

<p>California Department of Justice DIVISION OF LAW ENFORCEMENT Larry J. Wallace, Director</p> 	<h1>INFORMATION BULLETIN</h1>	
<p><i>Subject:</i> Probation Officer Obligations for Probation Youth in Foster Care</p>	<p><i>No.</i> DLE-2016-04</p>	<p><i>Contact for information:</i> Michael Newman, Director Bureau of Children's Justice (213) 897-2642</p>
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**TO: ALL PROBATION DEPARTMENTS**

The purpose of this Information Bulletin is to clarify probation officers' legal obligations under existing state and federal laws with respect to foster youth<sup>1</sup> and non-minor dependents ("NMDs")<sup>2</sup> who come within the jurisdiction of the Probation Department. Probation officers have specific obligations regarding the placement of and services for foster youth and NMDs who are in the probation system. These obligations apply to all foster youth within the jurisdiction of probation, including those "dual status youth" who are both within the jurisdiction of the dependency system (Welf. & Inst. Code, § 300 et seq.) and the delinquency system (Welf. & Inst. Code, § 602 et seq.).<sup>3</sup> These foster youth have rights under both Sections 300 et seq. and 602 et seq. of the Welfare and Institutions Code, and probation officers have obligations that include identifying relatives for placement and recommending and implementing least restrictive placements for foster youth within probation.

In this Information Bulletin, the DOJ emphasizes that state law mandates that probation officers must comply with the obligations identified below for foster youth: (a) during the initial determination regarding placement; (b) who need placements where a court has determined a custodial setting is not appropriate; (c) after disposition; and (d) to effectuate the termination of jurisdiction. In addition, while we encourage probation officers to consult and work with other knowledgeable agencies and entities to complete these obligations, the DOJ stresses that probation officers, and not child welfare agencies, are accountable for complying with these obligations for foster youth who are within the responsibility of the Probation Department. This Information Bulletin also highlights resources that probation officers may utilize to comply with their obligations.

This Information Bulletin does not create or confer any rights for or on any person or entity, nor does it impose any requirements beyond those required under applicable law and regulations.

Please direct your questions regarding this Information Bulletin to Michael Newman, Director of the Bureau of Children's Justice in the California Department of Justice, at (213) 897-2642 or michael.newman@doj.ca.gov.

<sup>1</sup> Throughout this Information Bulletin, "youth" refers to juveniles under the age of 18.

<sup>2</sup> A "non-minor dependent" is an individual who is 18 years of age or older and still subject to the juvenile court's transition jurisdiction. (Welf. & Inst. Code, § 450, subd. (c).)

<sup>3</sup> Although the Welfare and Institutions Code provisions covering the delinquency system start at Section 601, that section covers issues related to truancy are not within the scope of this Information Bulletin.

## **ONGOING OBLIGATIONS**

### **1. Obligation for Care and Treatment of Youth in Probation**

A probation officer has an obligation to provide youth within the jurisdiction of probation with “care, treatment, and guidance consistent with their best interest and the best interest of the public.” (Welf. & Inst. Code, § 202, subd. (b); see also Welf. & Inst. Code, § 202, subd. (d).)

### **2. Preference for Placement with Relatives**

If at any stage in a proceeding the probation officer makes a recommendation to remove a youth from the custody of his or her parents or guardians, the probation officer must give preference for the youth to be placed with a relative if: (a) “such placement is in the best interests of the minor;” and (b) the placement “will be conducive to reunification of the family.” (Welf. & Inst. Code, §§ 281.5 & 16000, subd. (a).)

### **3. Least Restrictive Placement and Foster Youth’s Best Interests and Special Needs**

The probation officer has an obligation to: (a) consider a “placement in the least restrictive, most family-like environment that promotes normal childhood experiences” throughout the foster youth’s involvement with the delinquency system; and (b) ensure “the selection of a safe placement setting that is in the child’s best interests and meets the child’s special needs.” (See Welf. & Inst. Code, § 706.6, subs. (c)(2)(B) & (d)(2).)

### **4. Probation Youth in Foster Care Placements Have the Same Rights as All Foster Youth**

Both the delinquency system and the dependency system share the same goals of “preserving and strengthening family relationships” in the placement of and services for foster youth. (See, e.g., *In re W.B., Jr.* (2012) 55 Cal.4th 30, 45; see also Ed. Code, § 48853.5, subd. (a) (defining “foster child” as “a child who has been removed from his or her home ... [and] is the subject of a petition filed under Section 300 or 602 of the Welfare and Institutions Code”).)

## **INITIAL DETERMINATION REGARDING PLACEMENT**

### **5. Investigation of Relatives**

If upon detention of the youth there is reason to believe the youth is at risk of entering foster care placement, then the probation officer must conduct “as early as possible,” and no later than 30 days after detention, an investigation in order to identify and locate all grandparents, adult siblings, and other relatives of the youth. (Welf. & Inst. Code, § 628, subs. (d)(1) & (2).) As part of that investigation, a probation officer has the following obligations:

- The probation officer must provide written and, when appropriate, oral notification to the youth’s adult relatives within 30 days of the youth being detained stating: (a) the child has been removed from the custody of his or her parents or guardians; and (b) an explanation of options for participation in the child’s care and placement.<sup>4</sup> The probation officer should not provide notice to relatives with a history of family or domestic violence. (Welf. & Inst. Code, § 628, subd. (d)(2).)

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<sup>4</sup> For Native American youth, the probation officer also has the responsibility to follow the requirements in the Indian Child Welfare Act (“ICWA”). Under ICWA, a probation officer must ask “at the first contact” whether a child is Native American. (Cal. Dept. of Social Services (“CDSS”), All County Letter No. 08-02, Jan. 30, 2008, at p. 4 (hereinafter “ACL 08-02”).) If the probation officer knows or has reason to believe that the youth is Native American, the probation officer must make further inquiries regarding the status of the child and notify

- The probation officer must use “due diligence” in investigating the names and locations of relatives and providing notice to relatives. (Welf. & Inst. Code, § 628, subd. (d)(3); see also 42 U.S.C. § 671(a)(29).) “Due diligence” includes:
  1. Asking the child age-appropriate questions, in a manner that is mindful of the child’s best interests, about relatives important to the child;
  2. Obtaining information regarding the locations of the child’s relatives;
  3. Reviewing the child’s child welfare and/or probation case file for any information regarding relatives;
  4. Telephoning, e-mailing, or visiting all identified relatives;
  5. Asking located relatives for the names and locations of other relatives;
  6. Using the Internet to locate relatives; and
  7. Developing tools, including a family tree, family map, or other diagram.
 (Cal. Rules of Court, rule 5.790(g).)
  
- If the probation officer has reason to believe there is a risk of the youth entering foster care, the probation officer must make “reasonable efforts ... to prevent or eliminate the need for removal of the minor from his or her home.” (Welf. & Inst. Code, § 628, subd. (b); see also 42 U.S.C. § 671(a)(15)(A).) <sup>5</sup> If the probation officer believes that services would be beneficial to the family “to prevent or eliminate the need for removal of the minor from his or her home,” then the probation officer must make referrals for such services. (Welf. & Inst. Code, § 653.5, subd. (a).)
  
- The probation officer must submit a written report to the court explaining: (a) “[t]he reasons why the minor has been removed from the parent’s custody;” (b) “[a]ny prior referrals for abuse or neglect of the minor or any prior filings regarding the minor pursuant to Section 300;” (c) “[t]he need, if any, for continued detention;” (d) “[t]he available services that could facilitate the return of the minor to the custody of the minor’s parents or guardians;” and (e) “[w]hether there are any relatives who are able and willing to provide effective care and control over the minor.” (Welf. & Inst. Code, § 635, subd. (d).)

## 6. Protocols for “Dual Status” Youth

Generally, a petition must not be filed that would make a youth simultaneously both a dependent child (under Welf. & Inst. Code, § 300 et seq.) and a ward of the court (under Welf. & Inst. Code, § 602 et seq.). (Welf. & Inst. Code, § 241.1, subd. (d).) When a youth is a dependent child, a petition may only be filed to place the child within delinquency jurisdiction if there is a jointly created protocol by the probation department and child welfare services (“CWS”) agency for the county allowing for joint recommendations and placement within both the dependency and delinquency systems. (Welf. & Inst. Code, § 241.1, subd. (e).) Youth who are

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that child’s parents or legal guardian, Indian custodian, and the tribe or tribes with whom the child is potentially affiliated. (*Id.* at 4-5.) If the child is at risk of entering foster care, is in foster care, or adoption is being considered, the probation officer has an affirmative ongoing duty to inquire about the status of the child. (*Id.* at 4.)

<sup>5</sup> For Native American children, a probation officer has a greater responsibility to conduct “active efforts” in providing remedial and rehabilitative services and programs “designed to prevent the breakup of the Indian family.” (Welf. & Inst. Code, § 361.7, subd. (a); ACL 08-02 at 10.) Those “active efforts” must “account [for] the prevailing social and cultural values, conditions, and way of life of the Indian child’s tribe.” (Welf. & Inst. Code, § 361.7, subd. (b); ACL 08-02 at 11 (emphasis omitted).)

For more resources on probation officer responsibilities for Native American youth, refer to ACL 08-02 and the California Department of Social Services All County Information Notice No. I-29-16, May 2, 2016.

simultaneously subject to the laws of the dependency and delinquency systems are often known as “dual status” youth.<sup>6</sup> (*Id.*)

The probation officer responsible for a “dual status” youth is required to work with CWS in conducting a joint assessment to determine whether it would “serve the best interests of the minor and the protection of society” to move the youth into the jurisdiction of probation (often referred to as “cross-over” youth). (Welf. & Inst. Code, § 241.1, subd. (a); Cal. Rule of Court, rule 5.512(a).) The probation officer must complete this assessment “as soon as possible after the child comes to the attention” of either probation or CWS. (Cal. Rule of Court, rule 5.512(a)(1).) In making this assessment, the probation officer must follow a joint protocol between the responsible probation and CWS departments to coordinate the assessment and recommendation for the youth. (Welf. & Inst. Code, § 241.1, subd. (b)(1).) That protocol must include, but not be limited to, consideration of the following twelve criteria that a probation officer must consider when assessing which jurisdiction is appropriate:

1. Nature of the referral;
2. Age of the youth;
3. History of any physical, sexual, or emotional abuse of the child;
4. Prior records of the youth’s parents for child abuse;
5. Record of any out-of-control or delinquent behavior by the youth;
6. The parents’ cooperation with the youth’s school;
7. The youth’s functioning at school;
8. The nature of the youth’s home environment;
9. The records of other agencies that have been involved with the youth and his or her family;
10. Any services or community agencies that are available to assist the child and his or her family;
11. A statement by any counsel representing the child; and
12. A statement by any Court Appointed Special Advocate representing the child.

(Welf. & Inst. Code, § 241.1, subd. (b)(2); Cal. Rule of Court, rule 5.512(d).)

If the departments do not agree on a status recommendation, then the responsible probation and CWS departments must each file a separate recommendation with the juvenile court, and the court must determine which status is appropriate. (Cal. Rule of Court, rule 5.512(d); see also Welf. & Inst. Code, § 241.1, subd. (a).) A court’s decision on jurisdiction may be reversed if it is based on reports that do not: (a) follow these protocols; and (b) demonstrate consideration of the required criteria in making a recommendation.<sup>7</sup>

## **DISPOSITION**

Within 60 calendar days after a foster youth is detained, or at the disposition hearing, whichever is first, the probation officer must: (a) make a recommendation regarding placement; and (b) complete a case plan. (Welf. & Inst. Code, §§ 636.1 & 706.6.)

### **7. Placement Recommendation to the Juvenile Court**

Following the “least restrictive” preferences described in Section 8 below, before disposition, a probation officer must consider the recommendation by the child and family team in making a placement recommendation for

<sup>6</sup> In single status counties, a probation officer may provide informal services to dependent youth, even without a declaration of wardship. (Welf. & Inst. Code, § 654.)

<sup>7</sup> See, e.g., *In re Joey G.* (2012) 206 Cal.App.4th 343, 349-50 (reversing and remanding court’s jurisdiction determination where there was only a report by probation, and not by the social worker, and the report did not address all of the requisite criteria); *In re Marcus G.* (1999) 73 Cal.App.4th 1008, 1014-15 (reversing order dismissing the dependency petition where the court was not presented with a joint assessment by probation and child welfare departments that accounted for all of the necessary criteria).

the foster youth in the case plan. The probation officer must also include the following in the case plan in connection with the placement recommendation:

- A description of the circumstances that led to the child coming under the supervision of the Probation Department and into foster care;
- Documentation of the pre-placement assessment of the child and family's strengths and services needs, the preventive services provided, and the reasonable efforts to prevent an out-of-home placement;
- A description of the type of home or institution where the child will be placed, including the reasons for the placement decision and a discussion of the safety and appropriateness of the placement, which should be one in "closest proximity to the minor's home;"
- The reasoning for any inconsistencies between the placement recommendation and the recommendation of the child and family team;
- The recommendation of the least restrictive placement that meets the child's needs according to the order of priority; and
- If foster care is recommended, a completed social study.

(Welf. & Inst. Code, §§ 706.5 & 706.6, subds. (b)-(d).)

Placements in distant or out-of-state facilities are placements of last resort. (Welf. & Inst. Code, §§ 706.6, subd. (d) & 727.1, subd. (b)(1).) If the probation officer recommends a placement that is a "substantial distance from the home of the minor's parent or legal guardian" or "out-of-state," the probation officer must document and explain in the case plan the rationale for the placement including: (a) "the reasons why the placement is the most appropriate and is in the best interest of the minor;" and (b) for out of state placements, the "in-state services or facilities that were used or considered and why they were not recommended." (Welf. & Inst. Code, § 706.6, subd. (i).) If a probation officer fails to provide evidence that in-state facilities or programs were "determined to be unavailable or inadequate to meet the needs of the minor," then the out-of-state placement may be reversed.<sup>8</sup>

## **8. Least Restrictive Alternatives for Placements for Foster Youth**

As part of the obligation for implementing placements, a probation officer has an obligation to place every foster youth in "the least restrictive, most family-like environment that promotes normal childhood experiences . . . that meets the minor's best interests and special needs." (Welf. & Inst. Code, § 706.6, subd. (c)(3)(B); see also 42 U.S.C. § 675(5)(A).) The probation officer must also consider the proximity of the placement to the home of the youth's parents in order to facilitate the goals of reunification and rehabilitation. (*Ibid.*)<sup>9</sup>

The probation officer must consider foster care placements according to the following order of priority:<sup>10</sup>

1. Relatives, nonrelated extended family members, and tribal members;
2. Foster family homes and certified homes or resource families of foster family agencies;

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<sup>8</sup> See *In re Khalid B.* (2015) 233 Cal.App.4th 1285, 1289-91 (reversing out-of-state placement order because there was no evidence that probation considered any California placements).

<sup>9</sup> See *In re Nicole H.* (2016) 244 Cal.App.4th 1150, 1159-60 (reversing placement order where probation included no evidence in the record that the placement far away from the parent's home was in the best interests of the youth).

<sup>10</sup> The order of priority in this section reflects changes made pursuant to Continuum of Care Reform (CCR) that reforms placement and treatment options for foster youth. (Assem. Bill No. 403, approved by Governor, Oct. 11, 2015, Assem. Final Hist. (2015-2016 Reg. Sess.)) CDSS is currently working with stakeholders on regulations to implement CCR, which may change probation officers' obligations with respect to foster youth. Probation officers should consult the CCR regulations once they are finalized.

3. Treatment and intensive treatment certified homes or resource families of foster family agencies, or multidimensional treatment foster homes or therapeutic foster care homes; and
4. Group care placements in the following order of preference:
  - a. Short-term residential treatment centers (starting January 1, 2017);<sup>11</sup>
  - b. Group homes;
  - c. Community treatment facilities; and
  - d. Out-of-state residential treatment.

(Welf. & Inst. Code, §§ 706.6, subd. (d), 727, subd. (a)(4), 727.1, subd. (a).)<sup>12</sup>

## 9. Development of a Case Plan

If the foster youth is detained, and the probation officer believes that the youth can safely return home with “reasonable efforts” by the youth, the youth’s parent(s)/guardian(s), and the probation officer, then the probation officer must document in the case plan “the issues and activities associated with those efforts” to safely return the youth home, including the identification of services that will be provided toward those efforts. (Welf. & Inst. Code, § 636.1, subd. (b).) In addition, the probation officer must also incorporate the following in the case plan:

- Assurances that the probation officer accounted for the “educational stability of the child” when considering the appropriateness of the educational setting and the proximity of the school to the placement;
- Assurances that the probation officer coordinated with the appropriate local educational agency to ensure the child remains in the same school or that the youth will be immediately enrolled at a new school with all educational records transferred;
- Specific time-limited goals and related activities designed either to enable the youth to return home or obtain permanent placement;
- The projected date the case plan objectives will be completed and the date services will be terminated;
- A schedule for visits between the youth and his or her family or an explanation of why no visits will occur;
- When placement is in a foster home, group home, or other child care institution that is a “substantial distance” from the home of the youth’s parent/guardian or out-of-state, an explanation why the placement is most appropriate and in the youth’s best interests;
- Identification of whether the youth has siblings, and if so, a description of efforts to place siblings together unless placement with siblings is determined not to be in the best interest of one or more of the siblings;
- A schedule of visits between the youth and the probation officer;
- Health and education information about the youth;
- A statement that the youth and parent/guardian had an opportunity to participate, review, and sign the case plan; and
- For youth aged 16 or older, a description of the programs and services to help the youth prepare to transition from foster care to “successful adulthood.”

(Welf. & Inst. Code, § 706.6.)

At each status review hearing, the probation officer must submit a social study and an updated case plan that follows the requirements contained in Section 706.5, subdivision (c) of the Welfare and Institutions Code.

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<sup>11</sup> Placements longer than 12 months must be approved by the chief probation officer, or his or her designee. (Welf. & Inst. Code, § 727.1, subd. (a)(4)(E).)

<sup>12</sup> These preferences are subject to and consistent with ICWA, and should be used for Native American children. (*R.R. v. Superior Court* (2009) 180 Cal.App.4th 185, 205.)

## **10. Implementation of Placement Order**

After the probation officer submits the case plan with the placement recommendation, the court may issue a placement order. Once the juvenile court issues a placement order, the probation officer has the “sole responsibility” to determine the appropriate placement for the foster youth. (Welf. & Inst. Code, § 727, subd. (a)(4).) As part of that responsibility, the probation officer must do the following:

- Develop a case plan within 30 days if the court orders foster care placement that was not previously recommended by the probation officer;
- Consider any recommendations of the child and family; and
- Determine the appropriate placement in the least restrictive environment that meets the child’s needs according to the order of priority.

(Welf. & Inst. Code, §§ 706.5, subd. (b), 727, subd. (a)(4), 727.1.)

At each subsequent review hearing, the probation officer must explain to the juvenile court the steps that have been taken to identify an appropriate placement for the youth. (Welf. & Inst. Code, § 737, subd. (b).) If the court determines that the probation officer failed to make reasonable efforts “to identify a specific, appropriate, and available placement,” the court shall order the probation officer to “assess the availability of any suitable temporary placements or other alternatives to continued detention.” (Welf. & Inst. Code, § 737, subd. (d)(1).) Delays caused by “administrative processes” or “convening any meeting between agencies” are not considered reasonable. (Welf. & Inst. Code, § 737, subd. (c).)

## **POST-DISPOSITION**

Probation officers have additional obligations with respect to foster youth following disposition, including recommending and executing a permanency plan, assisting foster youth or NMDs to obtain credit reports, facilitating educational success, and ensuring that foster youth and NMDs are able to access independent living services and programs. Each of these obligations on probation officers are discussed below.

### **Permanent Placements**

#### **11. Reunification Services**

If a foster youth is under the supervision of a probation officer, the juvenile court is required to order that probation officer “to ensure the provision of reunification services,” except in certain circumstances where the court finds that the parent is not fit. The purpose of the reunification services must be “to facilitate the same return of the minor to his or her home” or other permanent placement, and to address the youth’s other needs while in foster care. (Welf. & Inst. Code, § 727.2, subs. (a) & (b).)

#### **12. Permanent Plan or Planned Permanent Living Arrangements**

At the annual permanent placement hearing, first held within a year of the youth entering foster care, the probation officer must prepare a written social study and an updated case plan with a recommendation for a permanent plan and the identification of efforts made toward achieving that permanent placement. (Welf. & Inst. Code, § 727.3, subd. (a)(1); see also Welf. & Inst. Code, § 706.6, subs. (f) & (m).) The probation officer must take “reasonable efforts to finalize the permanency plan” for the foster youth. (45 C.F.R. § 1356.21(b)(2)(i) (2016); Welf. & Inst. Code, § 727.2, subd. (e)(2).)

**Youth Under 16:** If the youth is under 16, the permanent plan must be: (a) return home; (b) adoption; (c) legal guardianship; or (d) placement with a fit and willing relative.<sup>13</sup> The case plan must identify any barriers to achieving that permanent plan and the steps being taken and services provided to address those barriers. (Welf. & Inst. Code, § 706.6, subd. (n)(1); ACL 16-28 at 2.)

**Youth Over 16:** As with youth under 16, the probation officer must first consider reunification, adoption, legal guardianship, or placement with a relative. If the youth is over 16, after considering those options, the probation officer may recommend a planned permanent living arrangement only as a last option. (Welf. & Inst. Code, § 706.6, subd. (n)(2); ACL 16-28 at 1-2; see also 45 C.F.R. § 1356.21(h)(3) (2016).)

To facilitate a guardianship for a youth within the jurisdiction of probation, the Welfare and Institutions Code directs the probation officer to recommend to the juvenile court that it “establish a guardianship of the person of the minor and appoint a specific adult to act as guardian.” Upon such a recommendation, the juvenile court must set a hearing to consider the recommendation. (Welf. & Inst. Code, § 728, subd. (c).)

If the probation officer recommends placement in a planned permanent living arrangement for a youth over 16, the probation officer must include: (a) documentation of “a compelling reason or reasons why termination of parental rights is not in the minor’s best interests;” and (b) the identification of the “intensive and ongoing efforts” to return the youth to one of the preferred permanent placements identified above. (Welf. & Inst. Code, § 706.6, subd. (n)(2); see also 45 C.F.R. § 1356.21(h)(3) (2016).)

In addition, the probation officer must include in every social study report for a youth over 16 in a planned permanent living arrangement:

- The “intensive and ongoing efforts to return the minor to the home of the parent, place the minor for adoption, or establish a legal guardianship,” which includes the use of technology and social media to identify the youth’s biological parents or other family members;
- The steps to “[e]nsure that the minor’s care provider is following the reasonable and prudent parent standard;” and
- The steps to determine that “the minor has regular, ongoing opportunities to engage in age or developmentally appropriate activities,” which include speaking to the youth about such opportunities.

(Welf. & Inst. Code, § 706.5, subd. (c)(7); ACL 16-28 at 2-3.)

### 13. Application for Termination of Parental Rights

A probation officer must file an application to terminate parental rights if the child has been in foster care under the responsibility of the probation officer for 15 of the most recent 22 months unless: (a) the probation officer has documented and determined a “compelling reason”<sup>14</sup> that termination of the parental rights would not be in the youth’s best interests; or (b) the probation officer has not engaged in “reasonable efforts” to timely provide the reunification services identified in the case plan. (Welf. & Inst. Code, § 727.32, subd. (a); see also 45 C.F.R. § 1356.21(i) (2016).) If the juvenile court orders a hearing to terminate the rights of the parent to free

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<sup>13</sup> A “fit and willing relative” is defined as a relative who is “willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian” by the date of a permanent hearing. (Welf. & Inst. Code, § 366.26, subd. (c)(4)(B); CDSS, All County Letter No. 16-28, Apr. 22, 2016, p. 2 (hereinafter “ACL 16-28”).) A probation officer may not remove a child from the home of a fit and willing relative for the sole reason that the relative does not want to adopt the youth if the court determines that removal would be “seriously detrimental to the child’s emotional well-being.” (See *ibid.*)

<sup>14</sup> Examples of “compelling reasons” not to terminate parental rights are found under federal and state legal authority. (45 C.F.R. § 1356.21(h)(3) (2016); Welf. & Inst. Code, § 727.3, subd. (c); Cal. Rule of Court, rule 5.725(d)(2)(C); CDSS, All County Letter No. 00-77, Nov. 17, 2000, p. 2 (hereinafter “ACL 00-77”).)

the youth for adoption, the probation officer supervising the youth must prepare an assessment following each of the requirements identified in Section 727.31, subdivision (b) of the Welfare and Institutions Code.

### **Credit Report Obligations**

#### **14. Credit Report Checks**

When a youth in foster care placement and under the supervision of probation turns 14, and each year thereafter until 18 years of age, the probation officer must inquire whether the youth has any consumer credit history from each of the three major credit reporting agencies (“CRAs”). If the county does not participate in the California Department of Social Services’ (“CDSS”) electronic batch, then the probation officer must request credit reports directly from all three CRAs. The probation officer must also assist NMDs who are within the jurisdiction of the juvenile court with obtaining credit reports from CRAs each year until they turn 21. The credit report must be provided at no cost to the foster youth or NMDs. (Welf. & Inst. Code, § 10618.6; see also 42 U.S.C. § 675(5)(I); Cal. Dept. of Social Services (“CDSS”), All County Letter No. 14-23, Feb. 18, 2014, pp. 2-5 (hereinafter “ACL 14-23”).)

If the foster youth or NMD has a credit report, the probation officer must ensure that the youth “receives assistance with interpreting the credit report and resolving any inaccuracies.” (Welf. & Inst. Code, § 10618.6, subd. (c).) The probation officer may provide that assistance directly or refer the youth or NMD to an agency that provides such services if the probation officer takes care in selecting entities that provide hands-on service. (ACL 14-23 at 5.)<sup>15</sup>

### **Education-Related Obligations**

#### **15. School Transfers**

It is both the responsibility of the local educational agency (“LEA”) and the county placing agency, which includes the county probation department, to ensure the proper and timely transfer between schools of pupils in foster care. (Ed. Code, § 49069.5, subd. (b).) As soon as a probation officer is aware of the need to transfer a pupil in foster care out of his or her current school, the probation officer must notify the appropriate contact at the LEA where the pupil is currently in school, provide the date the pupil will be leaving the school, and request the pupil be transferred. (Ed. Code, § 49069.5, subd. (c).) A probation officer, however, is prohibited from requesting a transfer of a youth in foster care out of a school solely to exempt the pupil from certain graduation requirements. (Ed. Code, § 51225.1, subd. (l)(1).)

#### **16. Case Plan Education Related Responsibilities**

As mentioned above, in developing and updating the foster youth’s case plan, a probation officer must “assur[e] that the placement takes into account the appropriateness of the current educational setting and the proximity to the school” where the child is enrolled at time of placement. (Welf. & Inst. Code, § 706.6, subd. (e)(1).) The probation officer must also coordinate with the LEA to ensure the child remains in the same school, or if not, that the youth is transferred immediately and all pupil records are provided to the new school. (Welf. & Inst. Code, § 706.6, subd. (e)(2).)

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<sup>15</sup> Detailed instructions for requesting credit reports for youth, assisting NMDs in requesting credit reports, providing youth and NMDs with assistance in interpreting the credit reports and curing inaccuracies, and documenting such actions in the youth and NMD’s case plan can be found in ACL 14-23 and CDSS, All County Notice No. 15-98, December 8, 2015.

## 17. Foster Youth Information Sharing

For a comprehensive discussion on the requirements for sharing information regarding foster youth, including foster youth in probation, consult the Dear Colleague Letter: Foster Youth Information-Sharing prepared by the DOJ, CDSS, and California Department of Education (Sept. 1, 2016) available at <https://oag.ca.gov/news/press-releases/attorney-general-kamala-d-harris-issues-new-guidelines-encourage-secure-sharing>.

### Independent Living Services

## 18. Transitional Independent Living Plan and Independent Living Program

The case plan for all dependent individuals 14 and older must include “a written description of the programs and services that will help the child, consistent with the child’s best interests, to prepare for the transition from foster care to successful adulthood.” (Welf. & Inst. Code, § 16501.1, subd. (g)(16)(A)(i); see also 42 U.S.C. § 675(1)(D).) For individuals 16 and older, the case plan must include a transitional independent living plan (“TILP”). The TILP is a “written description of the programs and services that will help the child, consistent with the [youth’s] best interests, to prepare for the transition from foster care to successful adulthood.” (Welf. & Inst. Code, § 16501.1, subd. (g)(16)(A)(ii).) The probation officer must actively work with the youth/NMD and individuals who have been identified as important to the youth/NMD in developing the TILP. The TILP must include the steps that the probation officer is taking to ensure that the youth/NMD achieves a permanent plan. The TILP must be reviewed, updated, and signed by the probation officer and the youth/NMD every six months. (CDSS, Manual of Policies and Procedures, § 31-236: Transitional Independent Living Plan (TILP) (effective Dec. 10, 2004) (hereinafter “§ 31-236”).)

A critical component of the TILP is the mandate on probation officers to: (a) inform foster youth/NMDs about the county’s Independent Living Program (“ILP”); and (b) encourage them to participate in the ILP. (§ 31-236(g).) ILP means “the program administered by counties with oversight by [CDSS] to provide services and activities as described” in the youth or NMD’s TILP to assist and prepare them “to live independently upon leaving foster care.” (CDSS, Manual of Policies and Procedures, § 31-002(i)(1): Definitions (effective Dec. 10, 2004) (hereinafter, “§ 31-002.”) Under federal and state law, youth in foster care and NMDs have the right to attend ILP classes and activities starting at 16 years of age, and under state law, may participate up to age 21. (42 U.S.C. § 677(i)(2); Welf. & Inst. Code, § 16001.9, subd. (a)(16); § 31-002(i)(1).) As part of a probation officer’s ILP-related responsibilities (a comprehensive list of which are in CDSS’ Manual of Policies and Procedures cited within), a probation officer must determine the foster youth or NMD’s ILP eligibility, coordinate with the youth/NMD, ILP coordinators, and other care and service providers, and ensure that the youth/NMD is receiving the services identified in the TILP. (§ 31-236(g); CDSS, Manual of Policies and Procedures, § 31-525: Independent Living Program (ILP) (effective Dec. 10, 2004) (hereinafter “§ 31-525”).)

### TERMINATION OF JURISDICTION

## 19. Transition Jurisdiction

**Under 18:** Delinquency jurisdiction may be modified to transition jurisdiction for an eligible youth between 17 years, 5 months of age and 18. (Welf. & Inst. Code, § 450, subs. (a)(1)(A) & (a)(2)-(4); Cal. Rule of Court, rule 5.814; CDSS, All County Letter No. 11-85, Dec. 15, 2011, pp. 3-4 (hereinafter “ACL 11-85”).) A youth under age 18 and subject to the transition jurisdiction of a juvenile court is a “transition dependent.” (Welf. & Inst. Code, § 450, subd. (b).)

**Over 18:** Individuals between the ages of 18 and 21 are also eligible for modification from delinquency jurisdiction to transition jurisdiction if certain conditions are met. (Welf. & Inst. Code, § 450, subs. (a)(1)(A) & (a)(2)-(4); Cal. Rule of Court, rule 5.813; ACL 11-85 at 4-5.)

For both categories of individuals who are eligible for transition jurisdiction, a probation officer must request a hearing and submit a report to the juvenile court describing whether:

- It is in the individual's best interests for transition jurisdiction to continue;
- The individual "has indicated that he or she does not want juvenile court jurisdiction to continue;" and
- The individual "has been informed of his or her right to re-enter foster care by completing the voluntary re-entry agreement."

(Welf. & Inst. Code, § 607.3, subd. (d); Cal. Rule of Court, rules 5.813 & 5.814.)

A probation officer is responsible for supervising an individual within transition jurisdiction. A probation officer must do all of the following before a hearing to consider termination of transition jurisdiction:<sup>16</sup>

- Ensure the individual's presence in court for the hearing unless appearance was waived or there are documented efforts to locate an individual who did not appear;
- Submit a report to the court that describes "whether it is in the [individual's] best interests to remain under the court's jurisdiction;"
- Submit a 90-day transition plan;
- Ensure that the individual has been informed of his or her options, including the right to re-enter foster care placement up to age 21 and file a petition to resume transition jurisdiction;
- Submit written verification that Section 391, subdivision (e) documents, information, and services have been provided (see below); and
- Provide written verification that the Section 607.5 requirements have been completed regarding the availability of independent living services, and federal and state programs and benefits available for former foster youth.

(Welf. & Inst. Code, § 452, subd. (c); see also Welf. & Inst. Code, §§ 391, subd. (e) & 607.5.)

## **20. Hearing on Termination of Delinquency Jurisdiction for Foster Youth**

Prior to a hearing on the termination of jurisdiction, or at the status hearing closest to the youth's 18th birthday (which must occur no less than 90 days before the birthday), the probation officer must make a recommendation in the report to the court as to whether transition jurisdiction is appropriate for a youth who is in foster care. (Welf. & Inst. Code, § 727.2, subd. (i)(1).) Before termination, the probation officer must satisfy all of the obligations described above for a hearing to consider termination of transition jurisdiction, and also must:

- Ensure the individual had an opportunity to confer with counsel; and
- Include in the report to the court whether the individual: (a) has communicated that he or she does not want juvenile court jurisdiction to continue; and (b) has been informed of his or her rights to re-enter foster care through a voluntary re-entry agreement.

(Welf. & Inst. Code, § 607.3.)

## **21. Documents and Information that Must be Provided at Termination of Jurisdiction for NMDs**

In conjunction with these obligations, the probation officer must ensure and verify that the following documents have been provided to the NMD before jurisdiction is terminated:

- Written information concerning the case—including family history, placement history, whereabouts of siblings;
- Social Security Card;

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<sup>16</sup> Note, that where a county has a Section 241.1 protocol discussed above, the social worker with CWS may be responsible for supervising the individual within transition jurisdiction. (Welf. & Inst. Code, § 241.1, subd. (b)(4)(B).)

- Certified copy of birth certificate;
- Health and education summary, otherwise known as the “Health and Education Passport;”
- Drivers License;
- Letter from the county welfare department that includes the individual’s name and date of birth, the dates during which the individual was within the jurisdiction of the juvenile court, and a statement that the individual was a foster youth in compliance with state and federal financial aid documentation requirements;
- Death certificate of parents, if applicable;
- Proof of citizenship or legal residence, if applicable;
- Advanced health care directive form;
- Judicial Council form that a non-minor would use to file a Section 388(e) petition to resume dependency jurisdiction;
- Written 90-day transition plan; and
- The non-minor’s Medi-Cal Benefits Information Card and written verification that the eligible non-minor is enrolled in Medi-Cal.

(Welf. & Inst. Code, §§ 391, subd. (e) & 607.3, subd. (f).)

In addition, the probation officer must ensure and verify that the following services and information have been provided to the NMD before jurisdiction is terminated:

- Continued and uninterrupted enrollment in Medi-Cal for eligible non-minors;
- Referrals to transitional housing, if available, or assistance in securing other housing;
- Assistance in obtaining employment or other financial support;
- Assistance in applying to and obtaining financial aid for college, vocational training program, or other educational institutions;
- Assistance in maintaining important relationships in the best interests of an individual who was in out-of-home placement for six months or longer after entering foster care; and
- Assistance in accessing the Independent Living Aftercare Program in the county of residence for non-minors 18 to 21 years old and completing voluntary re-entry upon the non-minor’s request.

(Welf. & Inst. Code, §§ 391, subd. (e) & 607.3, subd. (f).)

These requirements must be satisfied for all NMDs who are leaving the system — whether they be youth who left the system when they turned 18 or NMDs who left the system.<sup>17</sup>

## **22. Non-Minor Dependents**

Both transition dependents and NMDs up to the age of 21 are eligible for the extended foster care benefits program if they meet one of five eligibility criteria:

1. “[C]ompleting a secondary education or a program leading to an equivalent credential.”
2. “[E]nrolled in an institution which provides postsecondary or vocational education.”
3. “[P]articipating in a program or activity designed to promote, or remove barriers to employment.”
4. “[E]mployed for at least 80 hours per month.”
5. “[I]ncapable of doing any activities described in subparagraphs (1) to (4), inclusive, due to a medical condition.”

(Welf. & Inst. Code, § 11403, subd. (b); CDSS, All County Letter No. 11-61, Nov. 4, 2011, pp. 3-8.) The probation officer is responsible for working with the NMD to ensure that the eligibility criteria are satisfied and documented in a case plan or TILP. (Welf. & Inst. Code, § 11403, subd. (c).)

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<sup>17</sup> *In re Shannon M.* (2013) 221 Cal.App.4th 282, 298 fn. 12.

A NMD in foster care who is completing his or her probation term is still eligible for extended foster care benefits so long as: (a) the NMD is on an order for foster care placement that occurred no later than the NMD's 18<sup>th</sup> birthday and the NMD is not yet 21 years old; and (b) the NMD is participating in, or is in an agreement, to satisfy one of the five extended foster care criteria identified above. (ACL 11-85 at 6.) In addition, when determining placements for NMDs within the jurisdiction of probation, the probation officer may consider an approved supervised independent living setting as defined in Section 11400 of the Welfare and Institutions Code. (Welf. & Inst. Code, § 727, subd. (a)(4)(G).)

A NMD must also sign a mutual agreement with a probation officer, which specifies that the NMD is voluntarily staying in foster care. (Welf. & Inst. Code, § 11403, subd. (d).) NMDs within transition jurisdiction have the legal authority of adults to make all decisions regarding educational rights, health and medical treatment, and records. (ACL 11-85 at 6.) NMDs maintain their status until they reach age 21 or transition jurisdiction is terminated. (See Welf. & Inst. Code, § 388, subd.(e)(1).) If the juvenile court terminates transition jurisdiction before a NMD reaches age 21, the court retains general jurisdiction to "allow for the filing of a petition to resume juvenile court transition jurisdiction." (Welf. & Inst. Code, § 452, subd. (d); see also Welf. & Inst. Code, § 388, subd. (e).)

For comprehensive information regarding supervising agencies' obligations with respect to NMDs, please consult the following ACLs from CDSS:

- All County Letter No. 11-15: New Kinship Guardianship Assistance Payment (Kin-Gap) Program Requirements, January 31, 2011;
- All County Letter No. 11-61: Extended Foster Care (EFC), November 4, 2011;
- All County Letter No. 11-69: Extension of Foster Care Beyond Age 18: Part One, October 13, 2011;
- All County Letter No. 11-77: Extension of Foster Care Beyond Age 18: Part Two (Placement), November 18, 2011;
- All County Letter No. 11-78: California Work Opportunity and Responsibility to Kids: Extending Benefits to Non-Minor Dependents, November 30, 2011;
- All County Letter No. 11-85: Extension of Foster Care Beyond Age 18: Part Three (Probation), December 15, 2011;
- All County Letter No. 11-86: Extension of Kinship Guardianship Assistance Payment (Kin-Gap) Program Benefits and Adoption Assistance Payments (AAP) to Age 21, March 1, 2012;
- All County Letter No. 12-05: Implementation of Extended Foster Care Special Project Codes in the Child Welfare Services/Case Management System (CWS/CMS), January 13, 2012;
- All County Letter No. 12-12: Re-Entry into Extended Foster Care (EFC), March 23, 2012;
- All County Letter No. 12-13: Relative and Nonrelative Extended Family Member Assessment/Approval; Revised and New SOC Forms for Non-minor Dependent Placement, March 27, 2012;
- All County Letter No. 12-44: Transitional Housing Placement-Plus-Foster Care and Changes to Transitional Housing Placement Program and Transitional Housing Program-Plus, September 11, 2012; and
- All County Letter, No. 14-33, Non-minor Dependents (NMDs) Placed Out-of-State, July 3, 2014.

### **FUNDING RESOURCES**

Below are some funding resources that probation officers may consider to support probation youth in foster placements. This is not an exhaustive list and does not include some funding (e.g. CalWORKS) which may be available generally to foster youth, but are not specific to youth who are within the probation system.

- **Aid to Families with Dependent Children-Foster Care ("AFDC-FC") Funding:** Otherwise known as foster care funds, this funding stream is available to fund placements of youth who are currently on out-of-home placement orders. AFDC-FC funding may derive from federal funding sources (i.e. Title IV-E of the Social Security Act) or state sources. Probation officers must "[e]nsure completion of the

documentation necessary to initiate AFDC-FC payments, as appropriate.” (CDSS, Manual of Policies and Procedures, § 31-405.31: Social Worker Responsibilities for Placement (effective Dec. 10, 2004).)<sup>18</sup> Probation officers who are responsible for the foster youth’s placement and care must ensure that the youth is eligible for AFDC-FC, which includes: (i) documenting what services were provided to prevent foster care, why those services were unsuccessful, and why foster care is necessary; (ii) assessing in a written document why foster care was necessary and the youth’s treatment needs while in foster care; (iii) developing a case plan for the youth within 60 days of placement; and (iv) ensuring the provision of services to return the child home or to an alternative permanent placement. (Welf. & Inst. Code, § 11404, subd. (b).) The responsible probation officer also must provide NMDs who participate in extended foster care from ages 18 to 21 with assistance to maintain eligibility for AFDC-FC funding. (Welf. & Inst. Code, § 11403, subd. (e).)

- **Approved Relative Caregiver (“ARC”) Funding:** ARC funding is available for youth living with relative caregivers who are ineligible for federal AFDC-FC funding. (Welf. & Inst. Code, § 11461.3.)
- **Medi-Cal:** For Medi-Cal-eligible children, probation officers are encouraged to facilitate intensive community based mental health services, including Intensive Care Coordination (“ICC”), Intensive Home Based Services (“IHBS”) and Therapeutic Foster Care (“TFC”). In addition, probation officers must provide foster youth with assistance in accessing Medi-Cal upon exiting the probation system. (See, e.g., Welf. & Inst. Code, § 391, subd. (e)(3); CDSS, All County Information Notice, No. I-31-15, July 22, 2015.)
- **Supplemental Security Income/State supplemental Payments (“SSI/SSP”) Eligibility:** Probation officers must: (i) screen all foster youth within the jurisdiction of probation for potential SSI/SSP eligibility once the youth turns 16 ½ years of age; and (ii) assist potentially eligible youth in the application process. (Welf. & Inst. Code, § 13757.)
- **Kinship Guardianship Assistance Payment Program (“Kin-GAP”):** Probation officers must negotiate and enter into a Kin-GAP agreement for foster youth who exit probation to guardianship with a relative to secure federal and state Kin-GAP benefits. (Welf. & Inst. Code, §§ 11364, 11387.)
- **Adoption Assistance Program (“AAP”):** AAP funding is available for foster youth who exit probation to adoption. When the county probation department is responsible for making AFDC-FC payments for a youth, the probation officer is responsible for providing financial aid and certifying the youth meets the eligibility requirements for receiving benefits under the AAP. (Welf. & Inst. Code, § 16118, subd. (e).)

### OTHER PUBLIC RESOURCES

Below are other public resources that are available for probation officers to assist them in satisfying their obligations:

- **Bureau of Children’s Justice (“BCJ”) in the California Department of Justice:** To report concerns regarding a youth’s care, placement, or services, contact BCJ at [BCJ@doj.ca.gov](mailto:BCJ@doj.ca.gov). More information about BCJ is available at <https://oag.ca.gov/bcj>.
- **CDSS Foster Care Ombudsman:** To report concerns regarding the youth’s care, placement, or services provided to youth in foster care, contact CDSS at (877) 846-1602 or [fosteryouthhelp@dss.ca.gov](mailto:fosteryouthhelp@dss.ca.gov). More information about the CDSS Foster Care Ombudsman is available at <http://www.fosteryouthhelp.ca.gov/OMBprog.html>.
- **CDSS Continuum of Care Reform (“CCR”) Division, General Information:** For general questions about how CCR impacts probation officer obligations contact CDSS at [ccr@dss.ca.gov](mailto:ccr@dss.ca.gov). More information about CCR is available at <http://www.cdss.ca.gov/cdssweb/PG4869.htm>.

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<sup>18</sup> See also CDSS, Manual of Policies and Procedures, § 31-001.2: General Requirements (effective Dec. 10, 2004) (“The requirements specified in Section 31-001 through Section 31-525 shall be met by county probation departments when placing children in out-of-home care.”)

- **CDSS CCR Division, Resource Family Approval (“RFA”)**: For questions regarding the process for approving caregivers, contact CDSS at [RFA@dss.ca.gov](mailto:RFA@dss.ca.gov). More information about RFA is available at <http://www.childsworld.ca.gov/PG3416.htm>.
- **Center for Families, Children and the Courts (“CFCC”)**: For more information regarding court services for children and families of children in the probation system, contact CFCC at (415) 865-7739 or [cfcc@jud.ca.gov](mailto:cfcc@jud.ca.gov). More information about CFCC is available at <http://www.courts.ca.gov/programs-cfcc.htm>.

Sincerely,

A handwritten signature in black ink, appearing to read "Larry J. Wallace", with a long horizontal flourish extending to the right.

LARRY J. WALLACE, Director  
Division of Law Enforcement

For KAMALA D. HARRIS  
Attorney General