

**TUOLUMNE COUNTY PROTOCOL FOR
WELFARE AND INSTITUTIONS CODE SECTION 241.1(e)
DUAL STATUS YOUTH
(AB 129)**

BACKGROUND

Welfare and Institutions Code (W & I Code) Section 241.1 requires that when a minor appears to come within the description of both Section 300 and Section 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 the protection of society. California Rules of Court, Rule 5.512, specifies many of the procedures and guidelines to be used to arrive at a joint recommendation as to the child's status (Wardship, Dependency or Dual Status).

The Probation Department and Child Welfare Services completed a 241.1 Protocol which was signed on August 16, 2004, by the Chief Probation Officer and the Director of Health and Human Services. This Protocol outlines the steps to be followed if at anytime while providing services to a child, the Court, Child Welfare Services or the Probation Department becomes aware a child appears to come within the description of both Sections 300 and 602 of the Welfare and Institutions Code.

On January 1, 2005, Welfare & Institutions Code 241.1 was amended to include subdivision (e) which states that the Probation Department and Child Welfare Services, in consultation with the Presiding Judge of the Juvenile Court, could create a jointly written protocol to jointly assess and produce a recommendation that the youth be designated as a dual status youth, allowing the youth to be simultaneously a dependent child and a ward of the court.

**DETERMINATION OF WHETHER CHILD APPEARS TO COME WITHIN
DESCRIPTION OF SECTION 300 AND/OR SECTION 602**

- Tuolumne County Child Welfare Services (CWS) shall determine if the child might fall within the description of W & I Code Section 300.
- Tuolumne County Probation Department shall determine if the child might fall within the description of W & I Code Section 602.
- If Probation and CWS conclude a child might fall within the description of both W & I Code Sections 300 and 602 (referred to herein as a "potential dual status minor"), the procedures of W & I Code Sections 241.1, 241.2, Rule 5.512 and this protocol shall apply.

TERMS

- A “dual status minor” is a minor who is adjudicated both a ward and dependent of the Juvenile Court. A “potential dual status minor” is a minor who Probation and CWS determine appears to come under the description of both Sections 300 and 602 and therefore might properly be adjudicated as either a ward and/or a dependent of the Juvenile Court.
- A “special status minor” is a potential dual status minor about whom Probation and CWS agree that one or the other agency should assume sole jurisdiction according to W & I Code 241.1(a).

DESCRIPTION OF DUAL STATUS DESIGNATION

- Dual status designation is designed for youth who require simultaneous designation in both W & I Code 602 ward and W & I Code 300 dependency status. It serves as the third possible recommendation in the W & I Code 241.1 joint assessment report.
- A dual status youth may be a dependent of the Court who commits a delinquent act requiring the formal intervention of probation rehabilitative services. Upon completion of the probation services, the youth will be returned to the primary care of DSS.
- A dual status youth may be a ward of the Court who is no longer in need of formal probation services and who has no suitable parent, guardian or responsible adult able or willing to provide proper care and supervision of the youth.
- Dependency and/or wardship may be terminated once the transition is complete and the youth’s needs and safety are no longer in question, and/or the youth no longer poses a threat to him/herself and the community.

TIMELINESS OF JOINT ASSESSMENT REPORT AND HEARING PURSUANT TO RULE 5.512

- If the minor is detained, the joint assessment 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 joint assessment report will be prepared and a hearing held on the report as soon as possible within thirty calendar days of the date of the petition.

- In all cases, notice of the hearing and the joint assessment report will be provided to the parties five calendar days prior to the joint assessment hearing.
- Both Probation and CWS will sign all joint assessment reports.
- The hearing on the joint assessment report will be held prior to the Jurisdiction Hearing, unless the Court directs otherwise. The Court, in its discretion, may delay hearing on the joint assessment report and ruling thereon, until findings have been made at the Jurisdiction Hearing or Hearings.

JOINT ASSESSMENT SITUATIONS

Pre-petition

In situations in which a minor is not currently under the supervision of either department and is brought to the attention of either Probation or CWS for consideration of jurisdiction, the responsible probation officer or social worker will determine the appropriate status of the child. In circumstances which are not clear-cut, the following procedures apply:

- **Minor Evaluated by Probation Department.** If the Probation Officer determines there is an indication of abuse or neglect, that fact will be reported by telephone to CWS and/or the appropriate law enforcement agency for a concurrent investigation. A suspected child abuse report form will be submitted to CWS within thirty-six hours. CWS will report its preliminary conclusions to Probation following the investigation completed within the state mandated time frames. Probation and CWS will proceed with the filing of a petition.
- **Minor Evaluated by CWS.** Should the minor initially be brought to the attention of CWS, the responsible social worker will begin an investigation following the state mandated time frames to determine if the minor comes within any of the provisions of Section 300.
 - If it appears that the minor does not fall within the description of Section 300, but may fall within Section 602, the Social Worker will immediately inform the Probation Officer, to determine the appropriate status of the minor.
 - If it appears that the minor is a potential dual status minor, the social worker will immediately inform the Probation Officer and Probation and CWS will proceed with the filing of a petition.

Filing a petition

- If the minor has been determined not to be a potential dual status minor, the appropriate agency will file a petition, if necessary.

- If the child is determined to be a special status minor, the agency which Probation and CWS agree should take jurisdiction of the minor will file a petition and be lead agency for preparation of the joint assessment report.
- If probation and CWS do not agree on the appropriate disposition of a special status minor, the agency with custody of the child will file a petition and be lead agency for preparation of the joint assessment report. The Court may direct that CWS and Probation file a petition and that the case proceed as a delinquency or dependency case.
- If CWS and Probation have determined the child is most appropriately a dual status minor, each agency will follow protocol for the filing of a petition. The agency which Probation and CWS agree should be the lead agency, will prepare the joint assessment report. Assuming jurisdiction is found under Section 300 and Section 602, the Court shall determine the appropriate status, including dual status, for the minor.

Post-Filing and Pre-Disposition Hearing

Where a dependency or delinquency petition has been filed but no Disposition Hearing held, whether or not a Jurisdiction Hearing has been held, and it appears to the parties that the case might more appropriately be handled under the other system, the following procedures apply.

Section 602 Petition Filed

- Probation or any other party will file a child abuse report with CWS detailing the specific facts that would support involvement by CWS.
- CWS will investigate the report following the state mandated time frames and provide its response to Probation as soon as possible. There are two possible outcomes of the investigation.
 - The situation is not appropriate to assert jurisdiction. If CWS determines the facts will not support a dependency petition or that offering voluntary services is the most appropriate course of action, no further action is necessary. (Parties proceed pursuant to W & I Code Section 329).
 - There is evidence to support jurisdiction under Section 300. In this instance, the parties will proceed pursuant to the following paragraph.

Probation will be the lead agency to prepare the joint assessment report. Probation and CWS will recommend that the minor be declared a ward, dependent or dual status. CWS will file a petition if the Court determines that the most appropriate disposition for the child is a dependent or, where Probation and CWS so recommend, as a dual status minor.

Section 300 Petition Filed

- CWS or any party will provide Probation the specific facts that would support proceeding under Section 602.
- Probation will immediately investigate those facts and provide its response to CWS as soon as possible. There are two possible outcomes for the investigation.
 - The situation is not appropriate to assert jurisdiction. If Probation determines that facts do not support jurisdiction pursuant to W & I Code Section 602, no further action is necessary.
 - There is evidence to support jurisdiction under Section 602. In this instance, the parties will proceed pursuant to the following paragraph.

CWS will be the lead agency to prepare the joint assessment report. Probation and CWS will recommend that the minor be declared a ward, dependent or dual status. Probation will request a petition if the Court determines that the most appropriate disposition for the child is as a Ward or, where Probation and CWS so recommend, as a dual status minor.

Post-Disposition

In situations in which either Probation or CWS, intend to file a petition regarding a minor already under the jurisdiction of the Court, the agency intending to file the petition will notify the agency with jurisdiction as soon as possible of its intention to file the petition. The agency requesting action is the lead agency for preparation of the joint assessment report. If not already prepared, the Court will order a joint assessment report at the initial hearing. The Court shall determine the appropriate status for the minor, including dual status, where Probation and CWS so recommend.

DECISION CRITERIA

In determining the type of petition to be filed each department shall give consideration to the following, which will be included in the joint assessment 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 functioning at school.
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 is available to assist the child and his/her family.
11. A statement by any counsel currently representing the child.
12. A statement by any Court Appointed Special Advocate currently appointed for the child (in those cases where the child is an out-of-county dependent or ward and a CASA program has been implemented in that county).
13. Records of other agencies which have been involved with the minor and his/her family.
14. The advantages of having both dependency and delinquency services available for the minor and the minor's family.
15. Whether CWS or Probation should be the lead agency if both recommend dual status for the minor.

Joint assessment reports will discuss, but need not be limited to, these factors. They will also contain a recommendation from Probation and from CWS as to which status, including dual status, will serve the best interests of the minor and the protection of society.

CONFLICT RESOLUTION

Both agencies commit to resolving any issues at the lowest staffing level possible. Therefore, conflict resolution will follow the protocol outlined in the Tuolumne County 241.1 Protocol dated August 16, 2004, and signed by the Chief Probation Officer and the Director of Health and Human Services Agency.

CASE MANAGEMENT FOR DUAL STATUS MINORS

For dual status minors, the parties hereby adopt a lead court/lead agency system as defined in W & I Code 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, visiting the minor monthly, scheduling Court hearings, preparing Court reports and providing services to the minor and the minor's family in concert with the assistance of the assisting agency. The most restrictive requirements of the dependency or delinquency systems shall apply to the management of the case. The lead and assisting agencies will cooperate and agree on an appropriate case plan for the minor and the family. At no time shall services be duplicated.

Client contacts and services shall be provided by the designated lead agency. On a monthly basis, the lead agency (probation officer or social worker) shall meet with the non-lead agency and shall obtain information regarding case contacts and services for entry in their respective data systems.

The Court shall conduct joint dependency/wardship Six Month Review 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.

Should it appear appropriate for the assisting agency to assume the lead agency role, CWS 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 assign that agency as the 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.

Nothing in this protocol shall authorize Child Welfare Services to make a detention decision resulting in the placement of a youth in a locked probation detention facility. In the event the youth is in violation of the Court order and/or requires detention in a locked facility, the case must be reviewed by a probation supervisor. If approved, a W & I Code 777 Notice of Hearing/Violation of Court Order petition may be filed and authorization given to place the youth in Juvenile Hall detention.

JUDICIAL COMMUNICATION & PROCEDURES

Whenever possible, the Superior Court of the State of California, County of Tuolumne shall continue its established practice of having one Judge hear all W & I Code 300 and 602 cases. If for any reason, more than one judicial officer should become involved in a dual status or potential dual status case, said 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 pursuant to W & I Code 727.2.

Upon the filing of a W & I Code 300 or 602 Petition, the Court Clerk shall conduct a search of the Court's records, including family law, paternity, and civil and criminal domestic violence cases, to determine if any other files exist with respect to said child and/or family. By local form and/or local rule, the Court may require a party filing a W & I Code 300 or 602 Petition to provide notice that another 300 or 602 Petition has been, or may soon be filed with respect to the minor, or that the minor is otherwise possibly subject to dual status.

Appointment of Counsel

- All parties agree the Office of the County Counsel shall solely represent the Department of Social Services on issues specifically related to juvenile dependency matters and cases dealing with dual status youth, and that a Deputy County Counsel shall meet and confer with the Probation Department, the Department of Social Services, and any appointed counsel in dual status cases, as required.
- Depending upon whether the initial petition is filed under W&I Code Section 602 or W&I Code Section 300, counsel will be appointed pursuant to the existing protocol.

- In any subsequent Court appearances involving dual status cases, the Court will relieve counsel, or appoint necessary counsel, to eliminate any conflicts.

DATA COLLECTION

W & I Code 241.1(e) (4) requires that counties who are implementing dual status cases shall have a plan to collect data. The following specifies the requirement imposed by Judicial Council in meeting this mandate:

- The Judicial Officer who determined the designation of the lead court shall complete the "Initial Entry Individual Case Form" provided by the Administrative Officer of the Courts (AOC).
- The Court Clerk's Office shall be responsible for completing the "Initial Entry Summary Form" provided by the AOC and shall submit it to the AOC on a quarterly basis.
- On any case that is determined to be dual status, the lead agency will provide the Court Clerk with the statistical information necessary to complete the forms which must be submitted to the AOC.

IMPLEMENTATION AND EVALUATION

The parties shall conduct a joint evaluation of this Agreement once every two years from the effective date of the Agreement, or sooner if requested in writing by any of the undersigned persons.

AGREEMENT

The Tuolumne County Department of Child Welfare Services, the Tuolumne County Probation Department and the Superior Court of the State of California, County of Tuolumne, do hereby adopt the aforesaid jointly developed protocol to allow the Tuolumne County Probation Department and Tuolumne County Child Welfare 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.

Executed this _____ day of _____, 200____, at Sonora, Tuolumne County, California

Ann Connolly, Director
Tuolumne County Human Services Agency

Shirlee Juhl, Chief Probation Officer
Tuolumne County Probation

Eric L. DuTemple
Presiding Judge
Superior Court of California
County of Tuolumne

APPROVED:

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