

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814



November 17, 2000

ALL COUNTY LETTER NO. 00-77

TO: ALL COUNTY WELFARE DIRECTORS
ALL COUNTY CHIEF PROBATION OFFICERS

REASON FOR THIS TRANSMITTAL

- State Law Changes
- Federal Law or Regulations Change
- Court Order or Settlement Agreement
- Clarification Requested by One or More Counties
- Initiated by CDSS

SUBJECT: TERMINATION OF PARENTAL RIGHTS

REFERENCE: 42 United States Code (USC) Section 675, 45 Code of Federal Regulations (CFR) 1356.21, and Welfare and Institutions Code Sections 706.6 (I) and 727.3 (i).

This letter is to inform Probation Departments that in order to be eligible for federal financial participation, the State placing agency must petition the juvenile court to terminate parental rights to facilitate adoption proceedings, when a minor has been in foster care 15 of the most recent 22 months, unless certain conditions exist.

Certain conditions that may exist include: (1) the Probation Department has documented in the case plan a compelling reason for determining that termination of parental rights is not in the minor's best interest, or (2) the Probation Department has not provided to the family, consistent with the time period in the case plan, services that the State deems necessary for the safe return of the child to the home, when reasonable efforts to reunify the family are required. Probation Departments must comply with this federal requirement, to maintain eligibility for the receipt of Title IV-E funds for the out-of-home care of eligible minors.

Compelling Reasons

Federal statute and regulations do not define "compelling reasons" for purposes of when not to initiate termination of parental rights when a minor has been in foster care 15 of the most recent 22 months. Federal regulations provide guidance that a "compelling reason" must be based on the individual circumstances of the child and the family, on a case by case basis, with an emphasis on what is in the best interest of the child. A compelling reason has to be documented in the case plan to ensure continued eligibility for the receipt of Title IV-E funds. This case plan documentation is necessary because there is no federal requirement for the juvenile court to make a judicial finding that a compelling reason exists.

Federal regulations provide that compelling reasons for not filing a petition to terminate parental rights include, but are not limited to:

- Adoption is not the appropriate permanency goal for the child;
- No grounds to file a petition to terminate parental rights exist;
- The child is an unaccompanied refugee minor as defined in 45 Code of Federal Regulations 400.111; or
- There are international legal obligations or compelling foreign policy reasons that would preclude terminating parental rights.

State Law and Regulations

State statute that governs what information is required in the case plan for a ward of the court defines “compelling reasons” when termination of parental rights is not in the child’s best interest. For this purpose, a compelling reason can be either:

- A determination made by the probation officer that any of the following applies:
 - The parent or legal guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship;
 - The permanent plan is for the minor to return to his or her own home;
 - A child 12 years of age or older objects to termination of parental rights;
 - The minor is placed in residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the minor a permanent family placement if the parents cannot resume custody when residential care is no longer needed. Or,
- A determination by the licensed county adoption agency or the State Department of Social Services when it is acting as an adoption agency that the minor is unlikely to be adopted and the child is living with a relative who is unable or unwilling to adopt the child because of exceptional circumstances, and the removal of the minor from the physical custody of his or her relative or foster parent could be detrimental to the minor’s emotional well-being.

If one of the conditions described in this letter do not exist, a Probation Department must initiate a petition to terminate parental rights by the end of the minor’s 15th month in foster care (of the most recent 22 months). Probation Departments should review their case files for wards receiving foster care maintenance payments to ensure compliance with this federal requirement, and all other federal eligibility requirements.

Please note it is the Department’s intent to conform California statute for wards of the juvenile court to this federal requirement. The Department is also including this provision in its revision of child welfare service regulations that govern services to wards receiving foster care maintenance payments.

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If you should have any questions related to this letter, please contact the Foster Care Policy Bureau at (916) 445-0813.

Sincerely,

Original Document Signed by

SYLVIA PIZZINI
Deputy Director
Children and Family Services Division