



CDSS

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REASON FOR THIS TRANSMITTAL

- ☒ State Law Change
- ☐ Federal Law or Regulation Change
- ☐ Court Order
- ☐ Clarification Requested by One or More Counties
- ☐ Initiated by CDSS

June 15, 2017

ALL COUNTY LETTER NO. 17-38

TO: ALL COUNTY PROBATION CHIEF OFFICERS
ALL COUNTY BOARD OF SUPERVISORS
ALL COUNTY PROBATION OFFICERS
ALL FOSTER CARE MANAGERS
ALL CHILD WELFARE SERVICES PROGRAM MANAGERS
ALL COUNTY WELFARE DIRECTORS
ALL TITLE IV-E AGREEMENT TRIBES

SUBJECT: ASSEMBLY BILL (AB) 2813 AMENDED WELFARE AND INSTITUTIONS CODE (WIC) SECTION 628 TO ELIMINATE CIRCUMSTANCES UNDER WHICH A MINOR MAY BE DETAINED AND MANDATED RELEASE OF DEPENDENT MINORS TO CHILD WELFARE AGENCIES UNLESS SPECIFIC CONDITIONS EXIST.

REFERENCE: [AB 2813 \(STATUTES OF 2016, CHAPTER 646\)](#); [WIC SECTION 628](#)

The purpose of this All County Letter (ACL) is to inform county child welfare agencies and probation departments of the provisions of AB 2813, which modified the circumstances under which a probation officer may detain, or continue to detain, a minor that has been taken into temporary custody. The intent of this letter is to highlight the changes AB 2813 made to the circumstances under which a dependent minor may be detained. It is the responsibility of the child welfare agencies and probation departments to determine how to implement the modifications.

Background / Summary

The law¹ requires a probation officer, upon delivery of a minor who has been taken into temporary custody, to immediately investigate the circumstances of the minor and the facts surrounding the minor being taken into custody and to immediately release the minor to the custody of his or her parent, legal guardian, or responsible relative unless evidence before the court demonstrates that continuance in the home is contrary to the

¹ WIC section 628(a)(1)

child's welfare, **and** one or more specified conditions are met as outlined below. The AB 2813 removed some of the specified conditions². The amendment further requires that the probation officer immediately release a dependent minor to the child welfare services department, his or her current foster parent, or other caregiver, unless one or more of the specified conditions are present.

The AB 2813 also amended the law³ by expressly **prohibit** a probation officer, from considering the minor's dependency status or the status of an appropriate placement when determining whether-or-not to detain the minor. The intent of AB 2813 is to deter dependents from being detained solely on the basis of their status and promote collaborative efforts amongst child welfare agencies and probation departments to identify solutions that best serve the overall welfare of a dependent.

Allowable Conditions for the Detention of Minors

- The continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor or is a reasonable necessity for the protection of the person or property of another.
- The minor is likely to flee the jurisdiction of the court.
- The minor has violated an order of the juvenile court.

Eliminated Considerations for the Detention of Minors

The following are **no-longer** conditions that a probation officer may consider as a basis for **continued detention** of a minor:

- The minor is in need of proper and effective parental care or control and has no parent, legal guardian, or responsible relative; or has no parent, legal guardian, or responsible relative willing to exercise or capable of exercising the care or control; or has no parent, legal guardian, or responsible relative actually exercising that care or control.
- The minor is destitute or not provided with the necessities for life, or is not provided with a home or suitable place of abode.
- The minor is provided with a home which is an unfit place by reason of neglect, cruelty, depravity, or physical abuse by either of his or her parents, or by his or her legal guardian or other person in whose custody or care he or she is entrusted.
- The minor is dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

² WIC section 628(a)(1)

³ WIC section 628(a)(2)

Prohibited Considerations for the Detention of Minors

A probation officer, when deciding whether to detain a minor who (1) is a dependent **or** (2) is the subject of a petition to declare him or her a dependent of the juvenile court **and** who has been removed from the custody of his or her parent(s) or guardian(s) by the juvenile court, shall **not** base the decision on any of the following:

- The minor's status as a dependent of the juvenile court or as the subject of a petition to declare him or her a dependent of the juvenile court.
- A determination that continuance in the minor's current placement is contrary to the minor's welfare.
- The child welfare services department's inability to provide a placement for the minor.

Release of Dependent Minors

A probation officer shall immediately release a minor, who is a dependent or is the subject of a petition to declare him or her a dependent, and who has been removed from the custody of his or her parent or guardian, to the custody of the child welfare services department or his or her current foster parent or other caregiver unless the officer determines that one or more of the specified conditions exist.

Clarification Regarding Minors and Referrals to Child Welfare Services

The WIC section 628 clarifies that none of these requirements and considerations limit the probation officer's existing authority to refer a minor to child welfare services.

If you have any questions regarding this ACL, please call the Concurrent Planning Policy Unit at (916) 657-1858 or email concurrentplanningpolicyunit@dss.ca.gov

Sincerely,

GREGORY E. ROSE
Deputy Director
Children and Family Services Division

c: County Welfare Directors Association
Chief Probation Officers of California
Judicial Council of California