



STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
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EDMUND G. BROWN JR.
GOVERNOR

October 18, 2018

ALL COUNTY LETTER NO.18-98

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS
ALL INDEPENDENT LIVING PROGRAM MANAGERS
ALL INDEPENDENT LIVING PROGRAM COORDINATORS
ALL FOSTER CARE MANAGERS
ALL TITLE IV-E AGREEMENT TRIBES
ALL TRANSITIONAL HOUSING COORDINATORS

SUBJECT: REMOVAL OF PHYSICAL CUSTODY FROM NON-CUSTODIAL
PARENTS

REFERENCE: [ASSEMBLY BILL 1332 \(CHAPTER 665, STATUTES of 2017\)](#)

PURPOSE

The purpose of this All County Letter (ACL) is to provide information on Assembly Bill (AB) 1332 (Chapter 665, Statutes of 2017) which amends Welfare and Institutions Code (WIC) 361(d). This amendment to WIC 361 creates a statutory basis for removing a child from the physical custody of a non-custodial parent. AB 1332 does not contain any new mandated activities or requirements for social workers and probation officers.

SUMMARY

Removal from Custodial parents:

Existing law, under WIC 361(c), provides that a dependent child shall not be taken from the physical custody of the parent(s) or guardian(s) with whom the child resides at the time the petition is initiated unless the juvenile court finds by clear and convincing evidence one or more of the following conditions:

- 1) "There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being" of the child if the child were returned home and there are no reasonable alternative means short of removal to protect the child (§ 361(c)(1));
- 2) The child's parent is unwilling to have physical custody of the child after being notified that his or her parental rights could be severed pursuant to WIC Section 366.26 (361(c)(2));
- 3) The child is suffering severe emotional damage and there are no reasonable alternative means to protect the child's mental health short of removal (361(c)(3));
- 4) The child or a sibling has been or is at substantial risk of being sexually abused by a parent, a member of the household or someone known to the parent and there are no reasonable means to protect the child from sexual abuse short of removal (361(c)(4));
- 5) The child or a sibling has been or is at substantial risk of being sexually abused by a parent, a member of the household or someone known to the parent and the child does not wish to return to the physical custody of the parent (361(c)(4));
- 6) The child has been left without any provision of support, has an incarcerated or institutionalized parent who cannot arrange for care of the child, or an adult custodian with whom the child has been left is no longer able or willing to care for the child and the parent's whereabouts are unknown and reasonable efforts made to locate the parent have been unsuccessful (361(c)(5)); and/or
- 7) An Indian child as defined by the Indian Child Welfare Act will likely suffer serious emotional or physical damage if he or she remains in the custody of the parent or Indian custodian and this conclusion is supported by the testimony of a qualified expert witness (361(c)(6)).

Removal from Noncustodial Parents:

As of January 1, 2018, WIC 361 was amended to add new provisions regarding non-custodial parents. Subdivision (d) of WIC 361 provides that a dependent child cannot be taken from the physical custody of the parent with whom the child *did not reside* at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of the following conditions:

- There would be substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child if the child were to live with the parent or if the parent were to exercise their right to physical custody, and
- There are no reasonable means by which the child's physical and emotional health can be protected without removing the child from the parent's physical custody.

Reasoning:

Prior to the enactment of WIC 361(d), WIC 361.2 was the only statute which addressed placement or non-placement of a child with a non-custodial parent. WIC 361.2(a) states that "when a court orders removal of a child pursuant to Section 361, the court shall first

determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.” (§ 361.2(a).) However, until now, the law has been silent on the *removal* of a child from the physical custody of a non-custodial parent who does not request custody of the child or with whom the child was residing at the time the events occurred that brought the child within the jurisdiction of the juvenile court. In practice, courts applied provisions relating to custodial parents to non-custodial parents in the absence of other clear requirements established in state law. As a result, a dependency case in Los Angeles County was appealed and the appellate court overturned the juvenile court’s finding that relied on applying the provisions for a custodial parent to a non-custodial parent.

AB 1332 added WIC section 361(d), described above, to clarify the standard applicable to noncustodial parents who do not fall within the description of section 361.2(a). For a parent with whom the child was not residing at the time the events occurred that brought the child within the juvenile court’s jurisdiction and who requests custody of their child, WIC 361.2 continues to control the assessment and determination regarding whether a child can be placed with that parent. For all other cases where the court is removing a child from a non-custodial parent, WIC 361(d) is the applicable statute.

Implications:

With the clarity in the law, the child welfare agency should ensure that both custodial and non-custodial parents are investigated when considering removal. If the agency is recommending removal from either custodial or non-custodial parent(s), the information in the report must be enough to meet the high legal threshold of clear and convincing evidence of risk to the child. The information in the report should document the specific behaviors of both the custodial and non-custodial parent(s) that place the child at risk.

If you have questions about this letter, please send an email to the Concurrent Planning & Policy Unit at concurrentplanningpolicyunit@dss.ca.gov .

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division