



# Children's Law Center of California

## CA Fostering Connections to Success Act Hearing Guide Memorandum #4

Below is a guide to the four hearings that are most impacted by the California Foster Connections to Success Act. This memorandum includes the following documents:

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### CA FOSTERING CONNECTIONS TO SUCCESS ACT OVERVIEW

#### **Goals**

- Recognizes need for better outcomes for youth entering adulthood from the foster care system.
- Youth are provided with increased levels of responsibility and independence while still afforded support.

#### **Benefits of Remaining in Care**

- Housing
  - More options, including SILP and potential to receive foster care payments directly.
  - Different licensing standards for foster homes – more freedom, flexibility, and respect of adult status.
- Continued case management: affirmative obligation on social worker to assist with meeting participation requirements; see below for requirements. This could mean help with help enrolling in college, finding a job, etc.
- Other services still available, such as clothing allowances and wraparound.
- Continued court supervision
  - Right to an attorney
  - Because the youth is a legal adult, no FR or .26 hearings. Parents no longer parties. Can only participate if invited by youth.
  - Focus will be on the goals and services of the TILP and efforts to achieve permanence.
- Important to stress this is not foster care for minors. Youth should have the same rights as any other adult, including medical privacy and right to make medical and educational decisions.

#### **Basics of Eligibility**

- Extended foster care applies to **non-minor dependents** ("NMD"). On or after January 1, 2012, a NMD is defined as a dependent who: (a) has attained age 18; and (b) is/was under a *foster care placement order* at age 18, and (c) is participating in one of the five eligibility conditions as described in his/her Transitional Independent Living Plan. *WIC 366.31 [New] & WIC 11400 (v) [Amended]*.
- However, nothing prevents the court from continuing jurisdiction over cases that currently exist with nonminors whom do not fall within the definition of a NMD. *WIC 303*

- **Eligibility Conditions:** youth must satisfy at least ONE of the following participation requirements:
  1. Completing high school or equivalent program (e.g. GED); or
  2. Enrolling in college, community college, or a vocational education program; or
  3. Employed at least 80 hours/month; or
  4. Participating in a program designed to promote or remove barriers to employment; or
  5. Unable to do one of the above requirements because of a medical condition.
- In addition to meeting the eligibility conditions, a youth must also:
  - Sign a **mutual agreement** agreeing to continue as an NMD of the Juvenile Court (within 6 months of 18<sup>th</sup> birthday); and
  - Agree to live in a **supervised placement** that is licensed or approved. *WIC 11400 (u) & 11403 [Amended], 11405*

**Implementation Timeline** *WIC 11403 (k)*

- Beginning in 2012, benefits will extend to youth up to 19 years old. 20 years old in 2013 and 21 in 2014 subject to budget appropriation by the state Legislature.

**Placement Options** *WIC 11402*

- Traditional placement options still available to youth, including:
  - Approved home of relative or NREFM
  - FFA or Foster Family Home
  - Group Home (with limitations)
  - Home of a Nonrelated Legal Guardian
  - Small Family Home/Dual Agency Regional Center Homes
  - THPP (with limitations)
- 2 NEW Placement Options:
  - **THP-Plus Foster Care:** modeled after existing THP-Plus but allows for cases to remain open.
  - **Supervised Independent Living (“SILP”):** the most “independent” placement option. Can include apartments (with or without roommates), room & board arrangements or college dorms. This may also include placements with relatives or family friends who previously, were unable to be ASFA approved, but who might be appropriate as a SILP. The placements will be approved and supervised. NMDs may be able to receive payments directly under this option.

**Re-Entry**

- Upon termination of jurisdiction, the court will assume **general jurisdiction** over the youth until there is no longer AB 12/212 eligibility. For all intents and purposes, the case will be closed. However, general jurisdiction allows the youth to **re-enter** when s/he needs to in order to access services.
- Re-entry can be achieved by filing a **388(e)** or by going into a child welfare office and signing a **Voluntary Re-Entry Agreement (VRA)** with the supervising agency. Preferred method is to sign the VRA – services begin immediately and the obligation to file 388 shifts to the agency.

**Acronyms**

- NMD: Nonminor Dependent
- SILP: Supervised Independent Living Placement
- THP+FC: Transitional Housing Program Plus Foster Care
- TILP: Transitional Independent Living plan
- TILCP: Transitional Independent Living Case Plan
- VRA: Voluntary Reentry Agreement

## **STATUS REVIEW HEARING (CLIENT IS OVER 17.5 AND UNDER 18)**

Same requirements as a regular status review hearing, but there are additional requirements for the report and at the hearing if it is the last status review hearing before your client turns 18 years old.

### ***What should be in the report?***

1. Your client's plans to stay in care after 18 as a nonminor dependent\*\*,
2. Whether there is an SSI application pending,
3. Whether there is a SJIS application pending,
4. Social worker's efforts to provide child with documents/information required in WIC 391,
5. When/how your client was informed of his/her right to terminate jurisdiction,
6. When/how your client was informed of the benefits of remaining in care, and
7. When/how your client was informed about re-entry if s/he decides to close his/her case at 18.

*There may be situations where your client would like to remain in care, but NOT as a nonminor dependent. For example, if your client has a SSI application pending, s/he may want to keep the case open just until that application is resolved. As has always been the case, the court has discretion to keep a case like this open until age 21 pursuant to WIC 303.*

### **ALSO,**

8. *If your client intends to stay in care:*
  - How your client plans to meet 1 of the 5 participation requirements to be a nonminor dependent,
  - Social worker's efforts to help your client meet the participation requirement(s), and
  - If ICWA applies, whether your client wishes to remain described as an Indian Child.
9. *If your client does not intend to stay in care:*
  - Your client's "alternative plan" for his/her transition to independence once the case closes, including housing, education, employment and a support system.

### ***What if the information above is not provided in the report?***

You should request a continuance for no more than five court days if there is no TILP, or if the report and TILP do not adequately provide the information described above. Cite *Rule of Court 5.903 (b)(5)*.

### ***What should you be discussing with your client?***

- Go over the rights s/he will have at age 18 and the choice of whether to: (a) remain in care as a nonminor dependent, (b) remain in care, but not as a nonminor dependent\*\*, or (c) close the case.
- Discuss the benefits of remaining in care, including new housing options.
- If your client intends to remain as a nonminor dependent, discuss how s/he plans to meet the participation requirements.
- Explain re-entry and how it will work.

### ***Court Hearing Findings/Orders***

- The court must make findings based on the information provided in the report (see #1-8 above).
- Orders will depend on your client's preference:
  - *Intends to remain in care as a nonminor dependent:* Court sets a nonminor dependent status review hearing within six months from the date of the current hearing (for our Sac attorneys: this first hearing cannot be an administrative review).
  - *Intends to remain in care, but NOT as a nonminor dependent\*\*:* Court sets a regular status review hearing within six months from the date of the current hearing.
  - *Does not intend on remaining in care:* Court sets a termination hearing pursuant to WIC 391 within one month after your client turns 18.

## **STATUS REVIEW HEARING OVER 18**

If your client is remaining in care as a nonminor dependent (“NMD”), status review hearing requirements have changed (see below).

Traditional status review requirements apply however, if your client does not meet the eligibility requirements for status as a nonminor dependent, but the court has maintained jurisdiction pursuant to its discretion in WIC 303 (i.e. your client does not want to sign a mutual agreement or meet 1 of the 5 participation requirements, but has requested his case remain open until his SSI application is resolved).

## **NONMINOR DEPENDENT STATUS REVIEW HEARING**

### ***What should be in the report?***

1. Necessity and appropriateness of the placement,
2. Your client’s plans to remain in care,
3. CSW’s efforts to help him/her meet the NMD eligibility requirements,
4. CSW’s efforts to help him/her maintain & establish relationships with siblings and caring and committed adults who can serve as life-long mentors,
5. Verification that s/he has been provided the information, documents and services required by WIC 391,
6. Your client’s TILP, as well as information regarding your client’s participation in developing the TILP, his/her progress in meeting the goals in the TILP, CSW’s efforts to comply with the TILP, and the possible need to modify the TULP to assist your client in meeting his/her goals.

*The law specifically points out that a nonminor dependent retains all legal decision making authority as would any adult. Hearings must respect that legal status. As such, there should be no FR, .26 hearings, authorization of psychotropic meds, limitation of education rights without your client’s permission, etc.*

### ***What if the information above is not provided in the report?***

You should request a continuance for no more than five court days. Cite Rule of Court 5.707 (c)(2).

### ***What should you be discussing with your client?***

- The appropriateness of the placement and the TILP, which should be identifying ways to gain increased responsibility. Make sure your client understands and agrees that the responsibilities are reasonable.
- What assistance, if any, your client is receiving from his/her CSW.
- Who your client would like to invite to their hearing (remember, parents are no longer parties and are not noticed for the hearings).

### ***Court Hearing Findings***

- The court must make findings based on the information provided in the report (see #1-6 above).
- The court must also find proper notice. Your client can chose to appear telephonically, or can designate you to appear on his/her behalf, but s/he must be provided proper notice.
- There are also special findings that must be made if ICWA applies. See Rule of Court 5.903(e)(1)(J).

### ***Court Hearing Findings***

- The court can either (1) continue jurisdiction and set a 6 month status review hearing, (2) set a termination of jurisdiction hearing within 30 days, **or** (3) terminate jurisdiction if the nonminor dependent review hearing is being held at the same time as the WIC 391 termination hearing (see one pager on termination of jurisdiction). Orders will depend on your client’s preference and/or participation in the TILP.

## **HEARING TO CONSIDER TERMINATION OF JURISDICTION (WIC 391 HEARING)**

In order to terminate jurisdiction over a client who 18 or older, the court must hold a hearing pursuant to WIC 391.

### **What should be in the report?**

1. Whether it is best interest of NMD to remain in foster care and why,
2. What makes your client eligible as a NMD,
3. Whether a SJIS or SSI application is pending,
4. Social worker's efforts to provide child with documents/information required in WIC 391,
5. When/how your client was informed of his/her right to terminate jurisdiction,
6. When/how your client was informed of the benefits of remaining in care,
7. When/how your client was informed about re-entry,
8. A completed form Termination of Juvenile Court Jurisdiction-Nonminor (JV-365),
9. Most recent TILP, completed 90 day Transition Plan, and if recommendation is for client to remain in care, the client's case plan (TILCP) must also be included,
10. *If your client is not present at the hearing:* Documentation of client's statement that s/he did not want to appear **or** documentation of reasonable efforts to locate if location is unknown.

*When the court terminates jurisdiction over a client who is eligible for reentry, it is important that you review with your client the JV Forms applicable to reentry, including the 388 (e) petition & the informational handout. Remind your client that s/he can sign a voluntary reentry agreement at DCFS to initiate benefits/services while waiting for a court hearing.*

### **What if the information above is not provided in the report?**

- You should request a continuance for no more than five court days. Cite *Rule of Court 5.555 (b)(5)*.

### **What should you be discussing with your client?**

- If your client wants his/her case closed, review the process for reentry and the proposed 90 day transition plan for specific options as to housing, education, supportive services, health care etc.
- **If your client does not want his/case closed but the Dept is recommending JT b/c your client is not satisfying participation conditions, discuss with your client the accurateness of the report the allegations of noncompliance, and the CSW's efforts to assist your client in satisfying participation conditions. Determine if your client wants to set a contest and what evidence should be presented to the court.**

### **Court Hearing Findings/Orders**

- The court must make findings based on the information provided in the report (see #1-11 above), including:
  - Whether your client had the opportunity to confer with you, and
  - Whether the NMD meets the eligibility criteria to remain in foster care as a NMD.
- If the court finds your client is eligible as a NMD, the court orders continued jurisdiction and sets a nonminor dependent status review hearing within 6 months
- If the court finds your client does not meet the criteria for a NMD, either because of participation requirements or age eligibility restrictions, the court can, pursuant to WIC 303, order continued jurisdiction and set a status review hearing within 6 months.
- If the court finds your client: 1) wants his/her case closed 2) is not participating in a reasonable and appropriate Transitional Independent Living Case Plan (i.e. not satisfying a participation condition) **or** 3) is not a NMD and is not otherwise eligible to remain in foster care (i.e. aging out) the court terminates jurisdiction.
- When terminating jurisdiction, the court issues an order retaining *general jurisdiction* for purposes of reentry and orders/ensures that the youth was provided a copy with the forms relating to re-entry including: the informational form (JV-464) and the 388 (e) petition (JV-466) .

## **HEARING TO REQUEST RETURN TO FOSTER CARE (REENTRY)**

When the court terminates jurisdiction over a nonminor dependent “NMD,” the court retains general jurisdiction over the nonminor. The nonminor has the option to re-enter foster care at a future date, as long as s/he doesn’t reach the maximum age limit for extended foster care. When a 388 (e) petition is filed requesting that the court resume jurisdiction by, or on behalf of, your former client, the court holds a hearing within 15 court days of receiving the 388 (e) and decides whether or not to re-open the case.

### ***What should be in the report?***

1. Confirmation that your client was a NMD and is age eligible,
2. Which participation condition your client intends to meet,
3. The Dept’s recommendation as to whether it is in your client’s best interest to resume jurisdiction,
4. *Whether your client signed a VRA, and*
5. *The recommended placement for your client.*

*There is a conflict in the statute regarding when the voluntary reentry agreement (VRA) must be signed. Pending clean-up legislation, please contact Lindsay or Sue if your client has filed a 388 without first signing a VRA.*

### ***What if the information above is not provided in the report?***

You should request a continuance for no more than five court days. Cite *Rule of Court 5.906(h)(3)*.

### ***What should you be discussing with your client?***

- Services: If a VRA was signed, services should have been initiated. What assistance has (or **should** have) been received i.e. medical/dental care, housing, education from the CSW?
- The importance of the TILCP, what help your client needs to satisfy one of five of the participation conditions, the appropriateness of your client’s current placement, and your client’s future goals, including housing (i.e. working towards SILP or completing a readiness assessment).

### ***Court Hearing - Findings***

- Whether the nonminor was previously a NMD who falls within the age criteria, that the court retained general jurisdiction, that the nonminor intends to satisfy one of the participation conditions, and whether the nonminor entered into VRA for placement in a supervised setting under the supervision of DCFS.
- That it is in the best interest of your client to continue in foster care.
- The court must also find proper notice. Your client can chose to appear telephonically, or can designate you to appear on his/her behalf, but s/he must be provided proper notice.

### ***Court Hearing - Orders***

The court can **either**

- Find that the nonminor meets the requirements (age, intention to meet participation conditions, signed VRA) and grant the request to resume jurisdiction, order DCFS to submit a new Transitional Independent Living Case Plan within 60 days, and set a nonminor dependent review hearing within 6 months of the signing of the VRA , **OR**
- Find that while nonminor meets the age requirement, he/she does not intend to satisfy at least one of the participation conditions/hasn’t signed a VRA and deny the request to resume jurisdiction (listing the reasons), inform the nonminor of the right to re-file the petition when circumstances change, provide the nonminor with a blank petition, and terminate the appointment of the attorney – effective 7 days after the hearing, **OR**
- Find the nonminor doesn’t meet age requirements or that the court didn’t retain general jurisdiction, and enter an order denying the request and terminate the appointment of the attorney- effective 7 days from the after the hearing.