

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

Revised August 27, 2010

I. Investigation/Intake Requirements

- 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 *and* one of the statutory grounds for detention in section 628(a)(1)–(7) exists.*
- 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)).
- 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)).
- D. Determine whether a petition needs to be filed (§ 652).

II. Requirements at Detention Hearing

- A. Submit a written detention report to the court if the child is at risk of entering foster care (§ 635). (See *Written Report Requirements* chart.)
 - 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)).
 - 2. Documentation to support the required court finding regarding “reasonable efforts to prevent removal” must be included in the detention report (§ 636(c)(2)).
- B. Make a prima facie showing that the child is a person described in section 601 or 602 (§ 635).

III. Requirements After Detention Hearing, If Child Is Detained

- A. Prepare case plan within 60 days of removal or by the date of the dispositional hearing, whichever occurs first (§ 636.1). (See *Written Report Requirements* chart.)
- 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)).
- 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 *Written Report Requirements* chart.)

IV. Placement Requirements

- 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:
 - 1. The least restrictive or most family-like setting;
 - 2. The most appropriate setting that is available and in close proximity to the parent’s home; and
 - 3. The environment best suited to meet the child’s special needs and best interests (§ 727.1(a)).
- 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)).

V. Notice and Report Requirements, Prior to Status Review and Permanency Planning Hearings

Prior to each status review hearing and permanency planning hearing, probation must:

- 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)).
- 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 *Written Report Requirements* chart.)
- 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)).
- 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)).

*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.