



CDSS

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DEPARTMENT OF SOCIAL SERVICES

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EDMUND G. BROWN JR.
GOVERNOR

December 15, 2011

ALL COUNTY LETTER NO. 11-85

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS
ALL FOSTER CARE MANAGERS
ALL INDEPENDENT LIVING PROGRAM COORDINATORS
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
TITLE IV-E AGREEMENT TRIBES
ALL ADMINISTRATIVE LAW JUDGES

SUBJECT: EXTENSION OF FOSTER CARE BEYOND AGE 18: PART THREE
(PROBATION)

REFERENCE: ASSEMBLY BILL (AB) 12, AB 212; PUBLIC LAW (PL) 110-351;
WELFARE AND INSTITUTIONS CODE (W&IC); MANUAL OF
POLICIES AND PROCEDURES (MPP); ALL COUNTY LETTER (ACL)
11-15, ACL 11-61, ACL 11-69; ALL COUNTY INFORMATION NOTICE
(ACIN) I-40-11

REASON FOR THIS TRANSMITTAL

- State Law Change
- Federal Law or Regulation Change
- Court Order
- Clarification Requested by One or More Counties
- Initiated by CDSS

The purpose of this ACL is to provide counties with information regarding probation youth access to the Extended Foster Care (EFC) Program created by AB 12. The EFC Program allows foster youth, including eligible probation wards, to continue in foster care after age 18, receive foster care benefits (Aid to Families with Dependent Children-Foster Care [AFDC-FC] payments), and services. These young adults remain under the jurisdiction of the court, supervision of the county, and must reside in eligible licensed or approved placements to receive AFDC-FC. These young adults are referred to as Non-Minor Dependents (NMDs). A new mechanism was created via AB 212 which allows for and defines how wards of the court can participate in the EFC Program. This ACL also describes how eligible minor wards can transition to W&IC section 300 dependency status or W&IC section 450 transition jurisdiction status at the time their delinquency jurisdiction is being terminated to allow them to remain in foster care and participate in the EFC Program after reaching age 18 if they also meet the eligibility criteria for EFC. For more detailed information on the EFC Program, including eligibility, refer to ACL 11-61 or ACL 11-69.

Previous ACLs have been released regarding:

- The general program policies and participation conditions (ACL 11-69, dated October 13, 2011);
- Eligibility (ACL 11-61 dated November 4, 2011);
- The EFC placement (ACL 11-77 dated November 18, 2011);
- The extension of benefits for Kinship Guardianship Assistance Payment (Kin-GAP) Program (ACL 11-15, dated January 31, 2011); and
- California Work Opportunity and Responsibility to Kids Extending benefits to NMDs (ACL 11-78, dated November 30, 2011).

Subsequent ACLs will be released regarding:

- Kin-GAP and Adoption Assistance Payments (AAP) Programs;
- Re-entry; and
- Data entry into the Child Welfare Services/Case Management System (CWS/CMS).

Please note: Counties should rely only upon the California Department of Social Services' (CDSS') ACLs, ACINs, County Fiscal Letters, or other guidance issued by CDSS as the communications of program or fiscal policy. Information shared in trainings, conferences, or other similar forums are for the purposes of providing a general overview and are often helpful for practice.

TYPES OF JURISDICTION FOR WARDS TO ALLOW FOR PARTICIPATION IN EFC

Foster youth under the supervision of probation may be eligible to continue in the EFC Program in one of three jurisdictional statuses: transition jurisdiction, dependency jurisdiction (new or resumed), or continued delinquency jurisdiction. Per W&IC section 607.2(a) wards meeting the following criteria are eligible for one of the three jurisdictional statuses for the purpose of participating in the EFC Program.

1. For **minor** wards who:
 - a. Are older than 17 years, five months, but not yet 18 years, **AND**
 - b. Were subject to an order for foster care placement as dependents of the court at the time the court adjudged them a ward who has not previously been subject to the jurisdiction of the court as a result of a petition filed pursuant to W&IC section 325, **OR**
 - c. Were subject to an order for foster care placement as dependents of the court at the time the court adjudged them a ward of the court under W&IC section 725, **OR**

- d. Were subject to an order for foster care placement as a ward that had not been under court jurisdiction as a result of a petition filed pursuant to W&IC section 325.
2. For **non-minor** wards who are:
 - a. Age 18 and older, **AND**
 - b. Were subject to an order for foster care placement as a ward on the day of attaining 18 years of age.

Termination of the court's delinquency jurisdiction would normally happen after wards complete their formal probation. For eligible wards (as described above) the court may continue juvenile court jurisdiction for purposes of participation in EFC. In addition to meeting the criteria described below for transition or dependency jurisdiction, **the NMD must also meet one of the five participation criteria** as described in ACL 11-69 to participate in the EFC Program.

1. Eligibility for Transition Jurisdiction (W&IC section 450)

Transition jurisdiction is a new status that allows older probation wards who have met the rehabilitative goals set forth in their case plan and who meet the criteria below to remain in foster care. Transition jurisdiction is for wards that are older than 17 years, five months. The difference in eligibility for transition jurisdiction between minors and non-minors is explained below.

At a hearing in which termination of jurisdiction over a ward is considered, the court may modify its order of jurisdiction and assume transition jurisdiction over the ward pursuant to W&IC section 450 if all of the following criteria are met:

- a. For minors:
 - (1) The ward is older than 17 years, five months and younger than 18 years and in foster care placement.
 - (2) The ward was removed from the physical custody of his/her parent(s) or legal guardian and was either:
 - (a) Adjudged a ward under W&IC section 725, and ordered into foster care placement **OR**
 - (b) Removed from parent(s) as a dependent of the court with an order for foster care placement as a dependent in effect at the time the court adjudged him or her to be a ward of the juvenile court under W&IC section 725:

- 1) Rehabilitative goals of the case plan have been met and jurisdiction over the youth as a ward is no longer required,
- 2) Reunification services have been terminated,
- 3) A hearing has not been set for termination of parental rights or the establishment of a guardianship,
- 4) The return of the minor to the parents or legal guardian would create a substantial risk of detriment to the minor's safety, protection, or physical or emotional well-being, and
- 5) The minor has expressed intent to sign a Mutual Agreement (SOC 162) with the responsible agency for placement in an eligible placement as a NMD and agree to meet one of the five federal participation criteria.

These minors are referred to as Transition Dependents and are no longer subject to the terms of their probation.

b. For non-minors

- (1) The ward is in foster care placement and attained age 18 while subject to an order for foster care placement and has not attained age 19 before January 1, 2012, or age 20 before January 1, 2013, or age 21 before January 1, 2014 (contingent upon legislative appropriation),
- (2) The ward was removed from the physical custody of his/her parent(s) or legal guardian and was either:
 - (a) Adjudged a ward under W&IC section 725, and ordered into foster care placement **OR**
 - (b) A dependent of the court with an order for foster care placement as a dependent in effect at the time the court adjudged him/her to be a ward of the juvenile court under W&IC section 725:
 - 1) Rehabilitative goals of the case plan have been met and jurisdiction over the youth as a ward is no longer required.
 - 2) The ward has signed the SOC 162 or the SOC 163, Voluntary Reentry Agreement (VRA), with the responsible agency for placement in an eligible placement as a NMD and meets one of the five federal participation criteria.

For more information on the SOC 162 see ACL 11-61. The VRA (SOC 163) will be explained in a subsequent ACL regarding the re-entry process. These forms are not on CWS/CMS yet, but will be available soon. The forms are located at:

<http://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC162.pdf>

<http://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC163.pdf>

Upon attaining age 18, Transition Dependents are referred to as NMDs and are no longer subject to the terms of their probation.

2. Eligibility for Dependency Jurisdiction (New or Resumed W&IC section 300)

The AB 212 provides an alternate path for wards that do not meet the criteria for W&IC section 450 and cannot be returned home safely to have delinquency status modified to dependency status under W&IC section 300. Wards eligible for dependency status are those who:

- a. Met their rehabilitative goals.
- b. Are younger than age 18 and not eligible for W&IC section 450.
- c. Come within the description of W&IC section 300 and cannot be returned home safely.

During a hearing to terminate jurisdiction over a ward who meets the above criteria, per W&IC section 607.2(b), the court may either:

a. For minor wards who were never dependents—

Order the probation department or ward's attorney to submit an application to the child welfare services department to modify the jurisdiction from delinquency to dependency if the ward meets all of the following criteria in addition to criteria described above:

- (1) Was not previously subject to the jurisdiction of the court as a result of a petition filed pursuant to W&IC section 325.
- (2) Does not come within the description of W&IC section 450.

OR

b. For minor wards who were prior dependents—

Vacate the previous order terminating dependency jurisdiction over the minor and resume jurisdiction pursuant to W&IC section 300 based on the prior dependency petition if the minor was subject to a foster care placement order and a dependent at the time of being adjudged a ward under W&IC section 725. Delinquency jurisdiction would be terminated.

3. Maintaining Delinquency Jurisdiction (W&IC section 602)

A ward can also participate in the EFC Program while remaining under delinquency jurisdiction on or after their 18th birthday, provided that:

- a. They are on an order for foster care placement that occurred no later than their 18th birthday and are not yet 19 years old, or 20 years old in 2013, or possibly 21 years old in 2014, **AND**
- b. They are participating in, or there is an agreement, to satisfy one of the five EFC Program participation criteria which must be documented in the Transition Independent Living Plan (TILP) see ACL 11-69.

Those NMDs who continue under delinquency jurisdiction and are still subject to the terms and conditions of probation are not voluntarily remaining in foster care and the Mutual Agreement for EFC (SOC 162) is not required. However, if those wards are meeting participation criteria for the EFC Program, Probation Officers (POs) must ensure the wards understand that changes in EFC eligibility must be reported. Additionally, the Six-Month Certification of EFC Participation (SOC 161) must be completed by the POs and sent to the Eligibility Worker (EW) as this authorizes the AFDC-FC payment. Changes in eligibility are reported to the EW.

Once the wards have met their rehabilitative goals, the NMD can choose to voluntarily participate in the EFC Program under juvenile court jurisdiction. At this point it will be required for the NMDs to sign the SOC 162. See ACL 11-61, dated November 4, 2011, for more information on the SOC 161 and 162.

NOTE: If a ward declines to become a NMD (participate in the EFC Program) that does not restrict the authority of the court to retain delinquency jurisdiction pursuant to W&IC section 607.

CASE MANAGEMENT FOR EFC PARTICIPATION

The NMDs under transition jurisdiction and dependency jurisdiction shall not be subject to any terms or conditions of probation nor are they subject to warrants of protective custody if they leave a placement. Their cases shall be managed as dependents of the court rather than as delinquents (W&IC section 451[b]). The NMDs under transitional and dependency jurisdiction have all the decision-making authority of legal adults and the right to make all decisions regarding their educational rights, health and mental health treatment and records. See ACL 11-69 for more information on case management for NMDs and ACL 11-77 for information on placement for NMDs.

Transitional Independent Living Case Plan

The AB 12 requires that case managers work with the youth prior to age 18 to ensure the TILP includes a plan for the youth to meet at least one of the eligibility criteria to remain in foster care upon reaching age 18. This must be in the case plan that is presented to the court at the six month hearing review before the youth attains age 18 as described in W&IC section 366(a)(1)(F) or 727.2. The NMDs' case plans are referred to as the Transitional Independent Living Case Plan (case plan in AB 12). This is a continuation of the same case plans that were developed prior to age 18. Both the six-month case plan updates and the TILP are continued with NMDs.

A minor or NMD under the transition, delinquency, or dependency jurisdiction of the court must also meet at least one of the participation conditions for EFC, to remain in EFC. This will be documented in their case plan or TILP as described in ACL 11-61 and ACL 11-69. The case plan for NMDs will focus on permanent connections and independence. After age 18, there is no longer a focus on family re-unification, termination of parental rights, or the establishment of legal guardianship. There continues to be a focus on permanency through identifying and developing permanent connections with caring committed adults, which could include maintaining or developing a relationship with a biological parent, when appropriate, or other family members. The case plan shall include efforts to assist the minor or NMD in finding and maintaining permanent connections with committed and caring adults and identify services to support them in meeting their goals to support independent living.

SOC 161

The purpose of the SOC 161 is for the case manager to certify that the NMD is meeting one of the five participation criteria for EFC. The certification covers a prospective six month period and is updated at the same time the TILP and case plan are updated. The SOC 161 needs to be provided to the EW and attached to the court report for each six month case plan review hearing (W&IC section 11403(c)). Documentation of participation should be noted in the CWS/CMS Case Contact Notebook and the court report. More information on the SOC 161 is in ACL 11-61, dated November 4, 2011. The SOC 161 is available at:

<http://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC161.pdf>

Supervision of former wards in EFC

Each county shall modify its existing dual status written protocol (per W&IC section 241.1) for the process of making recommendations to the court regarding which agency shall provide supervision based on the needs of the dependent.

The modification of the county W&IC section 241.1 protocols will include a process for determining:

- a. Which agency and court shall supervise a minor whose jurisdiction is modified from delinquency to transition jurisdiction;
- b. Which agency and court shall supervise a NMD under the transition jurisdiction of the juvenile court; and
- c. A process that addresses the manner in which supervision responsibility is determined when a NMD becomes subject to adult probation supervision.

For more specific information on supervision of NMDs see ACL 11-69.

Court hearings

The NMD's court case will remain open under the jurisdiction of the juvenile court for monitoring and oversight of the case plan. The NMD will continue to have six-month court hearings and their own counsel. The focus of the six-month court hearings is no longer reunification with birth parents, the establishment of a guardianship, or termination of parental rights. The hearing will focus on the assistance and supports the young adults need to reach transitional living, education, and employment case plan goals.

Hearings for NMD's are conducted under W&IC section 366.3 or section 727.2 and pursuant to Rules of Court section 5.903. The court shall appoint counsel for minors and NMDs under transition jurisdiction and, when possible, provide continuity of representation by retaining the same attorney to represent the minors and NMDs who are modified to transition or dependency jurisdiction (W&IC section 451[d]). Parents are no longer parties to the hearings nor have counsel. Hearings may be attended by persons the NMD invites, including a parent or guardian. The NMD may request telephonic appearance at the hearings, unless court ordered to appear personally.

Rules of court are available at: <http://www.courts.ca.gov/rules.htm>
Click HTML or PDF link to Title Five. Family and Juvenile Rules (Rules 5.1-5.830)

EXITING THE EFC PROGRAM

The NMD (unless still under delinquency jurisdiction) may exit the EFC Program at any time (prior to reaching the age limit) through the termination of dependency, or transition jurisdiction. Termination of delinquency jurisdiction is possible only when the NMD completes his rehabilitative goals. Termination of jurisdiction falls into three different categories:

- Dependency Jurisdiction - W&IC section 391(not discussed in this ACL);

- Transition Jurisdiction – W&IC section 452; and
- Delinquency Jurisdiction - W&IC 607.2 & 607.3.

A new mechanism was developed to allow a NMD or foster youth who exits care at or after age 18 to be eligible for re-entry to the EFC Program prior to reaching the maximum age of EFC. Beginning January 1, 2012, when terminating jurisdiction over a NMD or a foster youth who has reached age 18 and does not elect to remain in the EFC Program, the Juvenile Court now retains general jurisdiction over a NMD up to age 21, per W&IC section 303(b). This will allow the young adult to re-enter the EFC Program at a later date if the NMD is still under the maximum age of EFC.

1. Termination of Transition Jurisdiction

The agency supervising a NMD subject to transition jurisdiction shall complete all the following actions for a hearing during which termination of transition jurisdiction over a NMD is being considered (W&IC section 452(c)):

- a. Efforts to ensure the NMD must be in attendance at the hearing in person or telephonically, or if the NMD cannot be located or is not available to appear, the agency documents the reasonable efforts made to locate the NMD,
- b. The case manager must prepare a court report that states whether it is in the best interest of the NMD to remain under the court's jurisdiction,
- c. Complete the 90-day Transition Plan,
- d. If the NMD wants to exit care, the report will document that the NMD was advised of the right to re-enter the EFC Program prior to attaining the maximum age for EFC by filing a Voluntary Re-entry Agreement with the court (and how this is done),
- e. Submit written verification that the information, documents, and services set forth in W&IC section 391(e)(1)-(8) have been provided to the NMD, and
- f. Certify that the requirements set forth in W&IC section 607.5 have been completed.

2. Termination of Delinquency Jurisdiction

At a hearing to terminate delinquency jurisdiction for a ward that is over age 18 and subject to an order of foster care placement, the following requirements must be completed by the probation agency (W&IC section 607.3):

- a. Ensure the ward has been informed of his or her options, including the right to re-enter foster care placement by completing the SOC 163.
- b. Ensure the ward has had opportunity to confer with counsel.

- c. Ensure the ward is present for the hearing or attends telephonically. If the ward is not available to appear, efforts to locate the ward must be documented.
- d. Submit a report to the court that describes:
 - (1) Whether it is in the best interest of the ward to assume or continue transition jurisdiction;
 - (2) Whether the ward has indicated that he/she wants court jurisdiction to continue; and
 - (3) Whether the ward has been informed of the right to re-enter foster care after exiting,
- e. Submit the completed 90-day Transition Plan;
- f. Submit written verification that the information, documents, and services set forth in W&IC section 391(e)(1)-(8) have been provided to the NMD; and
- g. Certify that the requirements set forth in W&IC section 607.5 have been completed.

If jurisdiction is terminated, the court will retain general jurisdiction over the NMD until the NMD reaches 21 years old. Review hearings and case management are no longer required after the termination of dependency, delinquency, or transition jurisdiction of a ward who has reached age 18. General jurisdiction will allow the court to resume dependency jurisdiction, assume or resume transition jurisdiction if a former dependent/delinquent completes a SOC 163 requesting re-entry to the EFC Program and the non-minor is still under the applicable maximum age of EFC (W&IC section 303[b]). The agency files a W&IC section 388(e) petition to resume or assume jurisdiction.

RE-ENTRY TO THE EFC PROGRAM

In order for a non-minor to be eligible for re-entry into the EFC Program, the non-minor must have had a court order for foster care placement on his or her 18th birthday (this would include youth who are absent without leave or in an ineligible placement on their 18th birthday but maintain a placement order). This section gives a brief description of the re-entry process which applies to former wards and dependents. The re-entry process for wards and dependents will be the same. A subsequent ACL discussing eligibility for re-entry, the petition process and county responsibilities will be released.

Effective January 1, 2012, NMDs who exit foster care on or after age 18 are allowed to return to the EFC Program if they are still under the maximum age and they agree to sign the SOC 163 which acknowledges that the young adults agree to:

Meet at least one of the five participation conditions* (outlined in ACL 11-69 dated October 13, 2011):

- Be under juvenile court jurisdiction;
- Be in an eligible licensed or approved placement;
- Meet with the case manager monthly; and
- Be under supervision of the county.

*Young adults do not need to be meeting one of the five participation conditions at the time the request to re-enter foster care is made; they need to be willing to meet one of the criteria within a reasonable time after signing the SOC 163.

The SOC 163 is available at:

<http://www.cdss.ca.gov/cdssweb/entres/forms/English/SOC163.pdf>

The court shall resume dependency, or resume or assume transition jurisdiction over a non-minor if the non-minor meets the eligibility for re-entry and re-entry into the EFC Program is in the best interest of the non-minor. Young adults who voluntarily re-enter foster care after 18 years of age following dismissal of dependency are considered to be entering a new foster care episode. Therefore, a new funding eligibility determination is required. When determining the title IV-E eligibility, AFDC linkage criteria must still be satisfied. However, AFDC eligibility is based only on the young adult's income and property. Income and property of the parents/legal guardians or others in the assistance unit in the home are not relevant as the non-minor is an adult. All other eligibility criteria must be met, such as the participation criteria.

The probation department may resume supervision over a NMD if it was the agency providing supervision prior to termination of jurisdiction, subject to the W&IC section 241.1 protocol. The case manager of the supervising agency shall prepare a new Case Plan and submit it to the court within 60 days of the resumption of dependency per W&IC section 388(e)(5)(B).

Camera Ready Copies and Translations

For a camera-ready copy in English, contact the Forms Management Unit at fmudss@dss.ca.gov. If your office has internet access, you may obtain these forms from CDSS' webpage at http://www.dss.cahwnet.gov/cdssweb/FormsandPu_271.htm. When all translations are completed per MPP section 21-115.2, including Spanish forms, they are posted on an on-going basis on our web site. Copies of the translated forms can be obtained at http://www.dss.cahwnet.gov/cdssweb/FormsandPu_274.htm.

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Until translations are available, clients who have elected to receive Spanish, Russian, Vietnamese, and written Chinese materials should be sent the GEN1365 interpretation informing notice with a local contact number.

For questions on translated materials, please contact Language Services at (916) 651-8876.

Additional Information

A subsequent ACL regarding the process for re-entry into the EFC Program, including information regarding the SOC 163 will be released soon.

An ACL regarding data entry into the CWS/CMS is expected to be released in December 2011.

For questions related to the information provided in this ACL, please submit your question(s) to ab12@dss.ca.gov. We ask that you please submit all questions by e-mail to assist us in tracking questions and identifying areas that may need to be addressed in future ACLs.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division