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AB 129 PROTOCOL

1. ELIGIBILITY REQUIREMENTS FOR A DUAL STATUS DESIGNATION

All children who fall within the current §241.1 policy are eligible for a dual status disposition. The October 8, 1997, protocol provides:

“There are four main situations where the 241.1 protocol applies. The first and most typical situation is where a minor who is a dependent of the court pursuant to WIC 300 allegedly commits a crime or exhibits behavior resulting in a petition being filed in the Delinquency Court pursuant to WIC 601 or 602. In those instances, WIC 241.1 requires a joint assessment by Probation and DCFS. The assessment is to be filed and heard in the Delinquency Court and Probation would be the lead agency in the preparation of the joint assessment.

The second situation is where a minor who is on probation pursuant to WIC 602 or has been declared on WIC 601 status and who is on a home on probation order is the victim of child abuse and/or neglect. In those cases where an emergency response is made by a social worker, the minor, where warranted, would be taken into custody by the social worker and a case filed pursuant to WIC 300. A joint assessment would then be necessary. The case would be heard in the Dependency Court and DCFS would be the lead agency in the preparation of the assessment.

The third situation is where a minor is under the jurisdiction of the Delinquency Court and Probation wishes to seek an early termination of jurisdiction and return the minor home but is unable to do so because the home is inappropriate due to the potential for abuse and/or neglect or there is in fact no home to return to. In this case, Probation would be the lead agency in preparation of the protocol. The case would continue to be heard in the Delinquency Court until it is determined that the minor is better suited for the jurisdiction of the Dependency Court. When that determination is made, an orderly transition to DCFS and the Dependency Court would be made pursuant to the protocol developed between Probation and DCFS on May 22, 1996.

The fourth situation where the protocol applies is when a petition is filed in the Delinquency Court on a minor who is not under the jurisdiction of the

Dependency Court but the detention report suggests that child abuse and /or neglect may have some significance in what occurred. A very simple hypothetical is a case where a minor is charged with battery on a parent whom the minor claims perpetrated abuse against the minor. A joint assessment would then be ordered with Probation being the lead agency and the determination of the appropriate status for the minor would be made in the Delinquency Court.”

2. PROCEDURES FOR DUAL STATUS ASSESSMENT COURT RECOMMENDATIONS

The procedures for making a joint assessment and for making recommendations to the court will be the same for all §241.1 cases. The MDT will be responsible for preparing the §241.1 joint assessment.

The October 8, 1997, protocol provides:¹

“TIME LINES FOR FILING JOINT ASSESSMENT

In order for the WIC 241.1 protocol to be most effective in court, it needs to be filed in a timely manner. The following time lines have been agreed upon. In the first situation, where a petition is filed in the Delinquency Court on a minor who is a dependent of the court, the joint assessment should be completed and filed in the Delinquency Court on or before the time of the appearance on the pre-plea report. As previously noted, Probation is the lead agency for the preparation of the report. In cases where the minor is detained, the appearance on the pre-plea report is generally eight to twelve days after the detention hearing. It is of course imperative that the agencies communicate with each other quickly in these cases because the time line is short. This issue will be discussed later in this memo. In those cases where the minor is not detained, there should be no problem completing the assessment by the time of the pre-plea appearance or sooner. The most important part of this procedure is ensuring that the assessment is completed before the adjudication without interfering with any statutory speedy trial rights.

In the second situation, where a minor under the jurisdiction of the Delinquency Court becomes the subject of a petition in the Dependency Court, the joint assessment should be filed in the Dependency Court at the time of the Pre Resolution Conference (PRC), the Mediation Conference, or the adjudication, if a no time waiver trial is set. DCFS is the lead agency in this situation, and given the relatively small number of cases in this category, time should not be a problem in completing this report.

¹ The October 8, 1997 policy uses the term “lead agency” when designating which agency is to be responsible for preparing the initial §241.1 assessment.. AB 129 uses the term to designate which agency will be responsible for case management and making subsequent reports to the court. The “lead agency” under AB 129 will be determined by the MDT unit after the child’s status is determined by the court. (See Part 5A.)

In the third situation, where Probation seeks an early termination of jurisdiction of a ward, there is no specific time line. Probation is the lead agency for the preparation of this report which is to be filed in the Delinquency Court. The matter will be placed on calendar in the Delinquency Court only after the agencies have completed the assessment.

In the fourth situation, where there is information suggesting that a minor who is the subject of a petition in the Delinquency Court may have been the victim of child abuse and/or neglect in relation to what occurred, the joint assessment should be filed at or before the appearance on the pre-plea report. The time lines are the same for the first and fourth situations.

DCFS/PROBATION COMMUNICATION

In order to prepare the assessment in a timely manner, it is important to have a mechanism in place which will guarantee timely contact between the social worker and the probation officer. One of the biggest problems with implementation of the protocol has been the lack of communication between the social worker and the probation officer. It must be emphasized that the responsibility to prepare the assessment is a joint one. The juvenile courts will not accept communication problems as an excuse for the failure to complete and file a joint assessment in a timely manner. Any sanctions that may result from the failure to complete and file an assessment in a timely manner will be imposed on both agencies. The need for both agencies to cooperate with each other in this joint enterprise cannot be over emphasized. Therefore, each agency must have a central number that the other can contact to initiate the process.

When Probation is the lead agency for the preparation of the assessment, the probation officer only needs to call a central number at DCFS to alert DCFS of the need to prepare the assessment. At that point, the DCFS designee will immediately notify the appropriate social worker of the necessity to work on the assessment. The social worker must then contact the probation officer within 24 hours to begin the assessment. If the probation officer does not hear from the social worker within 24 hours, the probation officer should call the central number at DCFS for assistance. The probation officer should not have to attempt to track down the social worker in any other way. DCFS has designated Karel Kearn as the contact person for this process. Her number is (213) 526-6704.

When DCFS is the lead agency for the preparation of the assessment, a similar procedure should apply. The social worker should be able to call a central number at Probation to alert Probation of the need to prepare the assessment. The person designated by Probation must immediately notify the appropriate probation officer of the need to begin work on the assessment. The probation officer must then contact the social worker within 24 hours to begin the assessment. If the social worker does not hear from the probation officer within 24 hours, the social

worker should call the central number at Probation for assistance. Probation has designated Beverly Rush as the contact person for this process. Her number is (562) 940-2719.

Once the probation officer and the social worker have made contact, they are required to arrange a meeting to work on the assessment. In those cases where the minor is in custody or time is of the essence for another reason, the meeting should occur within 48 hours of their initial communication. In those cases where time is not of the essence, the meeting can be arranged at a time which is mutually convenient. The meetings between the probation officer and the social worker will take place in the Clerk's Office on the second floor of the Edmund D. Edelman Children's Court in Monterey Park. Meetings can be scheduled by calling Cynthia Garcia in the Clerk's Office at (213) 526-6611.

DEPARTMENT OF MENTAL HEALTH

The WIC 241.1 protocol includes a role for the Department of Mental Health (DMH). The current protocol states, "The role of DMH will be to assist the representatives from the Department of Probation and DCFS in obtaining records of previous mental health services and /or assessments. DMH will identify services available for the child and agencies to provide the services. Also, DMH will assist the Department's representatives in obtaining a mental health assessment when needed." DMH has designated Jo Ellen Perkins as the contact person for this process. Her number is (213) 738-3239.

CONTENTS OF ASSESSMENT

The most important part of the protocol is the assessment itself. The protocol currently in effect in our county is quite adequate. This memo will restate the relevant portions of the current protocol which relate to the contents of the assessment.

The joint assessment report shall state that the report was jointly developed by both departments and it shall include all of the information requested in the report outline. It shall summarize the assessment findings and state the reasons for the recommendations. Whenever possible, the social worker and the probation officer who collaborated on the report and their respective supervisors shall sign the report. If this is not possible due to time constraints, the report should indicate the names of the persons who collaborated on the report.

The joint assessment shall include interviews with the minor, the minor's parents/guardians, and appropriate collateral contacts including a representative from the minor's current placement. These collateral contacts shall be identified by name and telephone number in the report. The recommendation to the court shall take into account the nature of the referral, the minor's age, current juvenile court status and why, the minor's prior behavioral problems and/or delinquent

activities, the number of prior referrals to DCFS and Probation, the number of admissions to mental health facilities, the parents' cooperation with the minor's school and DCFS and/or Probation, the minor's functioning at school, the nature of the minor's home environment, the records of other agencies which have been involved with the minor and the family, and any other relevant information. The assessment shall also include any outside services or financial assistance that the minor is receiving or might be eligible for, and whether the minor would be eligible for each of these services if the minor is declared a dependent or a ward, including but not limited to special education services, regional center services, supplemental security income, and AB 3632 mental health services. The departments shall ask the court's assistance in obtaining services from an agency identified as having appropriate services for the child, but which has been uncooperative or unwilling to provide said services in the past.

DCFS and Probation shall notify the minor's dependency and delinquency attorneys and the minor's Court Appointed Special Advocate (CASA) whenever a joint assessment has been requested pursuant to WIC 241.1 and those individuals should be allowed to provide information and make a statement on the minor's behalf which should be included in the report. Once completed, a copy of the report should be provided to the minor's dependency and delinquency attorneys, the District Attorney, the CASA, the social worker and probation officer who collaborated on the assessment, and the dependency and delinquency judicial officers.

CONFLICT RESOLUTION

WIC 241.1 requires the protocol to contain provisions for resolution of disagreements between the departments regarding the need for dependency or ward status. The current protocol contains such provisions. They will be restated here. Whenever the social worker and probation officer conducting the joint assessment cannot agree on the recommendation to the court regarding the appropriate status for the subject minor, the social worker shall refer the case to the Juvenile Court Liaison Supervising Children's Social Worker, and the probation officer shall refer the case to the Juvenile Supervising Deputy Probation Officer at the Probation work location for resolution. If the supervisors cannot agree on the recommendation, they shall refer the case to their immediate supervisors (the Juvenile Court Liaison Deputy Regional Administrator for DCFS and the Juvenile Field Services Bureau for Probation). The Juvenile Consultant with Juvenile Field Services Bureau shall be the final arbiter for a case that originated with DCFS. The Director of Juvenile Court Services shall make the final decision on a case that originated with Probation.

When there has been a conflict, the report to the court should include a statement of the issues involved in the conflict, the positions taken by the departments, and what steps were taken to resolve the issues. The report shall indicate if the

decision was made jointly by DCFS and Probation, or by either department alone.”

3. COMMUNICATION BETWEEN JUDGES ON DUAL STATUS CASES²

In cases where a minor has a dual status there will be an increased need for communication between the Lead and secondary courts. To facilitate communication, each statutorily mandated court report shall contain a summary of the child’s progress in the concomitant court, including future court dates and potentially conflicting court orders.

A child’s dependency and delinquency court appointed counsel are encouraged to communicate before each court hearing.

The lead and secondary courts are also encouraged to communicate with each other.

[241.1 (e)(3) is a tad confusing because it talks about cases where dependency jurisdiction is suspended. That would seem to apply to “on hold” systems. In “lead agency” systems (like us) there is active concurrent jurisdiction. The October 26, 1999, memorandum from Nash regarding avoiding conflicts, covers all 241.1 cases where dependency jurisdiction is suspended while a child under the jurisdiction of the delinquency court. In dual status cases, neither court suspends jurisdiction.]

4. Data Collection

The Probation Department and DCFS will collect data as required by §241.2 and the Judicial Counsel of California. _____ of the Superior Court shall be the person responsible for completing the Summary Form to the Judicial Council on a quarterly basis.

5. Determination of Lead Agency and Lead Court

A. *Lead Agency*

Within seven court days after the disposition hearing the MDT will designate a Lead Agency. The Lead Agency will designate a case worker who will be responsible for implementing the case plan and reporting to the courts. The case plan shall be submitted to the Lead Court at the next scheduled court hearing. The MDT will assist the case worker in obtaining and coordinating services identified in the case plan. The MDT will provide this assistance until probation is terminated.

² The October 26, 1999 memorandum from Judge Michael Nash entitled “W.I.C. 241.1 Protocol – Avoiding Conflicts Between the Dependency and Delinquency Court” address intra court communication for the other 241.1 cases.

B. Lead Court

If the MDT selects DCFS as the Lead agency the Dependency Court shall be the Lead Court. If the MDT selects the Probation Department as the Lead Agency, the Delinquency Court shall be the Lead Court.

The Lead Court will be responsible for monitoring the implementation of the case plan. The secondary court may schedule court appearances as it deems necessary but may not change the child's status or placement without a supplemental § 241.1 report and hearing.