391(e);
  6. Information about the development of the TILCP, including how and when it was created, how the NMD participated, and, for a NMD who elected to have the Indian Child Welfare Act (ICWA) continue to apply, the extent of consultation with the tribal representatives;
  7. The efforts made by the social worker or probation officer to comply with the TILCP and efforts to finalize the permanent plan and prepare for independent living;
  8. Progress made towards meeting the TILP goals, and modifications to assist the nonminor in attaining the goals;
  9. The efforts made by the social worker or probation officer to help maintain relationships between the nonminor and caring and committed adults; and
  10. The efforts made by the social worker or probation officer as required under section 366(a)(1)(D) to help establish or maintain the nonminor's relationship with his or her siblings who are under the juvenile court's jurisdiction.
- B. The social worker or probation officer who prepares the report must submit the TILCP and TILP with the report.
- C. The report, the TILCP, and the TILP must be filed with the court at least 10 calendar days before the hearing, and copies of all documents must be provided to the NMD, all attorneys of record, and, if applicable, tribal representatives where ICWA continues to apply.

<sup>1</sup> All rule references are to the California Rules of Court unless otherwise indicated.

<sup>2</sup> All code references are to the California Welfare and Institutions Code unless otherwise indicated.

**V. Findings**

- A. Notice of the date, time, and location of the hearing was given as required by law;
- B. 1. The NMD's continued placement is necessary; *or*  
 2. The NMD's continued placement is no longer necessary;
- C. 1. The NMD's current placement is appropriate; *or*  
 2. The NMD's current placement is not appropriate, and the county agency and the nonminor dependent must work collaboratively to locate an appropriate placement;
- D. The TILP includes a plan for the NMD to satisfy one or more of the criteria in section 11403(b) for eligibility for NMD status, specifically the following (*indicate all that apply*):
1.  Attending high school or a high school equivalency certificate (GED) program;
  2.  Attending a college, a community college, or a vocational education program;
  3.  Attending a program or participating in an activity that will promote or help remove a barrier to employment;
  4.  Employed at least 80 hours per month;
  5.  Unable to attend a high school, GED program, college, community college, vocational education program, or a program or activities to promote employment or overcome barriers to employment, or to work 80 hours per month due to a medical condition;
- E. The county agency  has  has not made reasonable efforts & provided assistance to help the NMD establish & maintain compliance with the conditions in §11403(b);
- F. The NMD  was  was not provided with the information, documents, and services as required under section 391(e);
- G. The TILCP and TILP  were  were not developed jointly by the NMD and the county agency;
- H. For the NMD who has elected to have ICWA continue to apply, the representative from his or her tribe  was  was not consulted during the development of the TILCP;
- I. The NMD's TILCP  does  does not reflect the living situation and services consistent, in the nonminor's opinion, with what he or she needs to gain independence and sets out benchmarks that indicate how both will know when independence can be achieved;
- J. The NMD's TILCP  does  does not include appropriate & meaningful independent living skill services that will assist the youth with the transition from foster care to independent living;
- K. The county agency  has  has not made reasonable efforts to comply with the TILCP, including efforts to finalize the NMD's permanent plan and prepare him or her for independence;
- L. The TILP includes appropriate and meaningful independent living skill services that will assist the NMD with the transition from foster care to independent living;
- M. The NMD  did  did not sign and receive a copy of his or her TILCP and TILP;
- N. The progress made by the NMD toward meeting the goals in the TILCP has been (*specify and describe*):  
 Any modifications needed to assist in attaining the goals have been stated on the record and are to be incorporated in the case plan;
- O. The county agency  has  has not made reasonable efforts to help maintain relationships between the NMD and individuals who are important to him or her, including efforts to help establish and maintain relationships with caring and committed adults who can serve as lifelong connections;
- P. The county agency has made reasonable efforts as required in section 366(a)(1)(D) to establish or maintain the NMD's relationship with his or her siblings who are under the juvenile court jurisdiction; and
- Q. The likely date by which it is anticipated the nonminor dependent will achieve independence is (*choose date that reflects a realistic assessment*): \_\_\_/\_\_\_/\_\_\_.

**VI. Orders**

- A. Juvenile court jurisdiction over the youth as a nonminor dependent is continued.
1. The youth's permanent plan is independence after a period of placement in supervised settings as specified in section 11402.
  2. The matter is continued for a hearing under section 366(f) and rule 5.903 on (*choose date within the next six months*): \_\_\_/\_\_\_/\_\_\_; *or*  
 B. Juvenile court jurisdiction over the nonminor may no longer be necessary, and a hearing under rule 5.555 to consider termination of juvenile court jurisdiction is ordered on (*choose date within the next 30 days*): \_\_\_/\_\_\_/\_\_\_; *or*
- C. At a hearing held today under rule 5.555, the juvenile court entered the findings and orders as recorded on the *Findings and Orders After Hearing to Consider Termination of Juvenile Court Jurisdiction Over Nonminor* (form JV-367) and juvenile court jurisdiction is terminated pursuant to those findings and orders.

The information on this chart is based on the provisions of Assembly Bill 12 (Beall; Stats. 2010, ch. 559), the California Fostering Connections to Success Act, as amended by Assembly Bill 212 (Beall; Stats. 2011, ch. 459) and the California Rules of Court, effective July 1, 2012. The chart was compiled by the Juvenile Court Assistance Team, Center for Families, Children & the Courts, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, California 94102-3688, 415-865-7739, cfcc@jud.ca.gov

**Over a Dependent or Ward Age 18 or Older in a Foster Care Placement or Over a Nonminor Dependent**

(Welfare and Institutions Code sections 224.1(b), 303, 366.31, 391, 607.3, 16501.1(f)(16))

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**I. Applicability**

- A. This rule applies to any hearing during which the termination of the juvenile court's jurisdiction over the following nonminors will be considered:
1. A nonminor dependent as defined in Welfare and Institutions Code section 11400(v)<sup>1</sup>; or
  2. A ward or dependent of the juvenile court 18 years of age or older and subject to a foster care placement order.
- B. Nothing in the Welfare and Institutions Code or in the California Rules of Court<sup>2</sup> restricts the ability of the juvenile court to maintain dependency jurisdiction or delinquency jurisdiction over a person 18 years of age and older who does not meet the eligibility requirements for status as a nonminor dependent.
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- II. Setting and conduct of hearing**
- A. A court hearing must be placed on the appearance calendar and held before terminating juvenile court jurisdiction.
- B. The hearing under this rule may be held during a hearing required under section 366(f), 366.21, 366.22, 366.25, 366.3, 727.2, or 727.3 or rule 5.903.
- C. Notice of the hearing to the parents of a nonminor dependent as defined in section 11400(v) is not required.
- D. If juvenile court jurisdiction was resumed after having previously been terminated, a hearing under this rule must be held if the nonminor dependent wants juvenile court jurisdiction terminated again.
- E. If the court determines that the social worker's or probation officer's report prepared for the hearing, Transitional Independent Living Case Plan (TILCP), Transitional Independent Living Plan (TILP), and 90-day Transition Plan do not provide all information required below in section III and the court is unable to make all the findings and orders required below in sections IV and V, the hearing must be continued for no more than five court days for the submission of additional information.
- 

**III. Reports and supporting documents**

- A. The social worker or probation officer's report must include the following information:
1. Whether remaining under juvenile court jurisdiction is in the nonminor's best interests and the facts supporting the conclusion reached;
  2. The specific criteria in section 11403(b) met by the nonminor that makes him or her eligible to remain under juvenile court jurisdiction as a nonminor dependent;
  3. For a nonminor to whom the Indian Child Welfare Act (ICWA) applies, when and how the nonminor was provided with information about the right to continue to be considered an Indian child for the purposes of the ongoing application of ICWA;
  4. Whether the nonminor has applied for title XVI Supplemental Security Income (SSI) benefits and, if so, the status of any pending application and whether remaining under juvenile court jurisdiction until a final SSI decision has been issued is in the nonminor's best interests;
  5. Whether the nonminor has applied for Special Immigrant Juvenile Status or other application for legal residency and, if so, the status of any pending application and whether an active juvenile court case is required for that application;
  6. When and how the nonminor was provided with information about the potential benefits of remaining under juvenile court jurisdiction as a nonminor dependent, and the social worker's assessment of the nonminor's understanding of those benefits;
  7. When and how the nonminor was informed that if juvenile court jurisdiction is terminated, the court maintains general jurisdiction over him or her, and the nonminor has the right to file a request to return to foster care and have the juvenile court resume jurisdiction over him or her as a nonminor dependent;

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<sup>1</sup> All code references are to the California Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> All rule references are to the California Rules of Court unless otherwise indicated.

## Over a Dependent or Ward Age 18 or Older in a Foster Care Placement or Over a Nonminor Dependent

(Welfare and Institutions Code sections 224.1(b), 303, 366.31, 391, 607.3, 16501.1(f)(16))

8. When and how the nonminor was informed that if juvenile court dependency jurisdiction or transition jurisdiction is continued, he or she has the right to have that jurisdiction terminated;
  9. For a nonminor who is not present for the hearing:
    - a. Documentation of the nonminor's statement that the nonminor did not wish to appear in court for the scheduled hearing; *or*
    - b. Documentation of the reasonable efforts made to locate the nonminor whose current location is unknown; and
  10. Verification that the nonminor was provided with the information, documents, and services as required under section 391; *and*
  11. When and how a nonminor who is under delinquency jurisdiction was provided with the notices and information required under section 607.5.
- B. A completed *Termination of Juvenile Court Jurisdiction—Nonminor* (form JV -365), the nonminor's TILCP if the recommendation is for continuation of juvenile court jurisdiction, the nonminor's most recent TILP, and the nonminor's completed 90-day Transition Plan must be filed with the social worker's or probation officer's report.
- C. The social worker's or probation officer's report and all documents must be filed with the court at least 10 calendar days before the hearing, and the social worker or probation officer must provide copies of the report and other documents to the nonminor, the nonminor's parents, and all attorneys of record. If the nonminor is under juvenile court jurisdiction as a nonminor dependent, the social worker or probation officer is not required to provide copies of the report and documents to the nonminor dependent's parents.

#### Judicial Findings and Orders

All judicial findings and orders must be made on the record and included in the written, signed court documentation of the hearing.

#### IV. Findings

- A. Notice of the date, time, and location of the hearing was given as required by law;
- B. For a nonminor who is not present for the hearing, the reason for the nonminor's failure to appear was:
  1. The nonminor expressed a wish to not appear in court for the scheduled hearing and did not appear; or
  2. The nonminor's current location remains unknown although reasonable efforts were made to locate the nonminor.
- C. The nonminor had the opportunity to confer with his or her attorney about the issues currently before the court. (The nonminor must have had the opportunity to confer with his or her attorney prior to termination of jurisdiction unless the court finds the nonminor's whereabouts are unknown and reasonable efforts were made to locate the nonminor);
- D. Remaining under juvenile court jurisdiction  is  is not in the nonminor's best interests, and the facts in support of this finding were stated on the record.
- E. 1. The nonminor does not meet the eligibility criteria in §11403(b) to remain in foster care as a nonminor dependent under juvenile court jurisdiction at this time; or
  2. The nonminor meets one or more of the eligibility criteria in section 11403(b) to remain in foster care as a nonminor dependent. The specific criteria met by the nonminor is
    - a.  Attending high school or a high school equivalency certificate (GED) program
    - b.  Attending a college, a community college, or a vocational education program
    - c.  Attending a program or participating in an activity that will promote or help remove a barrier to employment
    - d.  Employed at least 80 hours per month
    - e.  The NMD is not able to attend a high school, a GED program, a college, a community college, a vocational education program, an employment program or

## Over a Dependent or Ward Age 18 or Older in a Foster Care Placement or Over a Nonminor Dependent

(Welfare and Institutions Code sections 224.1(b), 303, 366.31, 391, 607.3, 16501.1(f)(16))

activity or to work 80 hours per month due to a medical condition;

- F. For a nonminor who has an in-progress application pending for title XVI Supplemental Security Income benefits: The nonminor has an in-progress application pending for title XVI Supplement Security Income benefits and the continuation of juvenile court jurisdiction until a final decision has been issued to ensure that the child receives continued assistance with the application process  is  is not in the nonminor's best interest;
- G. For a nonminor who has an in-progress application pending for Special Immigrant Juvenile Status or other legal residency application, an active juvenile court case  is  is not required for that application;
- H. The nonminor was informed of the options available to assist with the transition from foster care to independence;
- I. The potential benefits of remaining in foster care under juvenile court jurisdiction were explained to the nonminor and the nonminor has stated that he or she understands those benefits;
- J. The nonminor was informed that if juvenile court jurisdiction is continued, he or she may have the right to have juvenile court jurisdiction terminated and that the court will maintain general jurisdiction for the purpose of resuming dependency jurisdiction or assuming or resuming transition jurisdiction over him or her as a nonminor dependent;
- K. The nonminor was informed that if juvenile court jurisdiction is terminated with the court retaining general jurisdiction, he or she has the right to file a petition to have the court resume jurisdiction over him or her so long as he or she is within the eligible age range for status as a nonminor dependent;
- L. 1. The nonminor was provided with the information, documents, and services set forth in section 391(e) and a completed *Termination of Juvenile Court Jurisdiction Nonminor* (form JV-365) was filed with this court; **or**
2. The nonminor was not provided with the information, documents, and services set forth in section 391(e) and juvenile court jurisdiction is continued to ensure that all information, documents, and services are provided (Continue jurisdiction for receipt of information, documents, and services unless the court finds the nonminor's whereabouts are unknown and reasonable efforts were made to locate the nonminor);
- M. For a nonminor subject to delinquency jurisdiction, the nonminor  was  was not provided with the notices and information required under section 607.5;
- N. For a nonminor to whom the Indian Child Welfare Act applies:
1. The nonminor intends to continue to be considered an Indian child for purposes of the ongoing application of ICWA to the nonminor as a nonminor dependent; **or**
  2. The nonminor does not intend to continue to be considered an Indian child for purposes of the ongoing application of ICWA to the nonminor as a nonminor dependent;
- O. 1. The Transitional Independent Living Case Plan includes a plan for a placement the nonminor believes is consistent with his or her need to gain independence, reflects the agreements made to obtain independent living skills, and sets out the benchmarks that indicate how the nonminor and social worker or probation officer will know when independence can be achieved;
2. The Transitional Independent Living Plan identified the nonminor's level of functioning, emancipation goals, and the specific skills he or she needs to prepare to live independently upon leaving foster care; **and**
3. The 90-day Transition Plan is a concrete individualized plan that specifically covers the following areas: housing, health insurance, education, local opportunities for mentors and continuing support services, workforce supports and employment services, and information that explains how and why to designate a power of attorney for health care.

**Over a Dependent or Ward Age 18 or Older in a Foster Care Placement or Over a Nonminor Dependent**

(Welfare and Institutions Code sections 224.1(b), 303, 366.31, 391, 607.3, 16501.1(f)(16))

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**V. Orders: Juvenile court jurisdiction continued**

- A. The nonminor meets one or more of the conditions in section 11403(b) and eligibility criteria for status as a nonminor dependent *and*
1.  dependency jurisdiction  transition jurisdiction over the nonminor as a nonminor dependent is ordered;
  2. The nonminor's permanent plan is independence after a period of placement in supervised settings specified in section 11402;
  3. For a nonminor to whom the Indian Child Welfare Act applies: The nonminor is an Indian child and  has not elected to have the Indian Child Welfare Act apply;
  4. The matter is continued for a hearing under section 366(f) and rule 5.903 on (*choose date within six months of today's hearing date*):     /    /    .
- B. For the nonminor who does not meet and does not intend to meet section 11403(b) eligibility criteria for status as a nonminor dependent but is otherwise eligible: The nonminor does not meet and does not intend to meet section 11403(b) eligibility criteria for status as a nonminor dependent but is otherwise eligible and will remain under juvenile court jurisdiction in a foster care placement, with the matter set for a status review hearing on (*choose date within six months of today's hearing date*):     /    /    .

**VI. Orders: Juvenile court jurisdiction terminated**

- A. Reasonable efforts were made to locate the nonminor and his or her current location remains unknown. The juvenile court's jurisdiction over the minor is terminated. The nonminor remains under the general jurisdiction of the juvenile court for the purposes of its considering a petition filed under section 388(e) to resume dependency jurisdiction or to assume or resume transition jurisdiction over him or her as a nonminor dependent; *or*
- B. The nonminor:
1. Does not meet one or more of the eligibility criteria for status as a nonminor dependent and is not otherwise eligible to remain under juvenile court jurisdiction; *or*
  2. Does meet one or more of the eligibility criteria for status as a nonminor dependent but does not wish to remain under juvenile court jurisdiction as a nonminor dependent; *or*
  3. Does meet one or more of the eligibility criteria for status as a nonminor dependent but is not participating in a reasonable and appropriate Transitional Independent Living Case Plan; and
  4. The relevant findings under rule 5.555 were made (findings in this Chart C in section IV, items C, I, L(1), and O(3)) The juvenile court's jurisdiction over the nonminor is terminated. The nonminor remains under the general jurisdiction of the juvenile court for the purpose of its considering a petition filed under section 388(e) to resume dependency jurisdiction or to assume or resume transition jurisdiction over him or her as a nonminor dependent; *or*
- C. The nonminor is no longer within the eligible age range for status as a nonminor dependent subject to the jurisdiction of the juvenile court. The relevant findings under rule 5.555 were made (findings in this Chart C in section IV, items L(1) or L(2) and O). Juvenile court jurisdiction over the nonminor is dismissed.

The information on this chart is based on the provisions of Assembly Bill 12 (Beall; Stats. 2010, ch. 559), the California Fostering Connections to Success Act, as amended by Assembly Bill 212 (Beall; Stats. 2011, ch. 459) and the California Rules of Court, effective July 1, 2012. The chart was compiled by the Juvenile Court Assistance Team, Center for Families, Children & the Courts, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, California 94102-3688, 415-865-7644, cfcc@jud.ca.gov

Fostering Connections to Success Act

Chart C (8/3/12)

4 of 4

**I. Purpose**

Rule 5.906 provides the procedures for the resumption of juvenile court jurisdiction over a nonminor.

**II. Contents of the request**

- A. The request to resume jurisdiction must be made using *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466).
- B. The request must be verified by the nonminor or if the nonminor is unable to provide verification due to a medical condition, the nonminor's representative. The court may dismiss without prejudice a request filed under this rule that is not verified.
- C. The request must be liberally construed in favor of its sufficiency.

**III. Filing the request**

- A. The form JV-466 must be completed and verified by the nonminor or the nonminor's representative if the nonminor is unable to provide verification due to a medical condition and may be filed by the nonminor or the county child welfare services, probation department, or Indian tribe (placing agency).
- B. For the convenience of the nonminor, form JV-466 and, if the nonminor wishes to keep his or her contact information confidential, *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468) may be:
  1. Filed with the juvenile court that maintained general jurisdiction, or
  2. Submitted to the juvenile court in the county in which the nonminor currently resides, after which:
    - a. The court clerk must record the date and time the originals were submitted and give a copy of the originals marked as received to the nonminor at no cost to him or her.
    - b. The court clerk must forward those originals to the clerk of the court of general jurisdiction within two court days of submission of the originals.
    - c. The court in the county in which the nonminor resides is responsible for all costs of processing, copying, and forwarding the form JV-466 and form JV-468 to the clerk of the court of general jurisdiction.
    - d. The court clerk in the county in which the nonminor resides must retain a copy of the documents submitted.
    - e. The form JV-466 and, if submitted, the form JV-468 must be filed immediately upon receipt by the clerk of the juvenile court of general jurisdiction.
3. For a nonminor living outside of California, the form JV-466 and the form JV-468 must be filed with the juvenile court of general jurisdiction.
- C. If the form JV-466 is filed by the nonminor, within two court days of its filing with the clerk of the court in the county of general jurisdiction, the clerk of that court must notify the placing agency that was supervising the nonminor when juvenile court jurisdiction was terminated that the nonminor has filed the form JV-466 and provide the placing agency with the nonminor's contact information. The notification must be by telephone, fax, e-mail, or other method approved by the presiding juvenile court judge that will ensure prompt notification and inform the placing agency that a copy of the form JV-466 will be served on the agency and that one is currently available in the office of the juvenile court clerk.
- D. If the form JV-466 has not been filed at the time the nonminor completes the Voluntary Reentry Agreement (VRA) described in section 11400(z), the placing agency must file the form JV-466 on the nonminor's behalf within 15 court days of the date the VRA was signed, unless the nonminor files form JV-466 prior to the expiration of the 15 court days.
- E. No filing fees are required for the filing of form JV-466 or form JV-468. An endorsed, filed copy of each form filed must be provided at no cost to the nonminor or the placing agency that filed the request on the nonminor's behalf.

**IV. Determination of prima facie showing**

- A. Within three court days of the filing of the form JV-466 with the clerk of the juvenile court of general jurisdiction, a juvenile court judicial officer must review the form JV-466 and determine whether a prima facie showing has been made that the nonminor meets all of the criteria set forth below and enter an order as set forth in section V.
  1. The nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement on the date he or she attained 18 years of age;
  2. On and after January 1, 2012, the nonminor will not have attained 19 years of age; or commencing January 1, 2013, he or she will not have attained 20 years of age; or commencing on January 1, 2014, he or she will not have attained 21 years of age;
  3. The nonminor wants assistance to maintain or secure an appropriate, supervised placement or is in need of immediate placement & agrees to a supervised placement under a VRA; and
  4. The nonminor intends to satisfy at least one of the eligibility criteria in section 11403(b).

**V. Finding and orders regarding prima facie showing**

- A. On determining that a prima facie showing has been made, the judicial officer issues the following written orders:

## Welfare and Institutions Code sections 224.1(b), 303, 388(e)

1. The nonminor's request to return to foster care is set for hearing on (specify date within 15 days of the date form JV-466 was filed): \_\_\_/\_\_\_/\_\_\_.
  2. An attorney is appointed to represent the nonminor solely for the hearing on the request (See section VI below.)
- B. On determining that a prima facie showing has not been made, the judicial officer issues the following written orders:
1. The nonminor's request to return to foster care is denied. The request is denied because (specify the reasons for the denial):
  2. The nonminor may file a new request when the issues are resolved.
- C. The court clerk must serve on the nonminor the following documents:
1. A copy of the written order;
  2. Blank copies of Request to Return to Juvenile Court Jurisdiction and Foster Care (form JV-466) and Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care (form JV-468);
  3. A copy of How to Ask to Return to Juvenile Court Jurisdiction and Foster Care (form JV-464-INFO); and
  4. The names and contact information of attorneys approved by the court to represent minors in juvenile court proceedings who have agreed to provide a consultation to nonminors whose requests are denied due to the failure to make a prima facie showing.
- D. The court clerk must serve a copy of the written order on the placing agency.
- E. Service must be by personal service or first-class mail within two court days of the issuance of the order.
- F. Proof of service must be filed.

**VI. Appointment of attorney:**

- A. If the nonminor included on the form JV-466 a request for reappointment of the same court-appointed attorney who represented the nonminor when he or she was a ward or dependent, the judicial officer must appoint that attorney, if available, solely for the hearing on the request to return to juvenile court jurisdiction.
- B. If the nonminor did not request the reappointment of a previous court-appointed attorney, the judicial officer must appoint an attorney to represent the nonminor solely for the hearing on the request. The attorney must be selected from the panel or organization of attorneys approved by the court to represent children in juvenile court proceedings.
- C. The juvenile court clerk must notify the attorney of the appointment as soon as possible, but no later than one court day from the date the order for appointment was issued. Notification must be made by telephone, fax, e-mail, or other method approved by the presiding juvenile court judge that ensures prompt notification. Notice must include the nonminor's contact information and inform the attorney that a copy of the nonminor's form JV-466 will be served on him or her and is also available juvenile court clerk's office.
- D. If the request to resume jurisdiction is granted, the judicial officer must continue the attorney's appointment to represent the nonminor on matters related to his or her status as a nonminor dependent until juvenile court jurisdiction is terminated, unless a finding is made that the nonminor would not benefit from the appointment of an attorney.
  1. To find that a nonminor would not benefit from the appointment of an attorney, the judicial officer must find all of the following:
    - a. The nonminor understands the nature of the proceedings;
    - b. The nonminor is able to communicate and advocate effectively with the court, other attorneys, and other parties, including social workers, probation officers, and other professionals involved in the case; and
    - c. Under the circumstances of the case, the nonminor would not gain any benefit from representation by an attorney.
  2. If the judicial officer finds that the nonminor would not benefit from representation by an attorney, a finding must be made on the record as to each of the criteria in item D.1 and reasons for each finding must be stated on the record.
- E. Representation of the nonminor by the court-appointed attorney for the hearing on the request to return to juvenile court jurisdiction and for matters related to his or her status as a nonminor dependent must be at no cost to the nonminor.
- F. If the nonminor chooses to be represented by an attorney other than a court-appointed attorney, the fees for an attorney retained by the nonminor are the nonminor's responsibility.

**VII. Notice of hearing**

- A. The juvenile court clerk must serve notice as soon as possible, but no later than five court days before the hearing date, as follows:
  1. Notice of the date, time, place, and purpose of the hearing and a copy of the nonminor's completed form JV-466 must be served on:
    - a. The nonminor;
    - b. The nonminor's attorney;
    - c. The child welfare services agency, the probation department, or the Indian tribal agency that was supervising the nonminor when the juvenile court terminated jurisdiction over the



nonminor; and

- d. The attorney for the child welfare agency, the probation department, or the Indian tribe.
2. Notice of the date, time, place, and purpose of the hearing must be served on:
  - a. The nonminor's parents, only if the nonminor requested on the form JV-466 that notice be provided to the parents;
  - b. The nonminor's tribal representative, if the nonminor is an Indian child and indicated the choice on the form JV-466 to have the Indian Child Welfare Act apply; and
  - c. The local CASA office, if the nonminor requested on the form JV-466 that notice be provided to his or her former CASA.
- B. The written notice served on the nonminor dependent must include:
  1. A statement that the nonminor may appear for the hearing by telephone; and
  2. Instructions on the local juvenile court procedures for arranging to appear and appearing at the hearing by telephone.
- C. Service of the notice must be by personal service or by first-class mail.
- D. Proof of service of notice must be filed by the juvenile court clerk at least two court days prior to the hearing.

#### VIII. Reports

- A. The social worker, probation officer, or Indian tribal agency case worker must submit a report to the court that includes:
  1. Confirmation that the nonminor was previously under juvenile court jurisdiction subject to a foster care placement order at the time he or she turned 18 years old; and that on and after January 1, 2012, the nonminor will not have turned 19 years of age; or commencing January 1, 2013, he or she will not have turned 20 years of age; or commencing on January 1, 2014, he or she will not have turned 21 years old;
  2. The condition or conditions under section 11403(b) that the nonminor intends to satisfy;
  3. The opinion of the person submitting the report as to whether continuing in a foster care placement is in the nonminor's best interests and a recommendation about the resumption of juvenile court jurisdiction over the nonminor as a nonminor dependent;
  4. Whether the nonminor & the placing agency have entered into a reentry agreement for placement in a supervised setting under the placement & care responsibility of the placing agency;
  5. The type of placement recommended should the request be granted to return to juvenile court jurisdiction and foster care; and
  6. If the placement recommended is in a setting where minor dependents also reside, the results of the background check of the nonminor under section 16504.5.
    - a. The background check under section 16504.5 is required only if a minor dependent resides in the placement under consideration for the nonminor.
    - b. A criminal conviction is not a bar to a return to foster care and the resumption of juvenile court jurisdiction as a nonminor dependent.
- B. The report and any supporting documentation must be filed with the court and a copy provided to the nonminor and the nonminor's attorney at least two court days before the hearing; and
- C. If the court determines that the report and other documentation submitted by the placing agency do not provide all the information listed above in this section and the court is unable to make all the findings and orders required below in sections IX and X, the hearing must be continued for no more than five court days for the placing agency or the nonminor to submit additional information as ordered by the court.

#### Judicial Findings and Orders

All judicial findings and orders must be made on the record and included in the written, signed court documentation of the hearing.

#### IX. Findings

- A. Notice was given as required by law;
- B. The nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement in effect at the time he or she turned 18;
- C. On and after January 1, 2012, the nonminor will not have attained 19 years of age; or commencing January 1, 2013, he or she will not have attained 20 years of age; or commencing on January 1, 2014, he or she will not have attained 21 years of age;
- D. The nonminor intends to satisfy at least one of the conditions detailed in section 11403(b);
- E. The condition or conditions under section 11403(b) that the nonminor intends to satisfy are
  1.  Attending high school or a high school equivalency certificate (GED) program
  2.  Attending a college, a community college, or a vocational education program
  3.  Attending a program or participating in an activity that will promote or help remove a barrier to employment

4.  Employed at least 80 hours per month
5.  The NMD is not able to attend a high school, a GED program, a community college, a vocational education program, an employment program or activity or to work 80 hours per month due to a medical condition;
- G. Continuing in a foster care placement is in the nonminor's best interests;
- H. The nonminor and the placing agency have entered into a reentry agreement for placement in a supervised setting under the placement and care responsibility of the placing agency; and
- I. The nonminor is an Indian child and chooses to have the Indian Child Welfare Act continue to apply to him or her as a nonminor dependent **or** the nonminor is an Indian child and chooses NOT to have the Indian Child Welfare Act apply to him or her as a nonminor dependent.

**X. Orders**

- A. If the court finds that the nonminor meets the age requirements for eligibility, and the nonminor intends to satisfy at least one condition under section 11403(b), and the nonminor and placing agency have entered into a Voluntary Reentry Agreement, the following orders are entered:
1. The court grants the request to resume jurisdiction, and juvenile court jurisdiction shall resume over the nonminor;
  2. Placement and care are vested with the placing agency;
  3. The placing agency must develop with the nonminor a new Transitional Independent Living Case Plan (TILCP) and file it with the court within 60 days;
  4. For a nonminor who is an Indian child and who chooses to have the Indian Child Welfare Act apply and is not under the supervision of a tribal case worker, the social worker or probation officer must consult with the tribal representative regarding a new TILCP;
  5. A nonminor dependent review hearing under rule 5.903 is set for (*specify a date within six months of the date the VRA was signed*): \_\_\_/\_\_\_/\_\_\_; and
  6. The prior order appointing an attorney for the minor is continued and that attorney is appointed until the jurisdiction of the juvenile court is terminated.
- B. If the court finds that the nonminor comes within the eligible age range, but the nonminor does not intend to satisfy at least one of the conditions under section 11403(b) or the nonminor and placing agency have not entered into a reentry agreement, the following orders are entered:
1. The nonminor's request to return to foster care is denied. The request is denied because (*specify the reasons for denial*):
  2. The nonminor may file a new request when the circumstances change.
  3. The order appointing an attorney to represent the nonminor is terminated and the attorney is relieved as of (*specify date seven calendar days after the hearing*): \_\_\_/\_\_\_/\_\_\_.

In addition to service of a copy of the written order, the juvenile court clerk must cause to be served on the nonminor blank copies of *Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-466) and *Confidential Information—Request to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-468) and the information sheet *How to Ask to Return to Juvenile Court Jurisdiction and Foster Care* (form JV-464-INFO).

- C. If the court finds that the nonminor does not meet the age requirements, the following orders are entered:
1. The request to have juvenile court jurisdiction resumed is denied; and
  2. The order appointing an attorney to represent the nonminor is terminated, and the attorney is relieved as of (*specify date seven calendar days after the hearing*): \_\_\_/\_\_\_/\_\_\_.

**XI. Findings and orders: Service**

- A. The findings and orders must be made on the record and included in the written, signed court documentation of the hearing.
- B. The written findings and order must be served by the juvenile court clerk on all persons who were served with notice of the hearing.
1. Service must be by personal service or first-class mail within three court days of the issuance of the order.
  2. Proof of service must be filed.

The information on this chart is based on the provisions of Assembly Bill 12 (Beall; Stats. 2010, ch. 559), the California Fostering Connections to Success Act, as amended by Assembly Bill 212 (Beall; Stats. 2011, ch. 459) and the California Rules of Court, effective July 1, 2012. The chart was compiled by the Juvenile Court Assistance Team, Center for Families, Children & the Courts, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, California 94102-3688, 415-865-7644, cfcc@jud.ca.gov

**CHART E Additional requirements for (1) any hearing to terminate jurisdiction over child who is in foster care as ward or RULE 5.812 who was in foster care as dependent when declared a ward and (2) last review hearing for child approaching majority—Delinquency Welfare and Institutions Code sections 450, 451, 727.2(i)-(j), 778**

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**I. Hearings subject to this rule**

- A. The last review hearing under Welfare and Institutions Code section 727.2<sup>1</sup> or 727.3 before the child turns 18 years of age; this hearing must be set at least 90 days before the child turns 18 and within six months of the previous status review hearing;
- B. Any review hearing held under section 727.2 or 727.3 for a child less than 18 years of age during which a recommendation to terminate juvenile court jurisdiction will be considered;
- C. Any hearing to terminate juvenile court jurisdiction over a child less than 18 years of age who is subject to an order for foster care placement; and
- D. Any hearing to terminate juvenile court jurisdiction over a child less than 18 years of age and not currently subject to a foster care placement order but who had an order for foster care placement as a dependent of the juvenile court at the time he or she was adjudged to be a ward.

**II. Conduct of the hearing**

- A. The hearing must be held before a judicial officer and recorded by a court reporter.
- B. If the court finds that the report and, if required, the Transitional Independent Living Case Plan and the Transitional Independent Living Plan submitted by the probation officer do not provide the required information and the court is unable to make all the findings required by rule 5.812(d)<sup>2</sup>, the hearing must be continued for no more than five court days for the submission of additional information as ordered by the court.

**III. Written report requirements**

- A. The report must state whether the child was provided with the notices and information required under section 607.5 and include a description of:
  1. The child's progress toward meeting the case plan goals that will enable the child to be a law-abiding and productive member of the family and community.
  2. If reunification services have not been previously terminated, the progress of each parent or legal guardian toward participating in case plan service activities and meeting the case plan goals developed to resolve the issues that contributed to the child's removal from his or her custody.
  3. The current ability of each parent or legal guardian to provide the care, custody, supervision, and support the child requires in a safe and healthy environment.
  4. For a child previously determined to be a dual status child for whom juvenile court jurisdiction as a dependent was suspended, a joint assessment under section 366.5 by the probation department and the child welfare services agency of the detriment, if any, to the child of a return to the home of his or her parents or legal guardian, and a recommendation on the resumption of dependency jurisdiction. The facts in support of the opinions expressed and recommendations made must be included in the joint assessment section of the report. If the probation department and the child welfare services agency do not agree in their conclusions, the child welfare services agency must file a separate report with facts in support of its opinions and recommendations.
  5. For a child previously determined to be a dual status child for whom the probation department was designated the lead agency, the detriment, if any, to the child of a return to the home of his or her parents or legal guardian and the probation officer's recommendation regarding the modification of the court's jurisdiction over the child from that of a dual status child to that of a dependent under section 300 and the facts in support of the opinion expressed and the recommendation made.
  6. For a child other than a dual status child, the probation officer's recommendation regarding modification of the juvenile court's jurisdiction over the child from ward to a dependent under section 300 or a transition dependent under section 450, and the facts in support of the recommendation.
- B. For the last review hearing held on behalf of a **child approaching majority** and any hearing to terminate jurisdiction held on behalf of a **child more than 17 years, 5 months and less than 18 years of age**, the report must include:
  1. The child's plans to remain under juvenile court jurisdiction as a nonminor dependent, including the criteria in section 11403(b) that he or she plans to meet;
  2. The efforts made by the probation officer to help the child meet one or more of the criteria in section 11403(b);
  3. Where applicable, the child's plans to maintain his or her status as an Indian child for purposes of the ongoing application of the ICWA to him or her as a nonminor dependent;
  4. The status of any application pending for title XVI Supplemental Security Income (SSI) benefits and, if such an application is pending, whether it is in the child's best interest to continue juvenile court jurisdiction until a final SSI decision has been issued to ensure that the child receives continued assistance with the application process;
  5. Whether the child has an in-progress application pending for Special Immigrant Juvenile Status or other application for legal residency and, if so, whether an active juvenile court case is required for that application;

<sup>1</sup> All code references are to the California Welfare and Institutions Code unless otherwise indicated.

<sup>2</sup> All rule references are to the California Rules of Court unless otherwise indicated.

6. The efforts made by the probation officer toward providing the child with the written information, documents, and services described in section 391(e)(1) and, to the extent that the child has not yet been provided with them, the barriers to providing the information, documents, or services and the steps that will be taken to overcome those barriers by the child's 18th birthday;
7. When and how the child was informed that at 18 years old he or she may request dismissal of juvenile court jurisdiction;
8. When and how the child was provided with information regarding the potential benefits of remaining under juvenile court jurisdiction as a nonminor dependent, and the probation officer's assessment of the child's understanding of those benefits;
9. When and how the child was informed that if juvenile court jurisdiction is terminated after he or she attains 18 years of age, he or she has the right to file a request to return to foster care; and
10. The child's Transitional Independent Living Case Plan and Transitional Independent Living Plan, which must include:
  - a. The individualized plan for the child to satisfy one or more of the criteria in section 11403(b) and the child's anticipated placement as specified in section 11402; and
  - b. The child's alternate plan for his or her transition to independence, including housing, education, employment, and a support system in the event the child does not remain under juvenile court jurisdiction after attaining 18 years of age.

#### **IV. Findings and Orders**

All judicial findings and orders must be made on the record and included in the written, signed court documentation of the hearing.

##### **A. Transition to Independence—These findings and orders are required at the last status review hearing before the child turns 18 years of age and at any hearing to terminate delinquency jurisdiction over a child in a foster care placement as a ward who is more than 17 years, 5 months and less than 18 years old:**

1. The child's Transitional Independent Living Case Plan (TILCP) includes a plan for the child to satisfy the following conditions of eligibility to remain under juvenile court jurisdiction as a nonminor dependent (*indicate all that apply*):
  - a.  Attending high school or a high school equivalency (GED) certificate program;
  - b.  Attending a college, a community college, or a vocational education program;
  - c.  Participating in a program or activities to promote employment or to overcome barriers to employment;
  - d.  Being employed at least 80 hours per month;
  - e.  Having a medical condition that makes the child unable to attend high school, a GED program, college, community college, vocational education program, or a program or activities to promote employment or overcome barriers to employment, or to work 80 hours a month;
2. The child's TILCP includes an alternate plan for his or her transition to independence, including, housing, education, employment, and a support system, in the event the child does not remain under juvenile court jurisdiction after attaining 18 years of age.
3. For a child to whom the Indian Child Welfare Act applies:
  - a. The child intends to continue to be considered an Indian child for purposes of the ongoing application of ICWA to the child as a nonminor dependent; *or*
  - b. The child does not intend to continue to be considered an Indian child for purposes of the ongoing application of ICWA to the child as a nonminor dependent;
4. For a child who has an in-progress application pending for title XVI Supplemental Security Income (SSI) benefits, continuation of juvenile court jurisdiction until a final decision has been issued to ensure that the child receives continued assistance with that application process  is  is not  in the child's best interest;
5. For a child with an in-progress application pending for Special Immigrant Juvenile Status or other legal residency application, an active juvenile court case  is  is not required for that application;
6. The potential benefits of remaining under juvenile court jurisdiction as a nonminor dependent were explained to the child and the child has stated that he or she understands those benefits;
7. The child was informed that he or she may decline to become a nonminor dependent;
8. The child was informed that upon reaching 18 years of age he or she may have the right to have juvenile court jurisdiction terminated following a hearing under rule 5.555;
9. The child was informed that if juvenile court jurisdiction is terminated after reaching 18 years of age, he or she may have the right to file a request to return to foster care and have the court resume jurisdiction over him or her as a nonminor dependent;
10. a.  All the information, documents, and services included in section 391(e) have been provided to the child; *or*  
b.  Not all the information, documents, and services included in section 391(e) have been provided to the child and the barriers to providing any missing information can be overcome by the child's 18th birthday;

11. The matter being before the juvenile court on a request for termination of jurisdiction over a child currently or previously subject to an order for foster care placement, the requirements of section 607.5  were  were not met.
- B. Modification of Jurisdiction—These findings and orders are required (1) At the last status review hearing before the child turns 18 years old and at any hearing to terminate delinquency jurisdiction over a child in foster care as a ward who is more than 17 years, 5 months and less than 18 years old in addition to those findings and orders included in section IV A and (2) At any hearing to terminate delinquency jurisdiction over a child who is in a foster care placement as a ward or who was in a foster care when adjudged a ward.**
- Consider the status of the ward to determine which findings and order apply to each individual case:**
- 1. Dual status child with dependency suspended: rehabilitative goals met and jurisdiction over the child as a ward no longer required**
- a. Finding: A return to the home would be detrimental to the child, and juvenile court jurisdiction over the child as a dependent should be resumed.**  
The facts supporting this finding are (specify): *and*
- Order:** Dependency jurisdiction over the child previously suspended is resumed and delinquency jurisdiction is dismissed. The matter is continued for a status review hearing under section 366.21 or 366.3 on (choose date within six months of the child's most recent status review hearing): \_\_\_/\_\_\_/\_\_\_ . *or*
- b. Finding: A return to the child's home would not be detrimental to the child, and juvenile court jurisdiction over the child as a dependent does not need to be resumed. The facts supporting this finding are (specify): \_\_\_\_\_ and**
- Order:** (1) The child is ordered returned to the home of the parents or legal guardian, and a progress report hearing is set on (choose date within the next six months): \_\_\_/\_\_\_/\_\_\_ ; *or*  
(2) The child is returned to the home of the parents or legal guardian and juvenile court jurisdiction over the child is terminated as set forth in *Petition to Terminate Wardship and Order* (form JV-794).
- 2. Dual status child with probation department as lead agency: rehabilitative goals met and jurisdiction over the child as a ward is no longer required**
- a. Finding: A return to the child's home would be detrimental to the child, and juvenile court jurisdiction over the child as a dependent is required.**  
The facts supporting this finding are (specify): \_\_\_\_\_ *and*
- Order:** The child's dual status is terminated, delinquency jurisdiction over the child is dismissed, and dependency jurisdiction is continued with the child welfare services department responsible for the child's placement and care. The matter is continued for a status review hearing under section 366.21 or 366.3 on (choose date within six months of the child's most recent status review hearing): \_\_\_/\_\_\_/\_\_\_ *or*
- b. Finding: A return to the child's home would not be detrimental to the child, and juvenile court jurisdiction over the child as a dual-status child is no longer required.**  
The facts supporting this finding are (specify): \_\_\_\_\_ *and*
- Order:** (1) The child is returned to the home of the parent or legal guardian and a progress report hearing is set on (choose date within the next six months): \_\_\_/\_\_\_/\_\_\_ ; *or*  
(2) The child is returned to the home of the parent or legal guardian and juvenile court jurisdiction over the child is terminated
- 3. Nondual status ward more than 17 years, 5 months & less than 18 years old currently in a foster care placement: Modification from delinquency to transition jurisdiction**
- Findings:** The child's rehabilitative goals have been met and juvenile court jurisdiction over the child as a ward is no longer required.  
The facts supporting this finding are (specify): \_\_\_\_\_ ;  
*For a child who was not a dependent when declared a ward:* The child appears to come with the description of section 300 and cannot be returned home safely.  
The facts supporting this finding are (specify): \_\_\_\_\_ ; *or*  
*For a child was a dependent when declared a ward:* The child remains with the description of a dependent under section 300 and return to the home of the parents would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being.  
The facts supporting this finding are (specify): \_\_\_\_\_ *and*  
*For every child:*  
Reunification services have been terminated;  
The child's case has not been set for a hearing to terminate parental rights or establish a guardianship;  
The child intends to sign a mutual agreement for a placement in a supervised setting as a nonminor dependent;  
The child comes within the juvenile court's transition jurisdiction as described in section 450;  
The child was originally removed from the physical custody of his or her parents or legal guardians on (date): \_\_\_/\_\_\_/\_\_\_ and continues to be removed from their custody;

The removal findings “continuance in the home is contrary to the child’s welfare” & “reasonable efforts were made to prevent removal” made at that hearing remain in effect; and  
The  probation department  child welfare services department is responsible for the child’s placement and care.

**Orders:** The child is adjudged a transition dependent pending turning 18 years old and assuming the status of a nonminor dependent under the transition jurisdiction of this court.  
The matter is continued for a status review hearing under rule 5.903 on (choose date within six months of the most recent status review hearing): \_\_\_/\_\_\_/\_\_\_.

**4. Nondual status child currently in a foster care placement who was in a foster care placement when adjudged a ward or Nondual status child not currently in foster care placement who was in a foster care placement when adjudged a ward and does not or does not intend to meet transitional jurisdiction requirements: Modification from delinquency jurisdiction to dependency jurisdiction**

**Findings:** The child’s rehabilitative goals have been met and juvenile court jurisdiction over the child as a ward is no longer required.  
The facts supporting this finding are (specify): \_\_\_\_\_;  
The child does not come within the juvenile court’s transition jurisdiction;  
The child remains within the description of a dependent child under section 300 and a return to the home of his or her parent or legal guardian would create a substantial risk of detriment to the child’s safety, protection, or physical or emotional well-being. The facts supporting this finding are (specify): \_\_\_\_\_;  
The child was originally removed from the physical custody of his or her parents or legal guardians on (date): \_\_\_/\_\_\_/\_\_\_ and continues to be removed from their custody;  
The removal findings “continuance in the home is contrary to the child’s welfare” & “reasonable efforts were made to prevent removal” made at that hearing remain in effect; and  
The  probation department  child welfare services department is responsible for the child’s placement and care.  
**Orders:** The order terminating jurisdiction over the child as a dependent of the juvenile court is vacated and dependency jurisdiction over the child is resumed.  
Delinquency jurisdiction is terminated.

The matter is continued for a status review hearing under section 366.21 or 366.3 on (choose date within six months of the most recent status review hearing): \_\_\_/\_\_\_/\_\_\_.

**5. Jurisdiction over the child was not modified from delinquency jurisdiction to dependency jurisdiction or transition jurisdiction**

**a. Child returned home and court maintains delinquency jurisdiction**

**Findings:** A return to the child’s home would not be detrimental to the child. The facts supporting this finding are (specify): \_\_\_\_\_.

The child’s rehabilitative goals have not been met.

**Orders:** The child is ordered returned to the home of the parent or legal guardian, and a progress report hearing is set on (choose date within the next six months): \_\_\_/\_\_\_/\_\_\_; **or**

**b. Child returned home and juvenile court jurisdiction dismissed**

**Findings:** A return to the child’s home would not be detrimental to the child. The facts supporting this finding are (specify): \_\_\_\_\_.

The child’s rehabilitative goals have been met and juvenile court jurisdiction over the child is no longer required.

**Orders:** The child is returned to the home of the parent or legal guardian and juvenile court jurisdiction is terminated; **or**

**c. Child in non-foster care placement**

**Findings:** The child’s rehabilitative goals have not been met.

**Orders:** Delinquency jurisdiction is continued and the order for an out-of-home placement in a non-foster care placement remains in full force and effect.

A progress report hearing is set on (choose date within the next six months): \_\_\_/\_\_\_/\_\_\_; **or**

**d. Child in foster care placement**

**Findings:** A return to the child’s home would be detrimental to the child. The facts supporting this finding are (specify): \_\_\_\_\_.

The child’s rehabilitative goals have not been met.

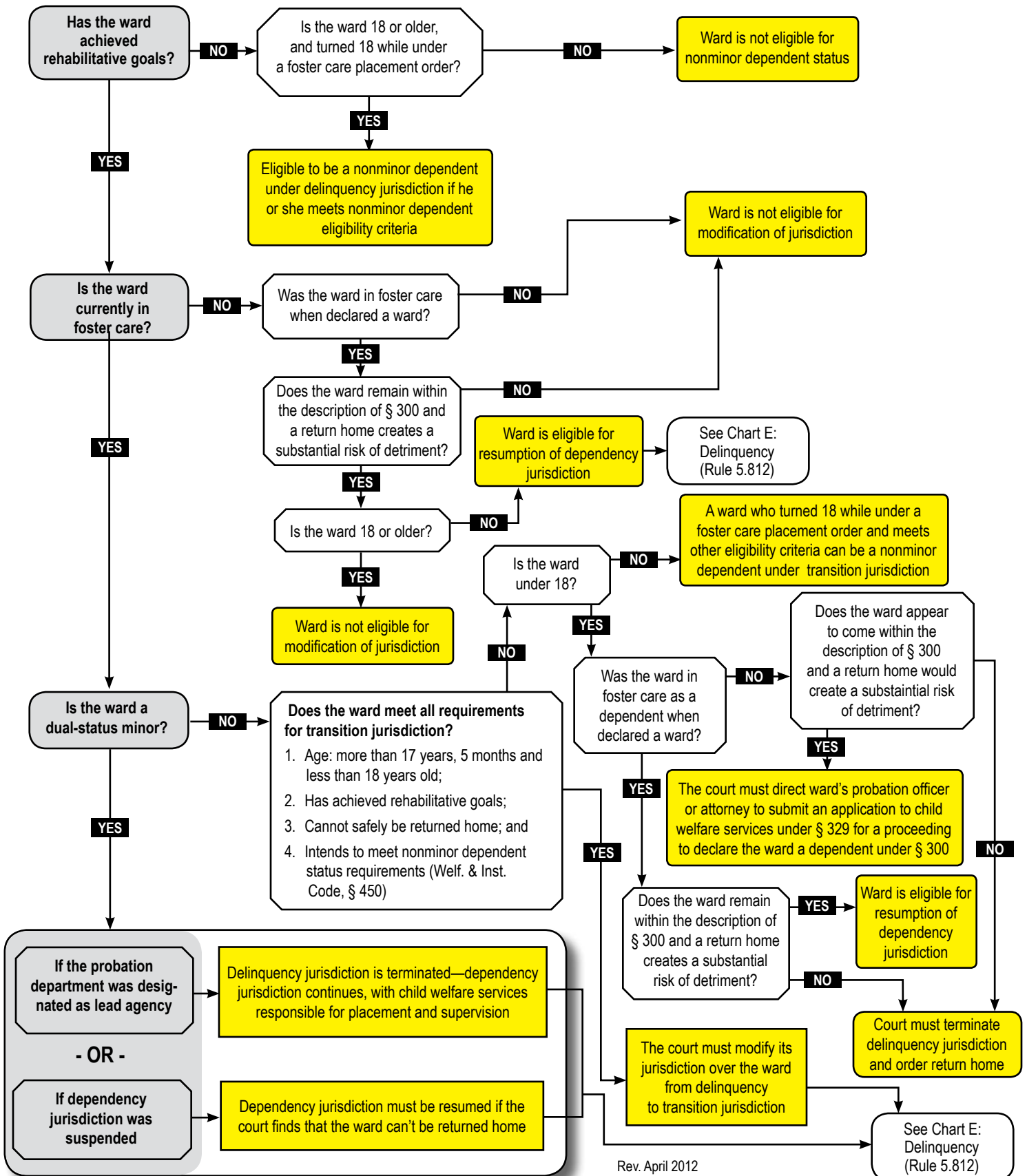
**Orders:** Delinquency jurisdiction is continued and the order for an out-of-home foster care placement remains in full force and effect.

The matter is continued for a status review hearing under section 727.2 or 727.3 on (choose date within six months of the most recent status review hearing): \_\_\_/\_\_\_/\_\_\_.

The information on this chart is based on the provisions of Assembly Bill 12 (Beall; Stats. 2010, ch. 559), the California Fostering Connections to Success Act, as amended by Assembly Bill 212 (Beall; Stats. 2011, ch. 459) and the California Rules of Court, effective July 1, 2012. The chart was compiled by the Juvenile Court Assistance Team, Center for Families, Children & the Courts, Administrative Office of the Courts, 455 Golden Gate Avenue, San Francisco, California 94102-3688, 415-865-7644, [cfcc@jud.ca.gov](mailto:cfcc@jud.ca.gov)

# Wards: Modification from Delinquency Jurisdiction to Transition or Dependency Jurisdiction

Applies to (1) Ward's last status review before turning 18—must be set at least 90 days before ward's 18th birthday; or (2) Any hearing to terminate jurisdiction over a ward of any age who is under a foster care placement order or was under such an order when adjudged a ward



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