

DUAL STATUS PROTOCOL

SANTA CLARA COUNTY

Welfare and Institutions Code Section 241.1

January 2012

OVERVIEW

This protocol has been developed pursuant to the mandates of Welfare and Institutions Code¹ (WIC) § 241.1 and the additions to that section following AB129. WIC § 241.1 requires that when a youth appears to come within the description of both section 300 and 601 or 602, the County Probation and the County Child Welfare Department shall jointly determine which status will serve the best interest of the youth and the protection of society. This protocol is written to ensure appropriate local coordination in the assessment of any youth who appears to come within the description of both sections.

All Santa Clara County partners agree that youth who come under § 241.1 are entitled to receive ameliorative services in the least restrictive and most appropriate system, which can meet their needs and the needs of society. When a youth comes under this protocol, the case will be heard by a judge who has been designated to preside over § 241.1 matters and who will make the determination as to which system can best serve the youth's needs. In certain cases, selected youth who are already § 300 dependents of the Juvenile Court and are receiving Permanency Services may have their § 300 dependency status placed "on hold" pursuant to Welfare and Institutions Code §241.1, subdivision (e), while they receive services from the Juvenile Probation Department. This Protocol is not intended to increase the number of dependents who are adjudged delinquents. The goal is to hold dependent youth of the court accountable for their delinquent conduct, to prevent their criminal behavior from escalating, and to ensure the safety of the community while providing for their needs as abused or neglected youth.

There are three main situations where the § 241.1 protocol applies. The situations are as follows:

1. WHEN THE MINOR IS ALREADY A DEPENDENT OF THE COURT

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

If the minor is a dependent of the court pursuant to §300 and his or her actions result in the filing of a §602 petition he/she may become a dual status minor or dependency may be dismissed and he/she would become a ward of the Juvenile Justice Court. In these instances the 241.1 assessment will be order by and filed and heard in the Juvenile Justice Court. If wardship is ordered, Probation will be the Lead Agency and the Juvenile Justice Court will be the Lead Court. If the minor is not made a ward but Probation remains involved in the case under Informal Supervision or Deferred Entry of Judgment, DFCS will be the Lead Agency and the Juvenile Delinquency Court will be the Lead Court.

2. IF THE YOUTH IS A 602 WARD AND NO DEPENDENCY JURISDICTION EXISTS

If the youth is a 602 ward and JPD is considering dismissing probation but JPD has concerns that the youth would be at risk for abuse or neglect as defined by § 300 if returned home to the parent, as soon as possible, the JPO shall calendar a Parte Review and recommend a 241.1 report be ordered. If it is determined that there is a basis for juvenile dependency jurisdiction a § 300 petition can be filed and wardship can be dismissed. In those cases, the case would be transferred to Juvenile Dependency Court and DFCS would be the Lead Agency.

3. WHEN A YOUTH HAS A PENDING 602 PETITION AND THERE ARE ALLEGATIONS OF POSSIBLE ABUSE OR NEGLECT

If the youth has a pending 602 petition and JPD or the Juvenile Justice Court has concerns that the youth is the victim of abuse or neglect, as defined by WIC § 300, the JPO shall recommend and the Court may order that a 241.1 report be prepared. If the Juvenile Justice Court orders a 241.1 report, DFCS will be notified by the court clerk pursuant to established procedures. DFCS and JPD shall each prepare an assessment and determine the least restrictive and appropriate disposition for the minor.

This Protocol will act as a general guideline for handling Dual Status cases and is agreed upon and signed off by all partners. Agency Procedures are contained in separate documents and will set forth the procedures for each agency to follow. Unlike the Protocol, the Procedures will be working documents and may be reviewed by the agencies and Dual Status Committee as needed. Prior to an agency making any

substantive changes to its procedures, which could potentially impact the children and families affected by this protocol, there will be a meeting of the Dual Status committee. The committee will attempt to reach consensus on any proposed changes to the Procedures.

PROTOCOL

1. 241.1 ASSESSMENT

Whenever an assessment and report is ordered pursuant to § 241.1 there will be an initial determination by the Department of Family and Children's Services (DFCS) and the Probation Department (JPD) to determine what program and agency can best meet the minor's need. These programs may include wardship, dependency or dual status. Dual status designation is designed for youth who require simultaneous designation in both 602 wardship and 300 dependency status.

This initial assessment will be completed by the assigned Probation Officer (JPO) and the assigned Social Worker (SW) within (48 hours) from when the § 241.1 assessment is ordered. If SW and JPO initially believe the minor may be a good candidate for dual status or there is disagreement between the SW and JPO as to which program can best meet the needs of the minor, a Team Decision Making meeting (TDM) will be requested through the designated supervisor. The TDM will be set within ____ (days/hours) of the § 241.1 order. If it is determined at the TDM that the minor would be a good candidate for dual status, the TDM participants will assess if the dependency case should be recommended placed on-hold or if there should be dual status with one agency designated as the lead agency and the other agency designated as the assisting agency.

At the TDM the agencies must seek the least restrictive level of care to meet the needs for the minor, family and community safety and determine the most appropriate department to provide services and supervision to the minor. The TDM participants shall consider the following when determining the most appropriate recommendation:

- a. The nature of the referral
- b. The age of the minor
- c. History of physical, psychological, and/or sexual abuse and any Child Welfare History
- d. Prior Criminal or Child Welfare record of the minor's parents
- e. Minor's prior delinquent record and behaviors
- f. Parental cooperation with minor's school

- g. Minor's functioning at school,
- h. The nature of the minor's home environment,
- i. The records of other agencies that have been involved with the minor and his or her family

The TDM shall consist of designated supervisors from DFCS and Probation.

If it is determined that the minor will best be served by placing his or her dependency status on hold, the process will be followed as outlined in (prior protocol). If it is determined that the minor would best be served by a lead agency model, the lead agency process shall be followed.

A. Lead Agency

i. General Overview

In working with a dual status child, both Probation and DFCS understand that there will be no duplication of services. Each agency will have a unique role in working with the minor and the family. Under the lead agency option one agency will assume primary management over the case file, court hearings, and court reports but both agencies can provide services to the child so long as those services are different and are warranted and/or required. DFCS and Probation will work cooperatively to assess and assign services to meet the needs of the child and family and agree on an appropriate case plan. All visit requirements as defined in Division 31 regulations must be complied with. The two agencies can jointly fulfill visit requirements to children, parents and caregivers based on the needs of the clients and based on which department representative would be available to visit the clients, as long as there is no duplication of services. Or, in the alternative, both agencies may conduct monthly visits as long as it is for different purposes. On a monthly basis, the lead agency and assisting agency shall discuss the case and exchange information regarding the minor, case contacts and services for entry in their respective data systems.

ii. Process

One court will be designated as the Lead Court and will hear all court proceedings for the minor. The lead court shall conduct a joint dependency/wardship hearing for dual status minors. Where there are findings and recommendations unique to the assisting agency, the lead agency shall coordinate with the assisting agency and ensure that those findings or matters are presented to the court. The lead agency will be responsible for preparing and filing all reports with the Lead Court. The assisting agency may prepare supplemental reports for the hearings as necessary. The court shall ensure that findings and orders required for both wards and dependent minors are made at the joint hearing.

It is understood, if dual jurisdiction is order for a minor and either family maintenance or family reunification services have been previously ordered in the dependency court, the legal time frames for reunification remain the same and are not interrupted.

B. On-Hold Dependency Jurisdiction

i. General Overview

If the minor is a dependent child of the court and receiving Permanency Services from DFCS and is identified by both DFCS and JPD to be a candidate for dual status, the youth's dependency status may be placed on hold by the Juvenile Justice Court and the youth may be made a ward of the Court.

ii. Process

Youth will be selected to have their dependency status placed on hold based upon the agreement of both DFCS and JPD. Each Department shall prepare separate reports and note their agreement in the dual status report required by WIC § 241.1. Factors to consider when assessing a youth for dual status include, but are not limited to, the youth's age, the seriousness of the offense, and the youth's psychosocial assessment. In addition, the Juvenile Justice Court bench officer may discuss the youth's case

directly with the Dependency Court bench officer prior to making a dual status determination. At the time that the Juvenile Justice Court declares a dependent youth to be a delinquent under § 602, the Court shall declare the youth to be a “dual status child” and “suspend dependency jurisdiction” as provided by § 241.1(e) and § 366.5.

- a. Approximately 60 days prior to the youth’s expected completion of the Court ordered intervention JPD shall calendar a Parte Review.² The JPO shall report to the Court the youth’s progress in the program(s) in which the youth is participating, the intent to recommend dismissal upon the youth’s completion of the intervention, and communication held with DFCS to address the youth’s return to § 300 Dependency status. The JPO shall recommend a subsequent Parte Review in approximately 60 days to submit the dismissal recommendation.

- b. Prior to dismissal, DFCS shall schedule a Team Decision-Making meeting (TDM). The purpose of the TDM is: to create a seamless transition plan that will enable the youth to return to § 300 dependency status with the least disruption to services and placement, while at the same time ensuring the safety of other youth and professionals involved in the dependency system; and, have the JPO verify the current or last known address of the youth’s parents or caretakers; and, identify any changes to the family’s circumstances. DFCS’ Joint Decision Making Unit will arrange for the TDM. The JPO will notify the youth and the youth’s parents of the date and time of the TDM. DFCS will notify the youth’s dependency attorney, the JPO, any appointed CASA, the youth’s parent’s dependency court attorney, and any other persons deemed necessary, of the time and place for the TDM. At the subsequent Parte Review, the JPO shall make recommendations to the court, including a recommendation for dismissal and release of the youth to the SW, if

² It is understood that a dual status youth’s return to dependency court is not automatic, but is predicated on the youth’s behavior and successful completion of their court ordered intervention.

appropriate, and DFCS will advise the Juvenile Justice Court of the transition plan and future placement of the youth.

c.

If the Juvenile Justice Court determines that returning the youth to the parent will be detrimental to the youth, or § 300 jurisdiction is necessary, or if the Juvenile Justice Court determines that it has insufficient information for making this determination, then the Court shall order that dependency jurisdiction be resumed and the case transferred to Dependency Court for further hearing within three court days. At that hearing the Dependency Court will set the matter for a new § 366.3 hearing within 60 days.

d.

iii.

iv. The Supervising Social Worker, along with County Counsel, the youth's court appointed Dependency attorney, the parents' Dependency attorney, and any other person the court deems to have a direct and legitimate interest in the case, may attend the hearing in the Juvenile Justice Court.

4. IF THE YOUTH IS A 602 WARD AND THE JUVENILE JUSTICE COURT JUDGE CONCLUDES THE YOUTH SHOULD BE A § 300 DEPENDENT BUT DFCS DECLINES TO FILE A 300 PETITION

a. The Juvenile Justice Court Judge will refer the matter to the Juvenile Dependency Court Supervising Judge pursuant to WIC § 331 and will order that the 602 file be transmitted to the Juvenile Dependency Court Presiding Judge for a review of DFCS' decision declining to file a § 300 petition. The Juvenile Dependency Court Presiding Judge will take action and notify the Juvenile Justice Court Judge, DFCS and other parties accordingly.

b. The 241.1 Assessment Report prepared by JPD and DFCS will serve as the functional equivalent of a WIC § 329 affidavit request for the Social Worker to file a § 300 petition, the required investigation and the refusal by DFCS to file a 300 petition.

5. PSYCHOLOGICAL EVALUATIONS

In all situations described above, if the Juvenile Justice Judge believes significant mental health issues are apparent, or placement is a likely option for disposition, a psychological evaluation of the youth may be ordered.

Original Signature on File 2/2/10

Judge Patrick E. Tondreau Date
Supervising Judge, Juvenile Justice Courts

Original Signature on File 2/11/10

Judge Katherine L. Lucero Date
Supervising Judge, Juvenile Dependency Courts

Original Signature on File 1/25/10

Will Lightbourne Date
Director of Social Services

Original Signature on File 1/26/10

Lori A. Medina Date
Director, Department of Family and Children's Services

Original Signature on File 2/2/10

Sheila Mitchell Date
Chief Probation Officer

