

October 26, 1999

MEMORANDUM

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

FROM: Presiding Judge Michael Nash
Juvenile Court

SUBJECT: **W.I.C. 241.1 PROTOCOL - Avoiding Conflicts Between the
Dependency and Delinquency Court**

BACKGROUND

This memo is written to deal primarily with issues arising from the recent appellate court case, In re Marcus G., filed July 28, 1999. In that case, a minor who was a dependent of the Dependency Court was declared a ward of the Delinquency Court without the benefit of a joint assessment pursuant to Welfare and Institutions Code section 241.1. Subsequently, the Dependency Court terminated its jurisdiction over the minor's objection. In an appeal filed by the minor, the appellate court remanded the matter to the juvenile court to determine whether the procedures mandated in WIC 241.1 were followed.

Since then, it has been brought to my attention that requests are being made to the Dependency Court to terminate jurisdiction over dependents who have been declared wards by the Delinquency Court either without the benefit of joint assessments pursuant to the WIC 241.1 protocol, or with what may appear to be joint assessments which do not strictly comply with the protocol. The result is Dependency Courts refusing to terminate jurisdiction, thereby creating potential conflict between our Dependency and Delinquency Courts. In this memo, I will hopefully articulate ways our Courts can resolve these issues so that we will not have minors who are under the jurisdiction of both Courts, a situation contrary to the law as stated in WIC 241.1(c).

CURRENT PROCEDURES

The best and easiest way to avoid these issues is by following the process established in our county pursuant to WIC 241.1. Specifically, minors who are dependents of the court must be identified in the Delinquency Court as soon as possible, the joint assessments must be requested and/or ordered, and the quality of these assessments must be evaluated by all who participate in the process from the probation officers and social workers who prepare them, to the lawyers who represent the various parties, and the judicial officers who consider them. If this process is followed, there should be no potential for conflict between the courts, assuming the following steps are taken:

1. The minute order prepared by the Delinquency Court reflecting that a joint assessment was ordered, shall be sent to both the Dependency Court of record and the DCFS 241.1 Unit no later than the following day.
2. Upon completion of the joint assessment, copies of the report shall be sent to both the Delinquency and Dependency departments of record simultaneously.
3. When the Delinquency Court determines the minor's appropriate status, the judicial officer shall state for the record that it has read and considered the joint assessment report and include any additional evidence that has been presented prior to the determination of the appropriate status. The minute order shall be sent to the Dependency Court of record and the DCFS 241.1 Unit no later than the following day.
4. If the Delinquency Court determines that *delinquency* is the appropriate status, the minute order which ultimately declares the minor to be a ward of the court shall be sent to the Dependency Court of record and the DCFS 241.1 Unit. This process insures that the Dependency Court's ruling on a request to terminate jurisdiction is made with full knowledge that the 241.1 process has been appropriately concluded.

There is no legal basis for the Dependency Court to deny that request for termination of jurisdiction because the determination by the Delinquency Court cannot be undermined by the Dependency Court. Any disagreements with that determination must be heard within the framework of the Delinquency Court.

ALTERNATIVES TO AVOID CONFLICT

Despite these procedures, it is fair to assume that occasionally cases will still come to the Dependency Court requesting termination of jurisdiction where it is not apparent that these procedures have been followed. In that case, there are a variety of alternatives available. However, before utilizing one of the following alternatives, County Counsel and/or the minor's attorney should make an effort before the case is called to determine if the procedure has been followed. If they are unable to do so, or if the documentation is not readily available, the case should be continued for not more than a few days to determine if the procedure has been followed and to obtain the documentation. Assuming that the assessment procedure did not occur, the following alternatives may be considered:

1. The Dependency Court should continue the request to terminate jurisdiction so that the minor's attorney in the Dependency Court can consult with the minor's delinquency attorney, and ultimately file a motion to vacate the dispositional order in the Delinquency Court on the ground that WIC 241.1 has not been followed. In re Marcus G. is now authority for this request. This procedure has been used successfully in our courts previously.
2. Another alternative is for the Dependency Court judicial officer or court clerk to communicate with the Delinquency Court judicial officer or clerk so that the Delinquency Court judicial officer can recall the case on his or her own motion. A related alternative is for the Dependency Court judicial officer to order the social worker to communicate with the probation officer who then communicates the deficient procedure to the Delinquency Court judicial officer and requests that the case be recalled for the purpose of complying with WIC 241.1.

If any of the above alternatives are used, the Delinquency Court shall proceed in the following manner. Without vacating the dispositional order, the Delinquency Court should order that a 241.1 assessment be completed. After receiving the assessment and conducting a hearing, the Delinquency Court should determine the appropriate status for the minor. If the Delinquency Court determines that the appropriate status is as a ward of the Delinquency Court, the minute order reflecting such shall be sent to the Dependency Court of record and the 241.1 Unit no later than the following day. Upon receipt of the appropriate documentation, the Dependency Court judicial officer should then terminate that court's jurisdiction.

On the other hand, if the Delinquency Court judicial officer determines that dependency is the appropriate status for the minor, the Delinquency Court judicial officer shall then vacate the dispositional order and proceed accordingly. This may mean simply dismissing the 602 petition or utilizing the procedures pursuant to WIC 654 or 725. In either case, the Delinquency Court clerk shall send the minute order to the Dependency Court of record and the 241.1 Unit no later than the following day.

3. A last alternative for the Dependency Court judicial officer is to grant the request to terminate jurisdiction even though the process has not been followed. This could be done after an independent review of the facts in which the judicial officer believes that termination of jurisdiction is the best result or that the failure to follow the WIC 241.1 procedure is, in effect, harmless error. There is one caution, however. If the minor's attorney in the Dependency Court objects, the Dependency Court judicial officer should continue the matter so that the minor's attorney can follow the first alternative, that is, filing a motion to vacate. This will avoid the potential of unnecessary utilization of the appellate process.

CONCLUSION

As a final note, although this memo has been written from the perspective of cases in which minors crossover from the Dependency Court to the Delinquency Court, the most common situation, the exact same process should occur in those rare cases where minors crossover from the Delinquency Court to the Dependency Court.