

**SAN JOAQUIN COUNTY MEMORANDUM
OF UNDERSTANDING AND PROTOCOL
FOR
WELFARE AND INSTITUTIONS
CODE SECTION 241.1 REPORTS AND
DUAL STATUS PROTOCOL FOR JUVENILE COURT**

Draft- 7/5/05

BACKGROUND

Welfare and Institutions Code (WIC) Section 241.1 requires that when a minor appears to come within the description of both section 300 and sections 601 or 602, the County Probation Department and the County Child Welfare Department shall jointly determine which status will serve the best interest of the minor and protection of society. (Senate Bill 220, effective 1/1/90). Section 241.1 states, "Recommendations of both departments shall be presented to the juvenile court with the petition which is filed on behalf of the minor and the court shall determine which status is appropriate for the minor.

Assembly Bill 129, effective 9/10/04, created authority for a minor who meets specified criteria to be designated as both a dependent child and a ward of the juvenile court simultaneously, thereby becoming a "dual status child".

In an effort to comply with the requirements of Section 241.1 and AB 129 as referenced above, the San Joaquin County Human Services Agency Child Protective Services, and the San Joaquin County Probation Department Juvenile Services have developed the following Memorandum of Understanding (MOU) and Protocol.

For purposes of this Protocol, a "dual status minor" is a minor who is adjudicated both a ward and dependent of the Juvenile Court.

Nothing in this MOU and Protocol shall preclude the Court from following the "Pre-602 Adjudication Protocol" previously adopted by San Joaquin County if the agencies agree that following the Pre-602 Protocol would serve the best interests of the minor and protection of society.

I. SOURCES OF REFERRAL

There are three possible sources of referral for the minor to be assessed as mandated by Section 241.1 of the WIC:

1. A judge of the San Joaquin County Juvenile Court;
2. An employee of the San Joaquin County Probation Department;

3. An employee of the San Joaquin County Human Services Agency Child Protective Services Unit (CPS).

II. TIMELINESS OF PROTOCOL REPORT AND HEARING

If the minor is detained, the protocol report will be prepared and a hearing held on the report as soon as possible but no later than fifteen court days after the order of detention. If the minor is not detained, the protocol report will be prepared and a hearing held on the report as soon as possible within thirty days of the date of the filing of the petition. The protocol report may be an oral report, unless the judge directs that a written report be filed. If a written report is ordered by the Court, then both Probation and CPS must sign the protocol report. The hearing on the protocol report will be held prior to the jurisdictional hearing, unless the Court directs otherwise for good cause.

III. PROCEDURE FOR REFERRAL

1. If a judge of the Juvenile Court believes that a minor appearing before the Court might come within the provisions of both WIC 300 *and* 601 or 602, the judge may refer the minor to either Juvenile Probation or CPS by indicating such referral on the Court's Minute Order. The agency with the matter before the Court shall proceed without delay following the procedures outlined below.

2. When CPS or the Probation Department believes a minor should come under the jurisdiction of the other department, the following steps will be taken to determine which status will serve the best interests of the child and society.

A. The CPS line worker and Probation will discuss the case in question to see if a mutually agreeable decision can be made. If no agreement can be reached, then the CPS and Probation supervisors will be consulted to try and reach agreement between the agencies. If no agreement is reached between the supervisors, the chiefs or their designees, of each agency will be requested to attempt to reach a joint agreement. If no joint agreement is forthcoming, then each agency will file a separate report with the Court.

B. In evaluating which status would best serve the minor, CPS and Probation shall evaluate any referral forms, relevant law enforcement reports, prior agency history and records, any available psychometric data or reports, any relevant court orders, as well as any other relevant information available to the agency.

C. Both agencies will document their agency's assessment using their agency's assessment system and appropriate forms. Such evaluation shall be completed within 30 calendar days if the minor is out of custody, or within 15 court days if the minor is detained.

IV. 241.1 EMERGENCY PROCEDURE

When a minor is booked at either Peterson Juvenile Hall or Mary Graham Children's Shelter and the intake evaluator on duty feels that the minor does not belong in the institution where the minor was booked because the minor is at substantial risk of being harmed if he/she remains at the Juvenile Hall or is at substantial risk of harming others at Mary Graham Children's Shelter, the following emergency procedure shall be initiated as soon as possible:

1. The agency who received the minor for booking shall immediately contact the other agency by telephone to determine if a resolution can be reached. Juvenile Probation shall call the 24 hour Emergency Number for CPS, 468-1333. CPS shall call Juvenile Probation at 468-4000, Monday through Friday, 8:00 a.m. to 5:00 p.m., and 468-4200 during all other hours and days.
2. In attempting to reach an interim decision on the most appropriate location to detain the minor pending further 241.1 Assessment, the agencies shall consider the least restrictive environment to the minor which will protect the minor and other minors, staff, and society.
3. If a mutual agreement cannot be reached as to the appropriate location for the minor to be detained pending the Section 241.1 assessment process, then the minor shall remain in the institution where originally booked. The agency with custody shall then file a petition under its jurisdiction, in order to meet the time limits required by law, and shall make a formal written referral pursuant to the Procedure for Referral, Section III, above.

V. DECISION CRITERIA

In determining the status of the minor, each agency shall give consideration to the following factors, which will be included in the protocol report:

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

13. Records of other agencies which have been involved with the minor and his or her family.
14. The advantages of having both dependency and delinquency services available for the minor and the minor's family.
15. Whether CPS or Probation should be the lead agency if both recommend dual status for the minor.

VI. COURT REVIEW OF PROTOCOL SITUATION

1. If both CPS and Probation agree upon which status best serves the interests of the minor and protection of society, then a petition may be filed or resumed under the mutually agreed upon code section by the appropriate agency as soon as possible. If the minor is detained pending the status determination, he/she shall be brought to court by the 15th court day following the order for assessment.
2. In the event that CPS and Probation are not able to agree on the status that would serve the best interests of the minor and protection of the public, the Court shall be presented with both agency's reports and will make the determination as to how the case should proceed following review of both 241.1 assessments. If the Court determines that either 300 *or* 601/602 proceedings should be pursued, the Court will direct, as necessary, the appropriate agency to file a petition. Such directive will be included in the Court's Minute Order and shall be routed to both CPS and Probation by the Clerk of the Court by the end of the next court day.
3. In the event that the Court determines that the minor should be designated a "dual status minor", the parties hereby adopt a lead court/ lead agency system as defined in WIC 241.1(e)(5)(B). The Court shall determine which agency will be the lead agency to manage the minor's case. The lead agency shall be responsible for case management, placement of the minor, visiting the minor monthly, visiting the foster parents as required, scheduling court hearings, preparing court reports, and providing services to the minor and the minor's family. The lead and assisting agencies will cooperate and agree on an appropriate case plan for the minor and family. The assisting agency's jurisdiction over the minor will be suspended so that at any one time, only one agency shall have active jurisdiction over the minor to ensure that there is no requirement for duplicative services.
 - A. Should it appear appropriate for the assisting agency to assume the lead agency role, CPS and Probation shall consult regarding the appropriateness of changing the lead agency and regarding any necessary changes to the case plan and will present their recommendation to the Juvenile Court. If the Juvenile Court determines that a change of lead agency is in the best interest of the minor, the Court will activate the jurisdiction of the assisting agency, assign that agency as the lead agency and suspend jurisdiction of the prior lead agency. The new lead agency will perform all duties of the lead agency as described above. Lead and assisting agency jurisdiction may change as the Juvenile Court deems appropriate during the pendency of the case.
 - B. Whenever possible, the Court shall conduct joint dependency/wardship hearings for dual status minors. The lead agency shall be responsible for preparing a single court report for

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

VII. JUDICIAL COMMUNICATION AND PROCEDURE

Whenever possible, the Superior Court of the State of California, County of San Joaquin, shall designate the Juvenile Delinquency Court, Department J-2, to hear all dual status or potential dual status cases. In the event that more than one judge becomes involved in a dual status or potential dual status case, then the judicial officers shall communicate between themselves as to the status of the minor, and shall make sure that each other has access to all relevant court files and reports, including reports filed under WIC 727.2. The Court shall appoint the same attorney to represent a minor who is involved in a 300 and 601 or 602 case, unless the Court finds it is not appropriate to do so, or that it would not be in the best interests of the minor to do so.

VIII. DATA COLLECTION

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

IX. AGREEMENT

The San Joaquin County Department of Child Welfare Services, the San Joaquin County Probation Department, and the Superior Court (Juvenile Division) of the State of California, County of San Joaquin, do hereby adopt the aforesaid jointly developed protocol to allow the San Joaquin County Probation Department and San Joaquin County Child Protective Services to jointly assess and produce a recommendation that a child be designated as a dual status child, and allowing for the child to be simultaneously a dependent child and a delinquent ward of the Court. Said Court and agencies do hereby elect to adopt and implement the provisions of AB 129. All sections of this document are integral to the whole, and if any section is found to be invalid by a court of competent jurisdiction, the entire agreement is invalid. The undersigned may terminate this agreement for prospective cases by providing thirty-day written notice to each of the undersigned.

Hon. John Parker, Presiding Judge

Date

Juvenile Court, San Joaquin County,
Superior Court of California

J. Christopher Hope,
Chief Probation Officer,
San Joaquin County

Date

Joseph Chelli,
Director, Human Services Agency,
San Joaquin County

Date

APPROVED:

Terrence Dermody, County Counsel,
County of San Joaquin

Date