

[<< Previous Rule](#) | [Back to Title Index](#) | [Next Rule >>](#) | [Printer-friendly version of this page](#)



## 2012 California Rules of Court

### **Rule 5.812. Additional requirements for any hearing to terminate jurisdiction over child in foster care and for status review hearing for child approaching majority (§§ 450, 451, 727.2(i)-(j), 778)**

#### **(a) Hearings subject to this rule**

The following hearings are subject to this rule:

- (1) The last review hearing under section 727.2 or 727.3 before the child turns 18 years of age. This hearing must be set at least 90 days before the child attains his or her 18th birthday and within six months of the previous hearing held under section 727.2 or 727.3.
- (2) Any review hearing held under section 727.2 or 727.3 for a child less than 18 years of age during which a recommendation to terminate juvenile court jurisdiction will be considered;
- (3) Any hearing to terminate juvenile court jurisdiction over a child less than 18 years of age who is subject to an order for foster care placement; and
- (4) Any hearing to terminate juvenile court jurisdiction over a child less than 18 years of age who is not currently subject to an order for foster care placement, but was previously removed from the custody of his or her parents or legal guardian as a dependent of the juvenile court and an order for a foster care placement as a dependent of the juvenile court was in effect at the time the juvenile court adjudged the child to be a ward of the juvenile court under section 725.

#### **(b) Conduct of the hearing**

- (1) The hearing must be held before a judicial officer and recorded by a court reporter.
- (2) The hearing must be continued for no more than five court days for the submission of additional information as ordered by the court if the court finds that the report and, if required, the Transitional Independent Living Plan submitted by the probation officer do not provide the information required by (c) and the court is unable to make all the findings required by (d).

#### **(c) Reports**

- (1) In addition to complying with all other statutory and rule requirements applicable to the report prepared by the probation officer for a hearing described in (a)(1)-(4), the report must include verification that the requirements of section 607.5 have been completed and a description of:
  - (A) The child's progress toward meeting the case plan goals that will enable him or her to be a law-abiding and productive member of his or her family and the community.
  - (B) If reunification services have not been previously terminated, the progress of each parent or legal guardian toward participating in case plan service activities and meeting the case plan goals developed to assist in the efforts to resolve his or her issues that were identified and contributed to the child's removal from his or her custody.
  - (C) The current ability of each parent or legal guardian to provide the care, custody, supervision, and support the child requires in a safe and healthy environment.
  - (D) For a child previously determined to be a dual status child for whom juvenile court jurisdiction as dependent was suspended under section 241.1(e)(5)(A), a joint assessment by the probation department and the child welfare services agency under section 366.5 regarding the detriment, if any, to the child of a return to the home of his or her parents or legal guardian and a recommendation on the resumption of dependency jurisdiction. The facts in support of the opinions expressed and the recommendations made must be

included in the joint assessment section of the report. If the probation department and the child welfare services agency do not agree, the child welfare services agency must file a separate report with facts in support of its opinions and recommendations.

- (E) For a child previously determined to be a dual status child for whom the probation department was designated the lead agency under section 241.1(e)(5)(B), the detriment, if any, to the child of a return to the home of his or her parents or legal guardian and the probation officer's recommendation regarding the modification of the court's jurisdiction over the child from that of a dual status child to that of a child under the court's jurisdiction as a dependent under section 300 and the facts in support of the opinion expressed and the recommendation made.
  - (F) For a child other than a dual status child, the probation officer's recommendation regarding the modification of the juvenile court's jurisdiction over the child from that of a ward under section 601 or 602 to that of a dependent under section 300 or to that of a transition dependent under section 450 and the facts in support of his or her recommendation.
- (2) For the review hearing held on behalf of a child approaching majority described in (a)(1) and any hearing described in (a)(2) or (a)(3) held on behalf of a child more than 17 years, 5 months old and less than 18 years of age, in addition to complying with all other report requirements set forth in (c)(1), the report prepared by the probation officer must include:
- (A) The child's plans to remain under juvenile court jurisdiction as a nonminor dependent including the criteria in section 11403(b) that he or she plans to meet;
  - (B) The efforts made by the probation officer to help the child meet the criteria in section 11403(b);
  - (C) For an Indian child, his or her plans to continue to be considered an Indian child for the purposes of the ongoing application of the Indian Child Welfare Act to him or her as a nonminor dependent;
  - (D) Whether the child has applied for and, if so, the status of any in-progress application pending for title XVI Supplemental Security Income benefits and, if such an application is pending, whether it is in the child's best interest to continue juvenile court jurisdiction until a final decision has been issued to ensure that the child receives continued assistance with the application process;
  - (E) Whether the child has an in-progress application pending for Special Juvenile Immigration Status or other applicable application for legal residency and whether an active juvenile court case is required for that application;
  - (F) The efforts made by the probation officer toward providing the child with the written information described in section 391(e)(1), and to the extent that the child has not yet been provided with the information, the barriers to providing the information, and the steps that will be taken to overcome those barriers by the date the child attains 18 years of age;
  - (G) The efforts made by the probation officer toward completing and providing the child with the items described in section 391(e)(2), and to the extent that the child has not yet been provided with each of the documents and services, the barriers to providing those items, and the steps that will be taken to overcome those barriers by the date the child attains 18 years of age;
  - (H) When and how the child was informed that upon reaching 18 years of age he or she may request the dismissal of juvenile court jurisdiction over him or her under section 778;
  - (I) When and how the child was provided with information regarding the potential benefits of remaining under juvenile court jurisdiction as a nonminor dependent and the probation officer's assessment of the child's understanding of those benefits;
  - (J) When and how the child was informed that if juvenile court jurisdiction is terminated, he or she has the right to file a request to return to foster care and have the juvenile court assume or resume transition jurisdiction over him or her as a nonminor dependent; and
  - (K) The child's Transitional Independent Living Plan, which must include:
    - (i) The individualized plan for the child to satisfy one or more of the criteria in section 11403(b) and the child's anticipated placement as specified in section 11402; and
    - (ii) The child's alternate plan for his or her transition to independence, including housing, education, employment, and a support system in the event the child does not remain under juvenile court jurisdiction after attaining 18 years of age.

#### **(d) Findings**

- (1) At the hearing described in (a)(1)-(4), in addition to complying with all other statutory and rule requirements applicable to the hearing, the court must find on the record and in the written, signed orders:
  - (A) Whether the rehabilitative goals for this child have been met and juvenile court jurisdiction over the child as a ward is no longer required. The facts supporting the finding must be stated on the record.
  - (B) For a dual status child for whom dependency jurisdiction was suspended under section 241.1(e)(5)(A) whether the return to the home of the parent or legal guardian would be detrimental to the minor. The facts supporting the finding must be stated on the record.
  - (C) For a child previously determined to be a dual status child for whom the probation department was designated the lead agency under section 241.1(e)(5)(B), whether the return to the home of the parent or legal guardian would be detrimental to the minor. The facts supporting the finding must be stated on the record.
  - (D) For a child other than a dual status child:
    - (i) Whether the child is at risk of abuse or neglect. The facts supporting the finding must be stated on the record;
    - (ii) Whether the return to the home of the parent or legal guardian would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. The facts supporting the finding must be stated on the record
    - (iii) Whether reunification services have been terminated;
    - (iv) Whether the matter has been set for a hearing to terminate parental rights or establish a guardianship; and
    - (v) Whether the minor intends to sign a mutual agreement for a placement in a supervised setting as a nonminor dependent.
- (2) At the review hearing held on behalf of a child approaching majority described in (a)(1) and any hearing under (a)(2) or (a)(3) held on behalf of a child more than 17 years, 5 months old and less than 18 years of age, in addition to complying with all other statutory and rule requirements applicable to the hearing, the court must find on the record and in the written, signed orders:
  - (A) Whether the child's Transitional Independent Living Case Plan, if required, or Transitional Independent Living Plan, includes:
    - (i) A plan specific to the child for him or her to satisfy one or more of the criteria in section 11403(b) and the specific criteria in section 11403(b) it is anticipated the child will satisfy; and
    - (ii) The child's alternate plan for his or her transition to independence, including, housing, education, employment, and a support system, in the event the child does not remain under juvenile court jurisdiction after attaining 18 years of age.
  - (B) For an Indian child to whom the Indian Child Welfare Act applies, whether he or she intends to continue to be considered an Indian child for the purposes of the ongoing application of the Indian Child Welfare Act to him or her as a nonminor dependent;
  - (C) Whether the child has an in-progress application pending for title XVI Supplemental Security Income benefits and, if such an application is pending, whether it is in the child's best interest to continue juvenile court jurisdiction until a final decision has been issued to ensure that the child receives continued assistance with the application process;
  - (D) Whether the child has an in-progress application pending for Special Juvenile Immigration Status or other applicable application for legal residency and an active juvenile court case is required for that application;
  - (E) Whether the child has been informed that he or she may decline to become a nonminor dependent;
  - (F) Whether the child has been informed that upon reaching 18 years of age he or she may request the dismissal of juvenile court jurisdiction over him or her under section 778;
  - (G) Whether the child understands the potential benefits of remaining under juvenile court jurisdiction as a nonminor dependent; and
  - (H) Whether the child has been informed that if juvenile court jurisdiction is terminated, he or she has the right to file a request to return to foster care and have the juvenile court assume or resume transition jurisdiction over him or her as a nonminor dependent;

- (I) Whether all the information, documents, and services in sections 391(e) were provided to the child, and
  - (i) Whether the barriers to providing any missing information, documents or services can be overcome by the date the child attains 18 years of age; and
  - (ii) Whether juvenile court jurisdiction should be continued to ensure that all information, documents, and services are provided to the child if the barriers cannot be overcome by the child attains 18 years of ages; and
- (J) Whether verification was submitted that the notices and information required under section 607.5 were provided to a child who is or was subject to an order for foster care placement.

**(e) Orders**

- (1) For a child previously determined to be a dual status child for whom dependency jurisdiction was suspended under section 241.1(e)(5)(A), dependency jurisdiction must be resumed if the court finds that the child's rehabilitative goals have been achieved and a return to the home of the parent or legal guardian would be detrimental to the child.
- (2) For a child previously determined to be a dual status child for whom the probation department was designated the lead agency under section 241.1(e)(5)(B), the court must terminate dual status, dismiss delinquency jurisdiction and continue dependency jurisdiction with the child welfare services department responsible for the child's placement if the court finds that the child's rehabilitative goals have been achieved and a return to the home of the parent or legal guardian would be detrimental to the child.
- (3) For a child who comes within the description of section 450(a), other than a child described in (e)(1) or (e)(2), the court must enter an order modifying its jurisdiction over him or her from delinquency jurisdiction to transition jurisdiction and set a nonminor dependent status review hearing under rule 5.903 within six months of the last hearing held under section 727.2.
- (4) For a child who was not subject to the court's dependency jurisdiction at the time he or she was adjudged a ward and is currently subject to an order for a foster care placement the court must:
  - (A) Order the probation department or the child's attorney to submit an application, under section 329, to the county child welfare services department to commence a proceeding to declare the child a dependent of the court by filing a petition under section 300 if the court finds:
    - (i) The child does not come within the description of section 450(a);
    - (ii) The rehabilitative goals for the child included in his or her case plan have been met and delinquency jurisdiction is no longer required; and
    - (iii) The child appears to come within the description of section 300 and a return to the home of the parent or legal guardian may be detrimental to his or her safety, protection, or physical or emotional well-being.
  - (B) Set a hearing to review the county child welfare services department's decision within 20 court days of the date the order to file an application under section 329 was entered and at that hearing:
    - (i) Affirm the county child welfare services department's decision not to file a petition under section 300; or
    - (ii) Order the county child welfare services department to file a petition under section 300.
  - (C) If the court affirms the decision not to file a petition under section 300 or a petition filed under section 300 is not sustained, the court may:
    - (i) Return the child to the home of the parent or legal guardian and set a progress report hearing within the next six months;
    - (ii) Return the child to the home of the parent or legal guardian and terminate juvenile court jurisdiction over the child; or
    - (iii) Continue the child's foster care placement and set a hearing under section 727.2 no more than six months from the date of the most recent hearing held under 727.2.
- (5) For a child who was subject to an order for foster care placement as a dependent of the court at the time he or she was adjudged a ward, the court must modify its delinquency jurisdiction over the child by vacating the order terminating jurisdiction over the child as a dependent of the court and resuming dependency jurisdiction over him or her if the court finds:

- (A) The child does not come within the description of section 450(a);
  - (B) The rehabilitative goals for the child included in his or her case plan have been met and delinquency jurisdiction may not be required; and
  - (C) The child remains within the description of a dependent child under section 300 and a return to the home of a parent or legal guardian would create a substantial risk of detriment to his or her safety, protection, or physical or emotional well-being.
- (6) At a hearing described in (a)(1) for a child approaching majority or at any hearing described in (a)(2) or (a)(3) held on behalf of a child more than 17 years, 5 months old and less than 18 years of age that did not result in modification of jurisdiction over the child from delinquency jurisdiction to dependency jurisdiction or transition jurisdiction, the court must:
- (A) Return the child to the home of the parent or legal guardian and set a progress report hearing within the next six months; or
  - (B) Return the child to the home of the parent or legal guardian and terminate juvenile court jurisdiction over the child; or
  - (C) Continue the child's foster care placement and:
    - (i) For the child who intends to meet the eligibility requirements for status as a nonminor dependent after attaining 18 years of age, the court must set a nonminor dependent review hearing under rule 5.903 no more than six months from the most recent hearing held under section 727.2; or
    - (ii) For the child who does not intend to meet the eligibility requirements for nonminor dependent status after attaining 18 years of age, the court must:
      - a. Set a hearing to terminate delinquency jurisdiction under section 607.2(b)(4) and section 607.3 for a date within one month after the child's 18th birthday; or
      - b. Set a hearing under section 727.2 no more than six months from the date of the most recent hearing held under section 727.2 for the child who will remain under delinquency jurisdiction in a foster care placement.
- (7) At any hearing under (a)(2) or (a)(3) held on behalf of a child 17 years, 5 months old or less that did not result in modification of jurisdiction over the child from delinquency jurisdiction to dependency jurisdiction, the court must:
- (A) Return the child to the home of the parent or legal guardian and set a progress report hearing within the next six months;
  - (B) Return the child to the home of the parent or legal guardian and terminate juvenile court jurisdiction over the child; or
  - (C) Continue the child's out-of-home placement and set a hearing under section 727.2 to occur within six months of the most recent hearing under section 727.2.
- (8) At any hearing under (a)(4) on behalf of a child less than 18 years of age that did not result in modification of jurisdiction over the child from delinquency jurisdiction to dependency jurisdiction, the court must:
- (A) Return the child to the home of the parent or legal guardian and set a progress report hearing within the next six months;
  - (B) Return the child to the home of the parent or legal guardian and terminate juvenile court jurisdiction over the child; or
  - (C) Continue the child's out-of-home placement and set a progress report hearing within the next six months.

**(f) Modification of jurisdiction-conditions**

Whenever the court modifies its jurisdiction over a dependent or ward under section 241.1, 607.2, or 727.2, the court must ensure that all of the following conditions are met:

- (1) The petition under which jurisdiction was taken at the time the dependent or ward was originally removed from his or her parents or legal guardian and placed in foster care is not dismissed until after the new petition is sustained; and
- (2) The order modifying the court's jurisdiction contains all of the following provisions:

- (A) A reference to the original removal findings, the date those findings were made, and a statement that the finding, "continuation in the home is contrary to the child's welfare," and the finding, "reasonable efforts were made to prevent removal," made at that hearing remain in effect;
- (B) A statement that the child continues to be removed from the parents or legal guardian from whom the child was removed under the original petition; and
- (C) Identification of the agency that is responsible for placement and care of the child based upon the modification of jurisdiction.

*Rule 5.812 adopted effective January 1, 2012.*

[\[ Back to Top \]](#)