

September 22, 2020

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 20-119

This All County Letter (ACL) addresses the expansion of Welfare and Institutions Code (WIC) Sections 301 and 361.8 to include nonminor dependents and wards of the juvenile court as persons entitled to consult with legal counsel when supervision or temporary or permanent relinquishment of custody of their minor child is being proposed. Additionally, for parenting wards (WIC §§ 601, 602), it requires remedial services be provided to try to prevent the child's removal, and places limitations on the ability to bypass reunification services if removal occurs.



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DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
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GAVIN NEWSOM
GOVERNOR

September 22, 2020

ALL COUNTY LETTER NO. 20-119

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS
ALL CDSS ADOPTION REGIONAL AND FIELD OFFICES
ALL LICENSED FOSTER FAMILY AGENCIES
ALL RESOURCE FAMILY APPROVAL MANAGERS
ALL TITLE IV-E AGREEMENT TRIBES

SUBJECT: EXPANSION OF WELFARE AND INSTITUTIONS CODE ([WIC](#))
[301](#) AND [361.8](#) TO INCLUDE NONMINOR DEPENDENTS AND
WARDS OF THE JUVENILE COURT AS PERSONS ENTITLED
TO CONFER WITH LEGAL COUNSEL WHEN THE INFORMAL
SUPERVISION OR TEMPORARY OR PERMANENT
RELINQUISHMENT OF CUSTODY OF THEIR MINOR CHILD IS
BEING PROPOSED; EXPANSION TO PARENTING WARDS OF
REMEDIAL PROTECTIONS BEFORE INVOLUNTARY REMOVAL
OF CUSTODY AND/OR BYPASSING THE PROVISION OF
REUNIFICATION SERVICES

REFERENCES: ASSEMBLY BILL ([AB](#)) [1371](#), [CHAPTER 666](#), STATUTES OF
2017; WELFARE AND INSTITUTIONS [CODE](#) (WIC) SECTIONS
[301](#), [361.8](#), [317](#), and [634](#)

PURPOSE

The purpose of this ACL is to inform child welfare services agencies and probation departments about the right of parenting minor and nonminor dependents (NMDs) and wards of the juvenile court pursuant to WIC Sections 601 or 602 (wards) to consult with legal counsel prior to entering into a program of supervision or any voluntary temporary or permanent custody agreement regarding their children. It is also to inform of the expansion of protections contained in WIC Section 361.8, formerly available only to parenting dependent children, to parenting wards.

BACKGROUND

Prior to the passage of AB 1371, existing laws provided legal counsel and safeguards against the loss of custody of a minor child born to minor juvenile court dependents only. WIC Section 301(c) required that parenting dependent children, who had a minor child at risk of supervision by a child welfare agency social worker, have the opportunity to consult with their appointed counsel before any voluntary arrangement could take place.

Additionally, WIC Section 361.8 prohibited using a parenting dependent's placement history, past behaviors or health or mental health during the pregnancy, as the sole basis for a finding that the parenting dependent's own minor child was at risk for abuse or neglect, regardless whether the parenting dependent was a minor or nonminor. Further, before a child of a parenting dependent minor could be removed from the physical custody of that parenting dependent minor, any party seeking out-of-home placement of the child would have to demonstrate in court that reasonable efforts were made to provide remedial services designed to prevent the removal of the child from the minor parent or parents. The efforts to prevent removal must include use of available resources such as the child and the minor parent's extended family, social services agencies, caregivers and all other available service providers. Only when these efforts were made and were unsuccessful could a child of a parenting dependent minor be removed from that dependent minor's custody. These same requirements also applied when a party sought to terminate the parental rights of a parenting dependent minor.

Also prior to January 1, 2018, WIC Section 361.8 precluded the juvenile court from bypassing the provision of reunification services to parenting dependent minors on the grounds that reunification services or parental rights had been terminated previously ([WIC 361.5\(b\)\(10\)](#) and [\(b\)\(11\)](#), respectively) unless another basis for bypassing the provision of services under Section 361.5, subdivision (b) existed.

NEW REQUIREMENTS

With the passage of AB 1371, the protections afforded in the previous version of WIC Section 301 to parenting dependent minors have been extended to nonminor dependents and wards of the juvenile court. Through AB 1371, WIC Section 301 now requires that NMDs and wards also be given the opportunity to consult with legal counsel regarding the care or custody of their minor child, prior to the implementation of any program of supervision. Section 301 also recognizes that wards of the juvenile court may not be a part of any dependency proceeding and therefore may not have counsel in dependency court. It therefore requires child welfare services agencies to give a ward an opportunity to confer with their juvenile justice attorney before implementing a plan of supervision if the ward does not also have a dependency attorney.

Additionally, AB 1371 extended to minor wards the reasonable efforts requirements discussed above. It further extended to minor wards the prohibition on bypass of reunification services to parenting minor wards if bypass is based exclusively on the grounds that the minor ward failed to reunify with any of their child's siblings or half-siblings or that their parental rights were terminated for these siblings or half-siblings.

Finally, the passage of AB 1371 added subdivision (c) to WIC Section 361.8. That provision requires social workers and probation officers to advise all parenting wards and parenting dependents, regardless of whether the dependent is a minor or a nonminor, of the right to consult with counsel before entering into any informal or formal custody agreement that would result in temporary or permanent loss of custody of a ward's or dependent's child. This advisement also must be given to parenting wards or parenting dependents before a social worker or probation officer may recommend that a nonparent seek legal guardianship over the ward's or dependent's child. Section 361.8(c) also requires social workers and probation officers to give parenting wards and parenting dependents the opportunity to confer with counsel before any of these actions may be taken. Finally, it adds a requirement that social workers and probation officers document in the ward's or dependent's case file whether consultation occurred or, if the opportunity to consult was given to the ward or dependent and consultation did not occur, the reason the consultation did not occur. By giving the opportunity to confer with counsel prior to any formal or informal custody arrangements being made for their minor child, all dependents and wards are now afforded the same due process rights and to have a voice in the decisions that affect them and their child.

If you have any questions about this ACL, please send an email to the Adoption Policy Unit at apu@dss.ca.gov or call (916) 657-1858.

Sincerely,

Original Document Signed By

GREGORY E. ROSE
Deputy Director
Children and Family Services Division