DEPARTMENT OF SOCIAL SERVICES
744 P Street, Sacramento, California 95814

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REASON FOR THIS TRANSMITTAL

[ ] State Law Change
[ ] Federal Law or Regulation Change
[ ] Court Order
[X] Clarification Requested by One or More Counties
[ ] Initiated by CDSS

ALL COUNTY INFORMATION NOTICE NO. I-05-06

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS
ALL CHIEF FISCAL OFFICERS
ALL CHILD WELFARE SERVICE PROGRAM MANAGERS

SUBJECT: **IMPLEMENTATION OF ASSEMBLY BILL (AB) 129, DUAL STATUS CHILDREN**

REFERENCE: AB 129 (CHAPTER 468, STATUTES OF 2004)

The purpose of this All County Information Notice (ACIN) is to provide County Welfare Departments (CWDs) and County Probation Departments (CPDs) with information and guidance on implementing the provisions of AB 129. The California Department of Social Services (CDSS) has included responses to questions it has received from CWDs and CPDs regarding AB 129.

BACKGROUND

A child may be placed in foster care as either a dependent in the placement and care of the CWD under Welfare and Institutions Code (W&IC) Section 300, or as a delinquent in the placement and care of the CPD under W&IC Section 600 et. seq. The receipt of Title IV-E funding by the agency with placement and care responsibility to pay for the foster care placement and related administrative costs is conditioned upon the agency's compliance with the service requirements specified in federal statute. For the CWD, these service requirements are set forth in State statute and the Division 31 regulations. For the CPD, Section 472 of the Social Security Act and W&IC Section 11404 require that a written agreement be in effect between the CWDs and CPDs in order to claim Aid to Families with Dependent Children-Foster Care (AFDC-FC) funding for foster children supervised by a probation department. The agreement, which incorporates the Division 31 regulations, sets forth the service requirements that probation departments must comply with in order to receive Title IV-E funding for probation supervised placements. These services may include but are not limited to the following: preplacement preventive services, relative home approvals, preparation of a written assessment and case plan, family reunification, regular visits with the child, periodic status reviews, concurrent planning, appointment of guardians for wards, Independent Living Program (ILP) services, and permanency planning hearings.

Additionally, California law requires that the same judicial oversight and legal requirements provided to dependents are also provided to delinquents placed in foster care.

AB 129 – GENERAL PROVISIONS

AB 129 is a statute intended to improve the management of delinquency and dependency cases. Under existing law, the juvenile court may establish jurisdiction over a child because the child is the subject of abuse and neglect, i.e., dependency status under W&IC Section 300, or because a child has committed acts that warrant delinquency jurisdiction, i.e., delinquency status under W&IC Sections 601 or 602. There are situations in which a child may, because of unique circumstances, come within both types of jurisdiction. Prior to the passage of AB 129, establishment of concurrent jurisdiction under both 300 and 601 or 602, i.e. dual status as a dependent and a delinquent, was prohibited; counties were required to establish a protocol for joint assessments by the probation and child welfare services department to determine which status to recommend to the juvenile court for a particular child. AB 129 now allows the establishment of dual status in counties which have established ahead of time a protocol to be followed in making a recommendation to the juvenile court for a particular child. Requirements for this protocol are set forth in W&IC Section 241.1(e) which was added by AB 129. The provisions of AB 129 are intended to create a comprehensive approach to meeting the needs of at risk youth by improving coordination among CWDs, CPDs, and the courts in conducting joint assessments to determine which services and/or resources can best suit the needs of each child.

AB 129 allows counties the flexibility to develop an approach allowing concurrent dependency and delinquency jurisdiction by adopting either an “on hold” system or a “lead court/lead agency” system, to determine which agency has primary placement and care responsibility at particular points in the proceeding. Under a “lead court/lead agency” system, either the CWD or the CPD will be designated as responsible for case management, court hearings, and submitting court reports. Under an “on hold” system, the child’s delinquency status remains “active” while the dependency is suspended. At the point when it appears likely that delinquency jurisdiction will be terminated and reunification would be detrimental to the child, the child welfare and probation departments jointly assess whether to recommend resumption of the child’s dependency status. Regardless of which system a county chooses, the county protocol may specify the respective functions and duties of the lead (i.e., agency with primary placement and care responsibility) and the non-lead agency.

The questions and answers which follow are categorized according to subject and are intended as information and or guidance to counties choosing to implement a dual status protocol. The CDSS will not require counties to submit plans for review and/or approval should they decide to implement AB 129.

FUNDING AND ELIGIBILITY QUESTIONS:

Counties choosing to implement a protocol allowing dual status are reminded that it does not change existing federal funding and eligibility requirements for a Title IV-E foster care payment and that the federal Adoption and Safe Families Act (ASFA) procedures and timelines still apply. All regulations found in Division 31 and 45 still apply to counties who choose to utilize a dual status designation for children in out-of-home care. Additionally, counties should be reminded that all county claiming procedures remain the same.

1. Q. Under the "lead agency" option, AB 129 requires the "lead agency" to be responsible for case management, conducting statutorily mandated court hearings, and submitting court reports. What then are the responsibilities of the non-lead agency and which agency would bear those costs?

   A. The CDSS will defer to county agencies to establish what role and responsibility the non-lead agency will have when a child is designated as a dual status child. Program funding for Title IV-E will remain the same; all related program funding from CDSS is transmitted directly through county welfare agencies (child protective services), who then establish memoranda-of-understanding with county probation agencies for the pass through of Title IV-E funds, reference All County Letter (ACL) No. 99-96. The CWD and CPD would be permitted to claim costs as long as there is no duplication of cost for the same activity or service.

2. Q. If both agencies provide services, can Social Workers (SWs) from both agencies time study their work involving the same child to Title IV-E?

   A. SWs and/or Probation Officers (POs) from both agencies can provide services and time study to an administrative activity involving a dual status child. As an example, in a multi-disciplinary team setting, the SW and PO will be meeting to discuss the same child, each providing unique information and expertise related to the case. If a SW and PO are both making a referral to services, i.e., counseling, the SW and PO can time study to the appropriate program code. County Fiscal Letter (CFL) No. 05/06-26, page two, addresses allowable Title IV-E administrative activities. As a reminder, Title IV-E funds do not pay for direct services.

   It is paramount that county agencies establish appropriate procedures and methods and agree that each party: (1) perform its duties and functions under the established protocol; (2) ensure no duplication of activities or services occurs; (3) ensure the services are indeed distinct and different; and (4) ensure the cost associated with each is <u>not duplicated</u>.

3. Q. Can two agencies simultaneously provide services to children and families under the "lead agency" option or would this constitute duplication of services?

   A. Under the "lead agency" option one agency would assume primary management over the case file, court hearings, and court reports but both agencies could provide services to the child so long as those services are different and are warranted and/or required. County agencies shall work cooperatively to assess and assign services to meet the needs of the child. County agencies would be prohibited from claiming funds twice for the same service or activity.

4. Q. Under the "lead agency" option, which agency is responsible for eligibility documentation/determinations?

   A. Regardless of whether a county employs a "lead agency" or an "on hold" system, the CWD will remain the sole agency at the county level, responsible for making AFDC-FC eligibility determinations.

5. Q. What funds can be used to provide services to children and families?

   A. CWD's are allocated the following funding: Child Abuse Prevention, Intervention and Treatment (CAPIT), Promoting Safe and Stable Families (PSSF), and Community Based Child Abuse Prevention (CBCAP). Although counties have flexibility in the use of these funds, each fund is subject to certain statutory/regulatory requirements, including restrictions on agencies eligible to receive these funds to provide services and the types of services that can be provided.

   The CAPIT funds are comprised of capped State General Funds, and State law requires that priority be given to prevention programs provided through nonprofit agencies. The PSSF and CBCAP are entirely funded through the federal Title IV-B allocation, subject to the annual federal budget process, and are therefore limited. Both CAPIT and CBCAP can be used to provide some level of intervention and treatment services, although the service priority for these funds is primary prevention. The PSSF funds must be expended according to federal guidelines with 20 percent in each of four service categories: family preservation, family support, time-limited family reunification, and adoption promotion and support.

   Together, these programs generally support local prevention and early intervention efforts and can be used for child welfare services programs. Counties must apply for these funds and provide services based on a three-year county plan approved by CDSS. These plans are developed by county child welfare agencies based on priorities developed through a community input process and approved by the Board of Supervisors. Also, in some counties, county general funds may be available to support

the provision of services for children and families, so long as these funds are not used as a match to draw down additional Title IV-E funding, as Title IV-E funds cannot be used to pay for direct services.

PROGRAM QUESTIONS:

Counties choosing to implement a protocol allowing dual status are reminded that it does not change existing regulatory and statutory guidelines related to children adjudged wards of the delinquency court or dependents of the juvenile court. Statutory guidelines pertaining to the care, custody and control; placement; family reunification; periodic review; permanency planning hearings and termination of parental rights proceedings for a minor adjudged a ward of the delinquency court is outlined in W&IC Section 727, et. seq. and for dependents of the juvenile court in W&IC Sections 360 et., seq., 361 et. seq., 362 et. seq., 364 et. seq., and 366 et. seq. Regulatory requirements related to minors adjudged wards of the delinquency court or dependents of the juvenile court are outlined in Division 31 Regulations. County probation and child welfare departments are encouraged to review these statutes and regulations as part of their process when developing their dual jurisdiction protocols.

6. Q. How will child welfare family maintenance and family reunification time frames be affected under the "lead agency" or "on hold" options of AB 129?

   A. Under the "lead agency" and/or "on hold" options of AB 129, time frames and requirements for family maintenance and family reunification will remain the same. *If a dual jurisdiction child is placed in a foster care facility and then the child is placed in a juvenile detention facility or medical facility and then returns to a foster care facility, family maintenance and family reunification time frames remain the same and are not interrupted*. In addition, the timelines for the 12th month permanency hearing and all subsequent 12-month permanent placement hearings remain the same and cannot be interrupted. Services, activities and time frames related to family maintenance and family reunification requirements as specified by regulatory and statutory guidelines must be complied with regardless of how counties choose to implement AB 129.

7. Q. How should counties address monthly home visits? Can both the probation officer and a social worker conduct the required monthly visit in order to meet State requirements?

   A. All visit requirements as defined in Division 31 regulations must be complied with regardless of how counties choose to implement AB 129. Flexibility is given to child welfare and probation departments to address how these visiting requirements will be fulfilled by the two agencies in their protocols. For example: either an "on hold" or a "lead agency" county protocol could specify that the child welfare services and probation

departments could jointly fulfill visit requirements to child(ren), parent(s) and caregiver(s) based on the needs of the individual client(s) and based on which department representative would be available to visit the clients as long as there is no duplication of services by the two departments.

Alternatively, under a lead agency model, the protocol may call for both the social worker and probation officer to conduct monthly visits, but for different purposes, and each agency in this case may conduct such visits so long as it is consistent with the existing claiming instructions and requirements.

Claiming instructions regarding monthly visits for foster children in Group Homes remain unchanged. See CFL No. 98/99-18, dated September 25, 1998, and CFL No. 98/99-52, dated December 17, 1998.

8. Q. The "on hold" option provides for suspending the dependency jurisdiction pending termination of the probation case. Can the "lead agency" option be used to provide for suspended probation jurisdiction while the child welfare services department is the "lead agency"?

A. AB 129 only provides for suspension of dependency jurisdiction under the "on hold" option and does not provide for suspension of delinquency jurisdiction. The protocols developed by the county child welfare services agency and the probation departments will indicate whether the county has chosen a "lead agency" or "on hold" option.

9. Q. On a case by case basis, can counties choose to implement AB 129 for certain children and not others, for example, children in permanent placement, where times for reunification are not an issue?

A. AB 129 does not specify which programs (i.e. permanent placement, family maintenance, etc.) must be considered for dual status. AB 129 mandates that the protocol describe (a) the process to be used to determine whether the child is eligible to be designated as a dual status child, (b) the procedures to assess the necessity for dual status and process to make joint recommendations to the court, including a seamless transition to minimize service disruption, and (c) a provision for communication between judges who hear dependency and delinquency petitions.

Therefore, CDSS will defer to the child welfare services and probation department protocols to specify how children will be assessed and designated dual status children. County child welfare and probation departments can make a determination on a case by case basis as described in their protocols whether a child would best benefit by being considered a dual jurisdiction child or whether the child would best benefit by being considered a child that comes within the description of either a dependent of the juvenile court or a ward of the delinquency court.

10. Q. Current State statute precludes minors with 602 adjudication from being placed in an emergency shelter. Under the "lead agency" model, would minors with concurrent 300/602 adjudication be precluded from placement in an emergency shelter?

    A. The prohibition against placing children who are dependents of the juvenile court with children who are 602 wards of the delinquency court in the same emergency facility is set forth in W&IC Section 16514(b). A county's decision to implement AB 129 does not change this existing statute.

11. Q. Once a "lead court" and "lead agency" have been determined; can the "lead court" and "lead agency" subsequently be changed?

    A. The CDSS will defer to the protocols developed between the child welfare services and probation departments as to whether the "lead court" or "lead agency" can be changed once initially chosen.

12. Q. Are there any examples of model "lead court/lead agency" systems that would comply with California law (and federal law/regulations)?

    A. Examples of the dual jurisdiction systems of other states can be researched utilizing the internet. In addition, the Judicial Council may be a good contact for such questions regarding other states that implement dual jurisdiction systems. An article distributed by the National Center for Juvenile Justice titled "When Systems Collide: Improving Court Practices and Programs in Dual Jurisdiction Cases" is available on their internet site at www.ncjj.org.

13. Q. Is it ever necessary to file a new 300 W&IC petition after termination of delinquency status in an "on hold" county? What if there are no new grounds for one, just that the delinquency sentence is finished?

    A. By definition, a dual status child is a child who could be considered to be a dependent child or a ward of the juvenile court. Unless there are new dependency allegations filed or the dependency case has been dismissed, a new 300 W&IC petition is not necessary. The "on hold" option of AB 129 allows for a joint assessment to be conducted by the child welfare services and probation departments in order to produce a recommendation for the court regarding whether the court's dependency jurisdiction shall be resumed if the termination of the court's jurisdiction, pursuant to Section 601 or 602 is likely, and reunification of the child with his/her parent(s) or guardian(s) would be detrimental to the child. AB 129 does not specify a particular court procedure to be used by a county seeking to resume a "dual status" child's dependency status, when delinquency has been terminated. The bill does not specify that a 388 petition must be filed to continue or resume a child's dependency status, nor does the bill preclude it.

The CDSS will defer to any court procedures or to county protocols as determined by individual county child welfare and probation departments and the county juvenile courts as to how to notify the court of any recommendation for resumption of the child's dependency status.

AUTOMATION QUESTION:

14. Q. How will dual jurisdiction cases be documented in CWS/CMS?

A. The implementation of AB 129 in CWS/CMS will require at least three developmental phases. The first and current phase may involve manual or non-automatic interim methods of marking, documenting, and tracking dual involvement cases until additional system changes are available in the subsequent phases. Methods and procedures for marking and documenting dual status cases in CWS/CMS will be conveyed to counties in a future CWS/CMS bulletin and/or an ACIN.

The second phase will involve a formal software and database upgrade that is planned for Release Version 6.1. The exact date for its implementation is uncertain, but it is currently planned for 2007. Release 6.1 will contain only some of the initial changes needed to fully implement AB 129. Workers will be able to provide a means of documenting cases that begin as a W&IC Section 300 dependency and then shift to Probation as the lead agency when the child is adjudicated as a W&IC Section 601/602. The system will also be able to accommodate the child returning from Probation where CWS resumes as the lead agency. CWS/CMS functionality should reflect county practices as well as social work practices in the State. Because county protocols are still being developed around the State, it is not yet possible to know how to best capture relevant information. Therefore, it is necessary to defer additional changes until an undetermined future date.

The current CWS/CMS functionality cannot support simultaneous Probation and CWS placements. Under the "on-hold" option, Release 6.1 will provide child welfare workers with the ability to suspend and close a case to enable Probation to service the case. If the dependency status is later reinstated, the Probation case would be closed and the CWS placement would again be reopened. In "lead agency" models, the CWS agency could provide and document concurrent services when Probation is the lead agency using time study documentation. However, the CWS agency would have to suspend and close their case on CWS/CMS. When cases are in a suspended status, all reminders and other application requirements for the case will also be suspended. A suspended case will be excluded from the SOC 291 report. More information about this functionality will be provided to counties as Release 6.1 is prepared and released.

The third phase of implementation will provide additional changes. These future enhancements may include the capability of keeping both the CWS and the Probation's SOC 158 placement concurrently open on the system. Workers may be able to document more aspects of the complimentary but non-duplicative services. The date for implementing this third phase has not yet been determined.

If counties should need additional information regarding Title IV-E funding and eligibility requirements, please contact the Foster Care Audits and Rates Branch at (916) 651-9152; for questions pertaining to program policy, contact the Child and Youth Permanency Branch at (916) 651-7464; and for CWS/CMS automation questions, contact the CMS Support Branch at (916) 651-7884.

Sincerely,

MARY L. AULT
Deputy Director
Children and Family Services Division

c: CWDA
CPOC