

**California's Fostering Connections to
Success Act (AB 12/212)**

**Beyond the Bench
Overview of the Legal Process:
Dependency
December 14, 2011**

Overview of the California Fostering Connections to Success Act

- AB 12: signed into law October 2010.
- AB 212 (clean up legislation): signed into law October 2011.
- Extends foster care funding, Kin-GAP & AAP until age:
 - 19 in 2012
 - 20 in 2013
 - 21 in 2014 (subject to budget approval)
- Makes additional changes to California's Kin-GAP program.
- *Key Provisions: WIC 241.1, 303, 366.3, 388(e), 391, 450, 11400, 11402 & 11403*

Outline of Today's Training

- Basics of Eligibility
- Roles/Responsibilities
- Court Hearings and Process
- Termination of Jurisdiction
- Re-entry
- Delinquency Court Issues

The Basics of Extended Foster Care in the Juvenile Court

Eligibility Overview

- Extended benefits available to:
 - **Non-Minor Dependents (NMD's)** – as defined in the next slide.
 - Youth who entered **Kin-GAP** at age 16 or older.
 - Youth who entered **AAP**, as long as the adoption agreement was signed when the youth was age 16 or older.
 - Former dependents/wards in **non-related legal guardianships** created in juvenile court (not probate court), regardless of the age of the youth when the guardianship was created.

Non-Minor Dependents

- On or after January 1, 2012, a NMD is defined as a **dependent**, transition status or ward who is all of the following:
 - Is/was younger than 19 as of Jan 1, 2012; or younger than 20 as of Jan 1, 2013, **and**
 - At 18 is/was under a foster care placement order, **and**
 - Is participating in one of the five eligibility conditions per their transitional independent living case plan, TILCP.

WIC 366.31 & WIC 14000(v)

Age Criteria and Phase-In: Who Is Eligible Next Year?

- Youth under age 19 as of January 1, 2012 who have an open case. This includes:
 - All youth who turn 18 on or after January 1, 2012.
 - Youth who turn 18 during 2011 (until they turn 19 in 2012).

Age Criteria Issue During Phase-In

- Because of the age requirement, youth who turn 18 in 2011 will be *partially eligible*, meaning they will be federally eligible for part of the year in 2012 (when they are 18) and part of the year in 2013 (when they are 19).
- This does NOT mean the case needs to close during the periods of ineligibility. The court still has discretion to maintain jurisdiction pursuant to WIC 303.

Summary of NMD Eligibility Requirements

According to definition of NMD, youth must:

1. Satisfy the age criteria.
2. Have an order for a foster care placement at age 18.
3. Satisfy at least 1 of 5 participation requirements.

Youth must also:

4. Agree to live in an approved/licensed supervised placement.
5. Agree to remain under the jurisdiction of the court as a NMD by signing a mutual agreement.

**Youth Responsibility Under
AB 12/212**

Participation Requirements

- Youth must satisfy 1 of the following 5 requirements as documented in the youth's TILP:
 - Be enrolled in high school or equivalent
 - Be enrolled in college/vocational school
 - Work at least 80 hours/month
 - Participate in a program/activity that helps the NMD find a job or removes barriers to employment
 - Be unable to do one of the above because of a medical or mental health condition

WIC 11400 & WIC 11403

Mutual Agreement

- In order to receive extended foster care, addition to meeting the definition of a NMD and participating in 1 of the 5 eligibility requirements, the youth must sign a mutual agreement [SOC 162, available online] within six months of turning 18.
- A Mutual Agreement is an agreement between the NMD and the agency specifying the youth's willingness to:
 - Remain under the juvenile court's jurisdiction as a NMD,
 - Remain in a "supervised placement,"
 - Report changes relevant to eligibility and placement, and
 - Work with the Agency on the implementation of the TILP participation activities.
- This is NOT a condition of payment, however it is a condition of participation and must be completed within six months...ACL 11-69

Roles/Responsibilities

NMD's Responsibilities

- Work with the social worker to ensure ongoing participation in the TILP
- Report changes of eligibility and placement.
- Demonstrate incremental responsibility.
- Participate in hearings in person or telephonically.
- Make health care decisions, including decisions regarding medications.
- Participate in placement decisions/responsibilities (i.e. Shared Living Agreement).

Social Worker Responsibilities

- Continued monthly in person contact with NMD.
- Supervise placement.
- Certify initial and ongoing eligibility.
 - A Certification of Participation must be completed (SOC 161 – available online) every 6 months.
- Submit court reports.
- Case planning – all case planning should be collaborative with NMD.
- Foster increasing levels of responsibility.

Meetings with Social Workers

- Youth will continue to have monthly, face-to-face meetings.
- There will be collaborative case planning focusing on the **TILCP**, which should include:
 - Services that ensure meaningful participation to maintain eligibility, including a back-up plan.
 - A plan for NMD's supervised placement setting.
 - A permanent plan for transitioning to living independently.
 - A plan for obtaining and maintaining permanent connections with caring, committed adults.
- The Transitional Independent Living Case Plan and the TILP will be updated every 6 months.

NMD Attorney's Role

- NMDs continue to have legal counsel.
- Traditional role maintained except:
 - NMD's counsel will now work on behalf of the NMD's stated interest, no longer "hybrid model" as defined in WIC 317.
- NMD can designate attorney to appear on behalf of NMD. *Rule 5.900(d)(3)*
- Upon re-entry, youth can request former attorney to represent him/her for re-entry. *Rule 5.90(b)(2)(F)*
- Upon an order terminating jurisdiction, aid will be terminated and a notice of termination of benefits and state hearing rights will be sent to NMD & his/her counsel, SW / PO, and the payee. *WIC 11403 (c)*

Caregiver's Role

- Discuss extended foster care options with youth prior to age 18.
- Support youth in TILP activities.
- Work with young adult to develop house rules/ Shared Living Agreements.
- Respect privacy and autonomy of NMD (i.e. HIPPA, etc.).
- Encourage incremental responsibility.

Court Process/Hearings

Overview of Hearings

- 4 Primary AB 12/212 Related Hearings:
 1. Last Status Review Hearing Before a Youth Turns 18
 2. NMD Review Hearings
 3. WIC 391 Hearing to Terminate Jurisdiction
 4. Request to Return to Juvenile Court Jurisdiction and Foster Care (Reentry)

Report Requirements: Last Status Review **Hearing Before a Dependent Turns 18**

(Rule 5.707)

Transitional Independent Living Case Plan (TILCP)

In addition to other requirements (see CHART A), SW must submit the youth's TILCP, which must include

- Individualized plan for the youth to satisfy the extended care participation criteria **AND** the anticipated placement.
- **An alternate plan for transition** in the event the youth does not remain under court jurisdiction after turning 18.

***Form for Findings and Orders: JV-460

Findings: Last Status Review Hearing **Before a Dependent Turns 18** **(Rule 5.707)**

In addition to other requirements (see CHART A), findings must include whether:

1. TILP includes a plan and back-up plan for youth to satisfy 1 of the 5 participation requirements.
2. Youth has an application pending for SSI
3. Youth has an application pending for Special Immigrant Juvenile Status, SIJS
4. Youth has been informed of his/her right to have juvenile court jurisdiction terminated
5. Youth understands the benefits of remaining under court jurisdiction as a NMD
6. Youth has been informed of his/her right to re-entry

Orders: Last Status Review Hearing Before a Dependent Turns 18

(Rule 5.707)

In addition to other requirements (see CHART A):

- **For youth who intends to remain in care as NMD:**
 - The court must set a nonminor dependent review hearing within six months from the date of the current hearing.
- **For youth who does not intend to remain in care as NMD and requests that jurisdiction be terminated:**
 - The court must set a hearing for termination of jurisdiction pursuant to WIC 391 within one month after the youth's 18th birthday.
- **For youth who will remain in care but will not be eligible for status as NMD:**
 - The court must set a regular status review hearing within six months from the date of the current hearing..

Status Review Hearings for NMD (Rule 5.903)

■ SEE CHART B

- IV-E review requirements are still in place – including the subsequent 12th month Permanency Planning Hearing.
- Youth continue to have review hearing every 6 months.
- Every other review hearing may be an administrative review.
 - *Unless the NMD or the NMD's attorney requests that the hearing be conducted by the court.*

***Form for Findings and Orders: JV-462
Rule 5.903, WIC 16503

Content of Status Review Hearing for NMDS

- At each review hearing, the Court is to:
 - Ensure that the youth is meeting one or more of the participation conditions as described in the TILCP.
 - Ensure reasonable efforts made by social worker to help NMD establish and maintain compliance with eligibility requirements.
 - Review the social worker's efforts to assist the youth in obtaining permanent connections with caring and committed adults.
 - Inform the youth of his/her right to have court jurisdiction terminated.

Conduct of Status Review Hearings for NMDs

- Should be conducted in a manner that respects the person's legal status as an adult.
- Should facilitate candid conversations between NMD and the Social Worker/PO.
- When necessary, the court should resolve disputes regarding:
 - Placement
 - Participation
 - Other issues that may arise

Case Plan Goal for NMDs

- As a NMD, the young adult is in a Planned Permanent Living Arrangement (PPLA) with the goal of successfully transitioning to independence with caring, committed adults who can serve as lifelong connections. *Rule 5.903(e)*
- Because NMD is legal adult:
 - No Reunification
 - No WIC 366.26 hearings
 - No termination of parental rights
 - No guardianship

WIC 366.21, 366.22 & 366.25

More Effects of Legal Adult Status

- Hearings can only be attended by parties or persons “invited” by the youth.
 - Parents no longer provided notice, participate in a case plan or are entitled to counsel. *WIC 295*
 - No Protective Custody Warrants. *WIC 303(d)*
 - Court does not consent to psychotropic medication. *WIC 303(d)*
 - No Caregiver consent for medical/education decisions. *WIC 303(d)*
 - NMD holds own educational rights.
 - NMD has **privacy rights** about medical information.
- *However, personal rights of foster children do still apply.** *WIC 16001.9*

Terminating Jurisdiction

Hearing to Terminate Jurisdiction

- There are a number of reasons the court may terminate jurisdiction over a NMD, including:
 - Youth opting-out
 - Youth exiting because of age
 - Ineligibility
- A hearing must be held pursuant to WIC 391 *prior* to terminating jurisdiction.

Ineligibility

- Examples of reasons why a youth may be deemed ineligible:
 - Failure to meet one of five participation requirements
 - Not residing in a licensed or approved placement
 - Youth is AWOL

Failure to Meet Participation Requirements

- It is the Court's role to determine if NMD is not participating in a reasonable TILCP. *Rule 5.555(d)(2)(A)(ii)*
- The *burden of proof* of nonparticipation/noncompliance is on the social worker. *Rule 5.555(c)*
- Social worker must document *reasonable efforts* to provide NMD with assistance to meet/maintain participation in TILP activities.

Rule 5.903(e)(1)(k & g)

What Must Occur at the WIC 391 Hearing to Terminate Jurisdiction

- SEE CHART C
- Social worker to ensure NMD is present unless NMD chooses to **participate in the hearing telephonically.**
- Court **shall** continue jurisdiction, unless
 - NMD does not wish to remain in care, or
 - NMD is not participating in reasonable and appropriate TILCP, or
 - NMD cannot be located and social worker documents reasonable efforts to locate him/her.
- Prior to the Court terminating jurisdiction, the court must find that youth was informed of:
 - His/her right to remain in care
 - The benefits of remaining in care
- The court must also find the NMD has been informed of his/her right to reenter care if under the age limits

Necessary Documentation at the WIC 391 Hearing to Terminate Jurisdiction

- **Transitional Independent Living Case Plan** *WIC 11400 (y)*
- Most recent **Transitional Independent Living Plan (TILP)**
- **Completed 90-day Exit Transition Plan.** *WIC 16501.1(f)(16).*
Developed with the youth. Should be as personalized and detailed as the youth directs. Must discuss:
 - Options for housing, health insurance, education, local opportunities for mentors and continuing support services & workforce and employment services.
 - Information regarding the advance health care directive form
 - Information regarding any current applications for SSI and Special Immigration Juvenile Status.

Available Benefits for Youth Who Exit Care

- Extended Medi-CAL up to age 21
- Aftercare ILP services up to age 21
- Non-federally funded THP-Plus to age 24 (space is limited)
- CalFresh (Food Stamps)

In addition, youth also remain eligible for re-entry if they meet the age and other requirements of NMDs.

General Jurisdiction

- If the Court terminates jurisdiction, it will maintain **general jurisdiction** until the youth no longer meets the age eligibility requirements of a NMD.
- This allows for re-entry into foster care without a new finding of abuse or neglect.
- There is no court or agency supervision of the youth (for all practical purposes the case is closed, but can be re-opened).

WIC 303(b) & WIC 366.31(c)

Reentry

The Basics of Reentry

- Youth who have their case closed can reenter unlimited times prior to no longer meeting the age eligibility requirements of NMD's.
- Youth must be informed of right to reentry at termination hearing.
- Reentry process is intended to be as accessible and easy as possible.
- This is a major change to the current law.

*****The goal of reentry is to permit youth to experience independence, while allowing a safety net.***

Path to Initiate Reentry (Rule 5.906)

*Reentry is initiated by either:

- The signing of a **Voluntary Reentry Agreement** (VRA)
 - The youth first contacts the agency (child welfare or probation) directly and requests to re-enter.
 - The youth must then sign a **VRA** with the agency to initiate services.
 - The VRA documents a youth's willingness and intention to:
 - Be placed in a supervised placement setting
 - Participate in eligibility requirements.
 - Have a transitional independent living case plan.
 - Participate in the filing of the 388, if applicable.
 - Re-enter foster care.

** If a VRA is signed, a mutual agreement is NOT required*

OR

- **A 388 (e) petition (JV-466) is filed** by the youth or other interested party in the county of general jurisdiction or the petition is submitted in the county of residence.

WIC 11400 (z), 388 (e), 11403 (e).; Forms related to re-entry: JV-464, JV-466, JV-468

CAVEAT

Path Recommended to Ensure IV-E Eligibility pending passage of new clean-up legislation

First step: Youth meets with social worker and completes VRA

- And then

Second step: 388 (e) petition (Form JV-466) is filed by SW or the youth or other interested person assisting the youth

Why?

Section 388(e) permits filing of petition (JV-466) before or after signing of the VRA

Section 11403(e) authorizes the resumption of aid at the youth's request by completing a VRA followed by, or concurrently with the filing of a 388 (e) petition (JV-466)

VRA Timelines

- Once the Voluntary Reentry Agreement (VRA) is signed, the placing agency i.e. county child welfare agency, probation or Indian tribe, is **required** to file a 388 (e) petition (Form JV-466) requesting the court to resume jurisdiction within *15 court days* of the signing of the VRA.
 - A nonminor may elect to file a 388(e) petition sooner by filing directly with the court
- The beginning date of aid can be the date the VRA is signed or the date of placement, whichever is later.

388 (e) Timelines

388(e) is filed:

Court must review 388(e) and determine whether prima facie showing has been made that youth **intends** to satisfy one of the participation conditions.

- *If denied*: Court must enter a written order listing the issue and inform the nonminor.
- *If a prima facie showing has been made*: Court directs the clerk to set the matter for a hearing within 15 court days of the date the request was filed.

Within 3 court days

Clerk must set hearing on the calendar within 15 court days from the date the request was filed.

Within 5 court days

Clerk must serve notice on nonminor, nonminor's attorney and supervising agency.

Within 10 court days

Court must hold a hearing to determine whether to resume jurisdiction over the nonminor. The nonminor may appear telephonically. If jurisdiction resumed:

- *Supervising agency has **60 days** to submit the new TILCP to the court.*
- *Court must set a nonminor dependent review hearing within **6 months from the date the VRA was signed.***

Within 15 court days

County of Jurisdiction vs. Residence

- The VRA can be signed in either the county of general jurisdiction or county of physical residence.
- The 388(e) can be *filed* in the county where the court retains general jurisdiction **OR** can be *submitted* in the county of physical residence.
- If *submitted* in county of physical residence, the court has **2** court dates from the submission to forward the 388(e) to county of general jurisdiction for *filing*.
- Case and payment remains with the county of general jurisdiction over NMD. However, existing intercounty transfer (ICT) may be used.
- For a nonminor living outside CA, the 388 (e) **must** be filed with the court that retained general jurisdiction.

WIC 17.1, 11400 (z), 388 (e), Rule 5.906(c)(2)(b)(ii), 11403 (e).

Forms related to re-entry: JV-464, JV-466, JV-468

Important Facts About Re-entry

- Youth must meet the age limits of 388(e).
- A background check on the petitioning youth *may* be completed to assess appropriateness and safety of placing the youth in foster care with minor dependents. *WIC 16504.5(a)(1)(D)*
 - **However, convictions are NOT a bar to re-entry.**
- If a former ward files for re-entry, the court may access a sealed file for limited purpose of verifying prior 602 status. *WIC 781(e)*
- IV-E eligibility for youth re-entering is based on “child-only case,” not parental income.
- If the NMD had a Court Appointed Special Advocate (CASA) as a dependent/ward of the court, the CASA can receive notice of the filing of the 388 (e) and the hearing if requested by the NMD. *Rule 5.906(b)(2)(H)*
- If the court determines that a prima facie showing has not been made and denies the request, the young adult is provided an opportunity to consult with an attorney. *Rule 5.906(d)(2)(A)(iv)*

**Other AB 12/212 Issues
That May Arise**

Other Services for NMDs

- In addition to case management, court oversight and access to counsel, NMDs are entitled to:
 - County Clothing allowance WIC 11461
 - ILP services WIC 10609.4
 - Wraparound Services WIC 18251
 - Earned Income per TILP disregarded *WIC 11008.15*
 - Savings up to \$10,000 exempt *WIC 11155.5*

ICWA for NMDs

- Definition of Indian child changed to include:
 - Unmarried person who is 18 years of age or over, but under 21 years of age, who is a member of an Indian tribe or eligible for membership in an Indian tribe, and is the biological child of a member, and who is under the jurisdiction of the dependency court *unless that person / counsel elects not to be so considered...*
- Hearings on ICWA to respect the status of the person as legal adult.
- If the NMD elects to continue their Indian child status after age 18, the tribe will continue to be noticed of hearings pursuant to WIC 224.2

ICPC for NMDs

- Extension of foster care to older youth is optional for states; not all states are choosing to opt in.
- Further, the Interstate Compact for Placement of Children does *not* mandate that a state that chooses not to opt in must provide ICPC services to California's NMDs.
- However, youth living out of state are eligible for extended foster care and there is a federal mandate for the county agency to visit NMDs in-person monthly.
 - May need to contract with out-of-state private agencies.

Delinquency Court Issues

Significant Effects on Wards

- Extended benefits will be available for:
 - Youth under the jurisdiction of the delinquency court pursuant to WIC 602 (who are still on probation) with an order for foster care placement at age 18.
 - Youth *no longer* requiring delinquency jurisdiction because their rehabilitative goals as set forth in the case plan have been met. Those youth, who have a foster care placement order and are older than 17 yrs, 5 months, are eligible to have their status modified to **transition jurisdiction** by the delinquency court.
- Resuming or assuming dependency status for eligible wards through new procedures if at risk of abuse or neglect.

Modification to Transition Jurisdiction

- If a ward in foster care placement HAS met his/her rehabilitative goals, is older than 17 years, 5 months and the delinquency court is ready to terminate jurisdiction, the delinquency court now has the option to modify to a new type of jurisdiction: WIC 450 transition jurisdiction.
- **How is this different from delinquency jurisdiction?**
 - Youth are not subject to any terms or conditions of probation. *WIC 451(b)*
 - The case is managed as if the youth is a dependent (if the youth is a minor) or a non-minor dependent (if the youth is an adult). *WIC 451(b)*
- **Why create this new jurisdiction?**
 - Important for eligible youth to be able to take advantage of extended benefits without remaining on probation/under delinquency supervision. Encourages former delinquent youth who may otherwise opt out to participate in services.

Eligibility for Transition Jurisdiction

- Wards whose rehabilitative goals *have* been met,

AND

- Are between ages 18 -19/20/*21 **AND** had a foster care placement order on the day they attained 18 years old **AND** sign a mutual agreement

OR

- Are more than 17 yrs, 5 months and less than 18 **AND** have a current foster care placement order **AND** (1) are not receiving reunification services, (2) do not have a permanent plan of adoption or guardianship & (3) return home is a substantial risk,

AND

- Were removed from the custody of his/her parent or legal guardian by the dependency or delinquency court.

Assuming Transition Jurisdiction

(Rule 5.812)

The Court can consider assuming transition jurisdiction for a ward with a foster care placement order:

1. At the **status review hearing** held closest to a ward attaining 18 years of age, which must occur at least 90 days before the ward's 18th birthday; or
2. When the court is prepared to **terminate jurisdiction** for ward over 17 years, 5 months of age.

NOTE: The court can also assume transition jurisdiction **at re-entry** for eligible former wards who exited foster care and wish to re-enter. 388 (e)

Rule 5.812(e), WIC 450, 451 607.2 & 727.2(i)

***Form for Findings and Orders: JV-680

Supervision of Transition Jurisdiction

- Counties are required to decide whether Probation or Child Welfare will be charged with supervising youth eligible for AB 12/212 under transition jurisdiction.
- Counties must also decide which court will supervise.
- Each county must modify its protocol for Section 241.1 to include a provision for determining which agency and court shall supervise.

Modifying Delinquency Jurisdiction

Resuming 300 Jurisdiction

- The Delinquency Court must consider modification to dependency jurisdiction for a **minor** ward who:
 - Is NOT eligible for transition jurisdiction (**e.g., the youth is 17 yrs, 5 months or younger**), AND
 - Was under dependency jurisdiction with an order for foster care placement when adjudged a ward, AND
 - Has met his/her rehabilitative goals, AND
 - Remains within description of dependent child, AND
 - A return to the home would be detrimental.

WIC 607.2(b) & 727.2 (i)

Modifying Delinquency Jurisdiction

Assuming 300 Jurisdiction

- The Delinquency Court must consider modification to dependency jurisdiction for a **minor** ward with a foster care placement order who:
 - Is NOT eligible for transition jurisdiction (e.g., 17 yrs, 5 months or younger; e.g., not in foster care), AND
 - Was not under dependency jurisdiction with an order for foster care placement when adjudged a ward, AND
 - Has met his/her rehabilitative goals, AND
 - Appears to come within description of dependent child, AND
 - A return to the home would be detrimental.

Procedure For Resuming/Assuming 300 Status

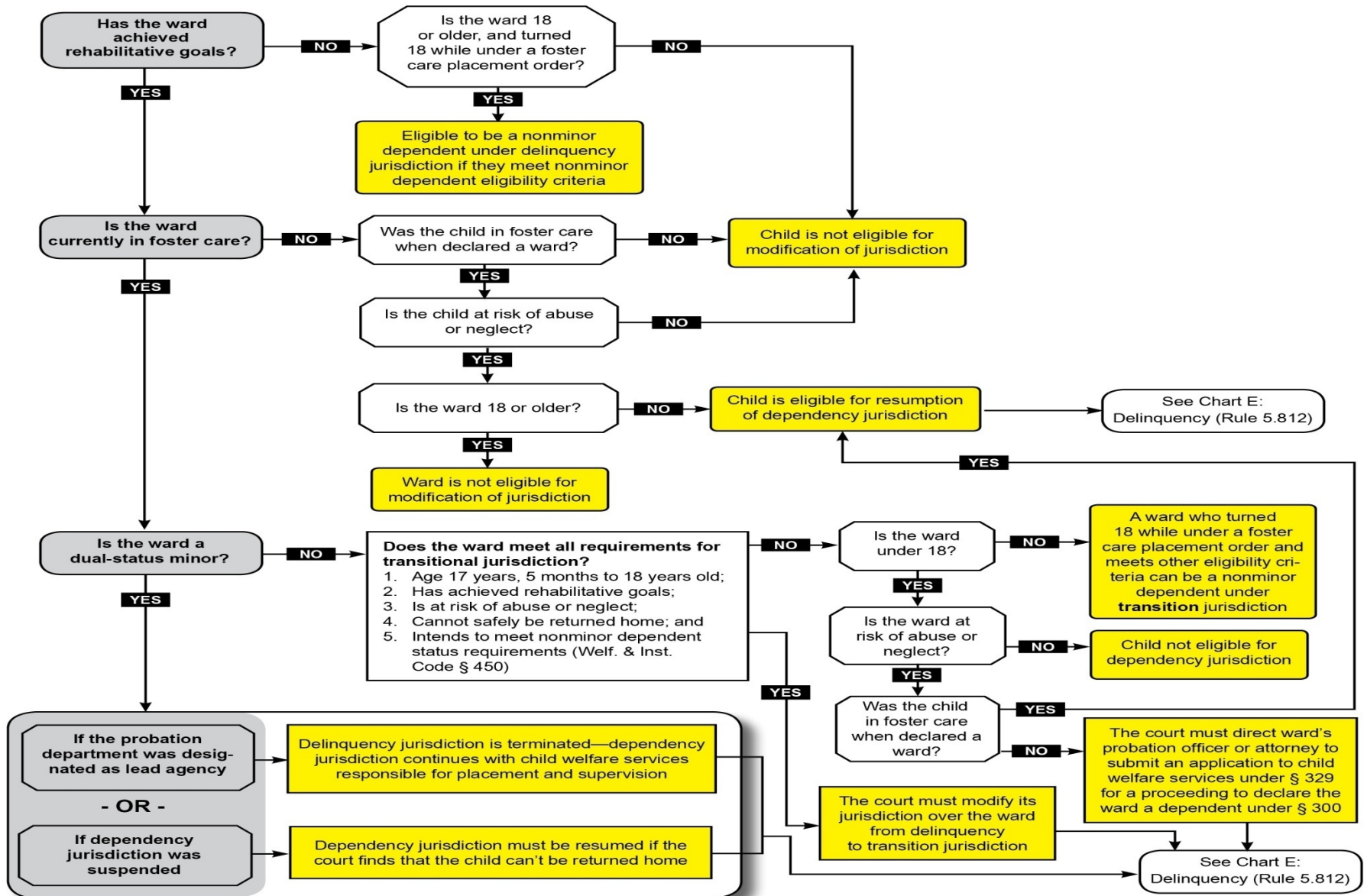
- Procedural mechanism for modification would depend on whether child was a prior dependent with an order for foster care placement at the time s/he was adjudged a ward.
- **PRIOR DEPENDENTS:** Delinquency court re-opens petition by vacating the original dependency court dismissal that occurred when the minor was declared a 602. *WIC 607.2(b)(3) & 727.2 (i)*
- **NOT PRIOR DEPENDENTS:** Delinquency court can order (defense counsel or probation) to apply for 300 petition pursuant to WIC 329 process. *WIC 607.2(b)(2) & 727.2 (i)*
 - Delinquency Court reviews child welfare's decision whether to file 300 petition after 20 judicial days. If it is a denial, court can either affirm the decision or order CWS to file the petition. *WIC 607.2(b)(2)(B)*

Special Consideration for Youth Under Dual Status

- Youth under dual status are *not* eligible for transition jurisdiction. When a youth under dual status has met his/her rehabilitative goals but return home would be detrimental, the court can **assume dependency status** through the following procedures:
 - *If dependency jurisdiction was suspended under WIC 241.1(e)(5)(A):* dependency jurisdiction must be resumed. *Rule 5.812(e)(1)*
 - *If dependency jurisdiction was not suspended, but probation was designated the lead agency:* the court must terminate dual status, dismiss delinquency jurisdiction and continue dependency jurisdiction with child welfare responsible for placement. *Rule 5.812(e)(2)*

Modification from Delinquency Jurisdiction to Transition or Dependency Jurisdiction

Wards: (1) Final status review for wards between 17 years, 5 months and 18 years of age
(2) Hearing to terminate jurisdiction (any age)



Faculty Contact Information

- Aleta Beaupied, *Senior Attorney, AOC Center for Families, Children and the Courts, Beaupied*, Aleta.Beaupied@jud.ca.gov
- Christine Kouri, *Principal Deputy County Counsel, County of Los Angeles*, Ckouri@counsel.lacounty.gov
- Lindsay Elliott, *Attorney, The Children's Law Center of California*, Elliottl@clcla.org
- Hon. Marilyn Kading Martinez, *Commissioner, Superior Court of California, County of Los Angeles*
mmartinez@lasuperiorcourt.org
- Susan Abrams, *Attorney, Children's Law Center of California*, Abramss@clcla.org