

May 24, 2007

TO: All Participants in the Los Angeles County Juvenile Justice System

FROM: Michael Nash, Presiding Judge, Juvenile Court
Trish Ploehn, Director, Department of Children and Family Services
Robert Taylor, Chief Probation Officer, Probation Department

SUBJECT: WIC 241.1 PROTOCOL

INTRODUCTION

This memorandum is designed to restate the procedures utilized in implementing Welfare and Institutions Code section 241.1 in Los Angeles County. The Los Angeles protocol has been redesigned to include new developments which include a new assessment process which takes into consideration strengths, needs, and risks; the creation of a multi-disciplinary team to conduct assessments, develop case plans, and participate in case management; and implementation of Assembly Bill 129 which provides counties the option of creating a dual status jurisdiction for dependents and wards of the court.

Through this new protocol, stakeholders in the Los Angeles juvenile justice system hope to enhance public safety by providing better services to youth and their families, reduce the number of dependent youths who become wards of the Delinquency Court, better serve those who do and limit their time as wards of the Delinquency Court by maintaining Dependency Court jurisdiction when appropriate.

I. BACKGROUND

Welfare and Institutions Code section 241.1(a) provides that whenever a youth appears to come within the description of both sections 300 and 602, the child welfare services department and the county probation department shall determine which status will serve the best interest of the youth and the protection of society pursuant to a jointly written protocol. Section (b) mandates and describes the protocol to be developed.

Section (c) mandates that the assessment process be utilized between counties whenever it is alleged that a youth who is under the jurisdiction of the juvenile court of one county is alleged to fall within the jurisdiction of the juvenile court of another county.

Section (d) prohibits a youth from simultaneously being a ward and a dependent of the court, except as noted in section (e).

Section (e) permits the probation department and child welfare services department in consultation with the presiding judge of the juvenile court to create a jointly written protocol to allow the departments to jointly assess and recommend that the youth be designated as a dual status youth, thereby allowing the youth to be both a dependent and a ward of the court simultaneously. The protocol must be signed by the chief probation officer, director of the social services agency, and the presiding judge of the juvenile court.

The protocol shall include (1) a description of the process to be used; (2) a description of the procedure to assess the necessity for dual status including the creation of a seamless transition from wardship to dependency status as appropriate; (3) a provision for ensuring communications between dependency judges and delinquency judges; (4) a plan to collect data in order to evaluate the protocol; (5) utilization of an on-hold system or lead/agency lead/court system that does not involve simultaneous or duplicative case management provided by both the probation department and child welfare services department.

II. DEFINING WHEN WIC 241.1 APPLIES

There are several situations where the 241.1 protocol applies. The first and most typical situation is where a youth 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 602. The assessment is to be filed and heard in the Delinquency Court with Probation designated as the lead agency.

The second situation is where a youth who is on probation pursuant to WIC 602 and who is also home on probation is the victim of child abuse and/or neglect. In these cases where a petition is filed pursuant to WIC 300, a joint assessment would then be necessary. The assessment is to be filed and heard in the Dependency Court with DCFS designated as the lead agency.

The third situation is where a youth is under the jurisdiction of the Delinquency Court and Probation wants to terminate jurisdiction and return the youth 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. A joint assessment would be necessary. The case would continue to be heard in the Delinquency Court with Probation designated as the lead agency. The process for this is clearly delineated in the memo entitled "WIC 241.1 and Permanency", dated July 23, 2004, attached hereto. (Exhibit A)

The fourth situation where the protocol applies is when a petition is filed in the Delinquency Court on a youth who is not under the jurisdiction of the Dependency Court but the detention report suggests that there may be a nexus between what occurred and child abuse and/or neglect. A joint assessment would then be ordered and heard in the Delinquency Court with Probation designated as lead agency.

In the above situation, the mere fact that a youth is a former dependent of the court does not constitute that nexus. There must be specific and articulable facts suggesting that the youth currently falls within WIC 300 in order for the Delinquency Court to order the assessment.

A fifth situation where a joint assessment is required is where it is requested that a youth who had a previous assessment and was placed on WIC 654, 725, or 790 status should be declared a delinquent for failure to comply with the terms of supervision pursuant to WIC 654, 725, or 790. (See memo dated June 15, 2000, "WIC 241.1 Protocol – Subsequent Assessments" Exhibit B).

In addition to the above, a joint assessment is required in cases where there is a fitness hearing pursuant to WIC 707, the youth is found to be fit for juvenile court jurisdiction, and it appears that the youth falls within WIC 300 and 602. (See memo dated June 18, 1998 entitled, "WIC 241.1 Protocol in Cases With Fitness Hearings" Exhibit C).

A joint assessment is not required when a youth on WIC 654, 725 or 790 status becomes the subject of a WIC 300 petition. The reasons are that it is not required by the WIC and the outcome is obvious in that the youth's WIC 654, 725 or 790 status would not change.

III. INFORMATION TRIGGERING PROTOCOL

In order to properly implement the protocol, it is important that all the participants in the juvenile justice system be aware of its applicability to particular youths. DCFS social workers must be aware of a youth's WIC 602 status when a youth is detained by them. They must also become aware when a dependent becomes the subject of proceedings in the Delinquency Court. Attorneys in the Dependency Court must know of contacts their clients have with Probation at the earliest possible time so that they can contact their clients as well as have input to the joint assessment. Probation officers and attorneys in the Delinquency system need to know of a youth's WIC 300 status by the time a youth appears in the Delinquency Court for the first time. Judicial officers in both systems must know of the youth's status with both systems at the time of the youth's first appearance in court.

The ability to keep participants properly informed of the status of a particular youth currently exists within our system. Both DCFS and Probation have access to the Juvenile Automated Index (JAI) which means they have access to information about the WIC 300 or 600 status of any youth who comes into contact with their respective departments. Every youth who is detained or filed upon by DCFS can be run on JAI before that youth's initial appearance in the Dependency Court. With that information in the Detention Report or the Application for Petition, the Court can order that the protocol be implemented at the first hearing. The key is the utilization of JAI by the social worker before the case comes to court. Further, there is no reason that the social worker cannot or should not contact Probation to initiate the joint assessment as soon as the social worker learns of the youth's WIC 600 status.

The same process applies when a youth is detained and/or filed upon by the Probation Department. Probation can also access JAI on every youth it refers for filing in the Delinquency Court. If the youth is under the jurisdiction of the Dependency Court, the probation officer should contact DCFS so that the preparation of the joint assessment can begin before the case gets to court. When the case comes to the Delinquency Court for the first time, the report from Probation should reflect the youth's active WIC 300 status. In addition, the Delinquency Court calendar contains a notation for every youth who has a connection to the Dependency Court. The Delinquency Court calendar reflects whether the jurisdiction of the Dependency Court is active or inactive. This is another means to alert the judicial officer, the court officer, and the attorneys about the need to implement the 241.1 protocol if implementation has not already begun.

There are two other means of communication which can alert participants of the need to participate in a joint assessment. One means is the START Report which is distributed to each Dependency Court every Wednesday which contains a list of dependent youth who had contacts with law enforcement involving an alleged criminal offense the previous week. (See memo dated June 12, 1998 entitled "DISSEMINATION OF THE START REPORT" Exhibit D). The other means of communication is through the Operational Agreement which provides notice to children's attorneys and social workers from Probation at the time a youth is brought to juvenile hall following arrest. (See attached Operational Agreement Between the Department of Children and Family Services [DCFS], Probation Department [Probation], and Attorneys Representing Juvenile Court Youth – Children's Law Center of Los Angeles [CLC] and Juvenile Court Bar Association [JCBA] Exhibit E).

In sum, there are several ways in existence to alert everyone in our system when youths cross over from one system to the other. There is no reason for any youth to fall through the proverbial cracks between the systems.

IV. 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 youth 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 youth 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 youth 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 youth under the jurisdiction of the Delinquency Courts 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.

In the third situation, where Probation seeks to terminate 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 after it is ordered by the Court.

In the fourth situation, where there is information suggesting that a youth 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.

In the fifth situation, where a subsequent assessment is ordered, the time line will depend on the youth's custody status. If the youth has been detained, the time line is the same as other detained cases. If the youth is not in custody, the time line will be determined by the Court.

In fitness cases, the Court will order the joint assessment as soon as the youth is found fit for juvenile court jurisdiction. The time line once again will depend on the youth's custody status. Typically, detention time lines will apply.

V. PROCEDURES FOR JOINT ASSESSMENT

When the Court orders a joint assessment pursuant to WIC 241.1, the case shall be referred to a multi-disciplinary unit known as the MDT. The MDT will consist of members from DCFS, Probation, DMH, (Exhibit I) and an educational representative from Learning Rights Legal Center. (Exhibit J) A blanket order authorizing DMH and Learning Rights Legal Center access to records has been issued. (Exhibit K) In addition to the MDT, each case will have a lead agency as delineated in Section II of the protocol. The responsibilities of the MDT shall include:

1. Preparing all joint assessments
2. Making recommendations to the Court on:
 - a. appropriate legal status for the youth
 - b. necessary services for the youth
3. Linking the youth to the necessary services
4. Tracking the youth's progress during the delivery of services
5. Reporting to the Court

A. Contents of Assessment

The most important part of the WIC 241.1 Protocol is the joint assessment. There are two parts to the assessment. First is the accumulation of facts for the assessment. The second is the method used to evaluate the facts which should include a strengths and needs piece as well as a risk assessment.

The report itself should indicate that it was developed by the MDT. It shall summarize the assessment findings and state the reasons for the recommendations. The report should indicate the names and telephone numbers of the team members who collaborated on the report.

The joint assessment shall include interviews with the youth,¹ the youth's parents/guardians, and appropriate collateral contacts including a representative from the youth'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 youth's age, current juvenile court status and why, the youth'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 youth's school and DCFS and/or Probation, the youth's functioning at school, the nature of the youth's home environment, the records of other agencies which have been involved with the youth and the family, and any other relevant information. The assessment shall also include any outside services or financial assistance that the youth is receiving or might be eligible for, and whether the youth would be eligible for each of these services if the youth is declared a dependent or ward, including but not limited to special education services, regional center services, supplemental security income, and AB3632 mental health services. The departments shall ask the court's assistance in obtaining services from an agency identified as having appropriate services for the youth, but which has been uncooperative or unwilling to provide said services in the past.

In addition, information shall be solicited from the youth's dependency and delinquency attorneys, the Court Appointed Special Advocate (CASA) if there is one, and current social worker and/or probation officer.

After the information has been gathered, the MDT shall evaluate the information using the methodology developed by the agencies and Professor Denise Herz. (Exhibit F)

After the information has been evaluated, the MDT will make two kinds of recommendations. The first will be the appropriate court status for the youth. (These recommendations will be addressed separately). The other

¹ Unless the minor has been instructed by counsel or chooses not to speak. Any conversation should not include discussion of the current offense. This does not include DMH whose role is discussed in Exhibit I.

recommendation shall be the services plan which should include but not be limited to:

1. A description of the behavior and needs, including mental health needs, that the youth must address to be successful without the supervision of the juvenile court.
2. What services will be provided to address each need identified?
3. What person and/or agency will provide these services?
4. When will those services be provided?
5. Are there any obstacles that would prevent the timely provision of services?
6. Does the youth have special education needs; Are they being addressed?
7. Will family reunification services be provided?

For each of the needs and services identified above, a social worker and/or a probation officer shall be designated as responsible to either provide the services or to make sure the service is provided by another agency. Each service plan shall also include a plan for termination of WIC 602 status if that is one of the recommendations.

B. Recommendations of Legal Status

There are six possible recommendations:

1. WIC 300 status
2. WIC 300/654 status
3. WIC 300/725 status
4. WIC 300/790 status
5. WIC 300/602 status
6. WIC 602 status

WIC 300 status can be recommended under four circumstances: (1) when a WIC 300 youth is charged in Delinquency Court; (2) when a WIC 602 youth has a petition filed in Dependency Court; (3) when a youth is charged in Delinquency Court and child abuse is suspected; and (4) when termination of WIC 602 status is sought because home is unsafe or non-existent.

WIC 300/654/725/790 status can be recommended when a WIC 300 youth is charged in Delinquency Court.

WIC 300/602 status can be recommended under the following circumstances: (1) when a WIC 300 youth is charged in Delinquency Court; and (2) when a WIC 602 youth has a petition filed in Dependency Court.

WIC 602 status can be recommended under the same situations as WIC 300 status as delineated above.

C. Guidelines for Legal Status Recommendations

Note – The MDT will utilize the attached guidelines (Exhibit G) for recommendations on appropriate legal status for the subject youth.

D. Conflict Resolution

When there is disagreement in the MDT on the recommendation to the court regarding the appropriate legal status for the subject youth, the social worker should refer the matter to the Juvenile Court Liaison Deputy Regional Administrator and the probation officer should refer the matter to the Juvenile Field Services Bureau. The Juvenile Consultant with Juvenile Field Services Bureau shall be the final arbiter when DCFS is the lead agency. The Director of Juvenile Court Services shall be the final arbiter when Probation is the lead agency.

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.

E. Submission of Report

A completed joint assessment shall be provided to the Delinquency and Dependency Court's of record, the youth's dependency and delinquency attorneys, County Counsel, the District Attorney, and the youth's CASA, if any. Consistent with law, the court considering the joint assessment shall have discretion on whether to permit an evidentiary hearing pursuant to WIC 241.1.

F. Inter-Court Communication

If the Delinquency Court, upon receipt of a joint assessment, decides that the youth should only be on WIC 300 status, the Delinquency Court should dismiss the WIC 602 case and send a copy of that minute order to the Dependency Court. If the Delinquency Court decides the youth should remain on WIC 300 status with WIC 654, 725, or 790 status as well, the Delinquency Court shall send a copy of the minute order to the Dependency Court after the youth has been placed on WIC 654, 725, or 790 status. If the Delinquency Court decides that the youth should be placed on WIC 602 status, the matter must proceed to an adjudication. Once the petition has been sustained and the youth is declared a 602, the minute order should be sent to the Dependency Court so that jurisdiction can be terminated if the intent is that 602 is to be the sole jurisdiction. If the intent of the Delinquency Court is that dual status pursuant to WIC 300/602 is appropriate, that should be reflected in the minute order sent to the Dependency Court.

If the Dependency Court, upon receipt of a joint assessment, decides that the youth should remain on WIC 602 status, the Dependency Court should dismiss the WIC 300 petition and send a copy of that minute order to the Delinquency Court. If the

Dependency Court decides that the youth should be placed on WIC 300 status, the Dependency Court must send a copy of the minute order which declares the youth a dependent of the court to the Delinquency Court so that it can terminate its jurisdiction if the intent of the Dependency Court is that 300 is to be the sole jurisdiction. If the intent of the Delinquency Court is that dual status pursuant to WIC 300/602 is appropriate, that should be reflected in the minute order sent to the Dependency Court.

G. Avoiding Conflicts Between the Courts

The issue of avoiding conflicts between the Dependency Court and the Delinquency Court was previously addressed in the attached memo dated October 26, 1999 entitled, "WIC 241.1 Protocol – Avoiding Conflicts Between the Dependency and Delinquency Court." (Exhibit H) The principles articulated in that memo are still applicable.

VI. DUAL STATUS PROCEDURES

There are two types of dual status that occur through the WIC 241.1 Protocol, informal and formal. Informal dual status occurs when a WIC 300 youth is also placed on WIC 654, 725, or 790 status. Formal dual status occurs when a youth is simultaneously on WIC 300 and 602 status. This will address the court and agency supervision procedures for both.

A. Informal Dual Status

When a WIC 300 youth is placed on probation without wardship under WIC 654, 725 or 790, the matter shall be automatically referred to the Team for compliance with the case plan articulated in the joint assessment and the court's orders.

The MDT shall assume responsibility for overseeing the provision of services to and the progress of the youth. The Team shall meet with the youth's social worker and caregiver and coordinate its actions within the scope of the overall case plan for the youth.

The social worker will continue to prepare the scheduled reports for the Dependency Court. The Team and the social worker will consult with each other prior to the preparation and submission of the report. The report will include a copy of any report previously submitted to the Delinquency Court.

The MDT will be responsible for preparing any reports due in the Delinquency Court. The report will include a copy of any report previously submitted to the Dependency Court.

In the event that a youth violates the conditions of his/her WIC 654, 725, 790 supervision and WIC 602 status is being considered, a subsequent joint assessment is required. In that case, the procedures for joint assessment should be followed.

B. Formal Dual Status

When a WIC 300 youth is also placed on WIC 602 status or vice versa, the matter should be automatically referred to the MDT for case management purposes. The MDT will be responsible for implementing and/or overseeing implementation of the recommendations from the joint assessment and the court's order.

For dual status youth, both the Dependency Court and the Delinquency Court will maintain their respective proceedings. The MDT will be responsible for coordinating the efforts of Probation and DCFS regarding the youth and the family. The MDT will provide input to both the social worker and the probation officer as they prepare their reports for their respective hearings. Each report will have any previously submitted reports to the other court attached thereto along with updates from the MDT.

During dual status jurisdiction, placement decisions and findings (including Title IV-E) will be made by the Dependency Court. The actual placement location will be determined by the social worker in conjunction with the MDT, taking into consideration any legal impediments to certain placements due to the youth's WIC 602 status. In cases where a suitably placed WIC 300 youth needs to change placement due to the new and additional WIC 602 status, both Dependency Court and Delinquency Court will make suitable placement findings. When this occurs, Probation will be the lead agency in placing and supervising the youth's placement in probation only placements. Either way, this will insure continued representation for parents in Dependency Court and also insure that Probation does not lose access to Title IV-E funds when the youth is placed in a Probation supervised suitable placement.

Custodial decisions, i.e. halls, camps, DJJ will be made by the Delinquency Court. When a WIC 300 youth is committed to camp or DJJ, the Dependency Court's order will be suitable placement on hold for Title IV-E funding purposes pending release from camp or DJJ if the order of the Delinquency Court places the youth on dual status. If a WIC 300 youth who is at home is committed to camp or DJJ, the order of the Dependency Court will continue to be home of parent if the order of the Delinquency Court places the youth on dual status, assuming conditions still exist for WIC 300 jurisdiction.

Dual status jurisdiction should last only as long as it is necessary. For a WIC 300 youth who is at home, dependency jurisdiction will last only as long as there are conditions which justify jurisdiction. Delinquency jurisdiction can continue with the youth at home. On the other hand, delinquency jurisdiction should terminate when no longer necessary and the youth remains at home with dependency jurisdiction as long as the jurisdiction is necessary.

For a suitable placement youth, delinquency jurisdiction should only last as long as necessary and no extra steps are necessary with respect to dependency

jurisdiction which remains in effect. However, group home placement can be impacted by the termination of delinquency jurisdiction. Hopefully, those situations will be reduced by the fact that dependency jurisdiction with the participation of the MDT will have consistently maintained a focus on permanency.

The situation is a little trickier with a dependent youth who is at home, is charged in the Delinquency Court, and the MDT recommends WIC 602 status with a suitable placement order. In that situation, if the Delinquency Court orders that disposition, jurisdiction in Dependency Court should be terminated for that youth. There are several reasons for this.

First, if the youth is at home under Dependency Court jurisdiction, it is in most instances not expected that Dependency Court will maintain its jurisdiction for a significant period of time. Second, if the Delinquency Court disposition is suitable placement, there is not an uncomplicated legal mechanism to convert that disposition into a suitable placement order in Dependency Court. Third, if the delinquency suitable placement is terminated, the youth presumably has a safe home to return to. Fourth, that is a perfect situation for the family to receive family reunification services from Probation, something they are legally required to do. Finally, it is expected that this will occur in very few cases.

VII. DATA COLLECTION

All data necessary to comply with WIC 241.2 for evaluation of the protocol shall be collected and maintained by the MDT.

VIII. CONCLUSION

This memorandum is intended to provide a framework for improvement and expansion of Los Angeles County's WIC 241.1 Protocol. With the cooperation of all participants in our juvenile justice system, we should be able to utilize this process to achieve better outcomes for many of the youth who pass through our system while making our community a safer place.

MN:ns
Attachments