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**Understanding the Court  
Process for Non-Minor  
Dependents**

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**California's Fostering  
Connections to Success Act**

## The Legal Process Covers:

- Overview of the Basics (Eligibility, Mutual Agreement)
- AB12 and Wardship
- Preparing for EFC: Last Court Hearing as a Minor
- EFC Requirements and Roles
  - Meeting/Report Requirements
  - Hearing Requirements
  - Participant Roles
- Termination of Jurisdiction
- Re-entry
- Rules of Court and Forms

## Assembly Bill 12

- Implements 2008 federal legislation
  - Fostering Connections to Success and Increasing Adoptions Act (Public Law 110-351) 2008
- Prior, most foster youth were on their own at 18
- High rates of homelessness, poverty, unemployment and incarceration

## Legal framework

- Title IV-E is a federal funding law
  - All states participate
  - 10th Amend.
  - Written into the WIC
- Rules of court
  - Same as a statute
- Separation of powers
  - We have that here



## Eligibility

- What is a nonminor dependent?
- WIC 11400(v):
- A dependent or ward who is *all* of the following:
  - attained 18 years of age while under an order of foster care placement by the juvenile court;
  - is in foster care under the placement and care responsibility of the county welfare department, county probation department or tribe; and
  - has a transitional independent living case plan.

*\*Youth must also agree to placement in a supervised placement in an eligible facility.*

## “...has a TILCP”

- Transition Independent Living Case Plan
- Defined in WIC 11400(y)
  - “updated every six months”
  - “goals and objectives of how the nonminor will make progress in the transition to living independently”
  - “assume incremental responsibility for adult decisionmaking”
  - “collaborative efforts”
  - “to ensure active and meaningful participation in one or more of the eligibility criteria”

## Youth Over 18 Who Do Not Meet The Definition of an NMD

- **For youth not under foster care order at 18 or ineligible for other reasons** (e.g., not meeting eligibility requirements).
- **Jurisdiction can continue for these youth until the youth reaches 21 years of age** *even* if the young adult does not meet eligibility requirements for status of a NMD because court’s continue to have discretion to maintain jurisdiction. *WIC 303, WIC 607(a)*,
- Will not receive AFDC funding.

## The Mutual Agreement

- A contract
- SOC 162
- WIC 11403(u)
  - “A written voluntary agreement of consent for continued placement and care in a supervised setting”
  - “documents the nonminor’s continued willingness to remain in supervised out-of-home placement”
  - “and report any change of circumstances relevant to continued eligibility for foster care payments”
  - “documents the nonminor’s and social worker’s or probation officer’s agreement to work together to facilitate implementation of the mutually developed supervised placement agreement and transitional independent living case plan.”
- Not a condition of payment.

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## Participation Requirements

- Condition of payment (WIC 11403(b)(2))
- Legislature intent is a collaborative effort to maintain ongoing eligibility (WIC 11403(a))
- Youth must satisfy 1 of the following 5 requirements as documented in the youth’s TILP:
  - Be enrolled in high school or equivalent
  - Be enrolled in college/vocational school
  - Work at least 80 hours/month
  - Participate in a program/activity that helps you find a job or removes barriers to employment
  - Be unable to do one of the above because of a medical or mental health condition

WIC 11400; WIC 11403; All County Letter 11-61

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## Important things to remember...

- Participation in extended foster care is *voluntary*. Youth may opt-out.
- NMD still has the same rights as any other adult.
- No action by court required to declare NMD status, happens without court order.
- Marriage does not disqualify. *In re H.C.*, (2017) 17 Cal.App.5th 1261
- Child Welfare/Probation does not “have custody” of the NMD. *WIC 303(d)*

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### Three Ways for Wards to Become Eligible for Extended Benefits

1. Youth under the jurisdiction of the Delinquency Court pursuant to WIC 602 (who are still on probation) with an order for foster care placement at age 18.
2. Youth *no longer* requiring jurisdiction according to WIC 602 because their rehabilitative goals as set forth in the case plan have been met. They are eligible to have their status modified to **transition jurisdiction**.
3. Eligible youth under 17.5 years old may resume or assume 300 dependency status if they are at risk.

*WIC 450, 607.2, 607.3*

## AB 12 and Wardship

### NMD's under 602 jurisdiction

- *Youth who remain under 602 jurisdiction past age 18 are nonminor dependents if they meet the definition of WIC 11400(v)*
- WIC 607.2(b)(4)-court can continue delinquency jurisdiction over an NMD

### NMD's under 602 jurisdiction

- Section 607.2(b)(5) does provide to option for the court to “continue its delinquency jurisdiction” without NMD status
  
- But placement likely not title-IV eligible

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### NMD's under 602 jurisdiction

- Rehabilitation efforts continue
- A nonminor dependent who has not completed probation has limitations on adult decision making.
- Subject to the care, supervision, custody, conduct, and maintenance orders as described in section 727.
- Not required to complete the *Mutual Agreement for Extended Foster Care* (SOC 162).
- WIC 303(d)(2)

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### 602 NMD's

- Status reviews under WIC 366.31 required
  
- Title IV-E requirements for NMD's are in play
  
- Should identify a permanent plan
  
- What if they aren't meeting eligibility requirements? Implicate funding?
  - If they are participating in rehabilitative case plan, should be eligibility
  - If not, consider other options

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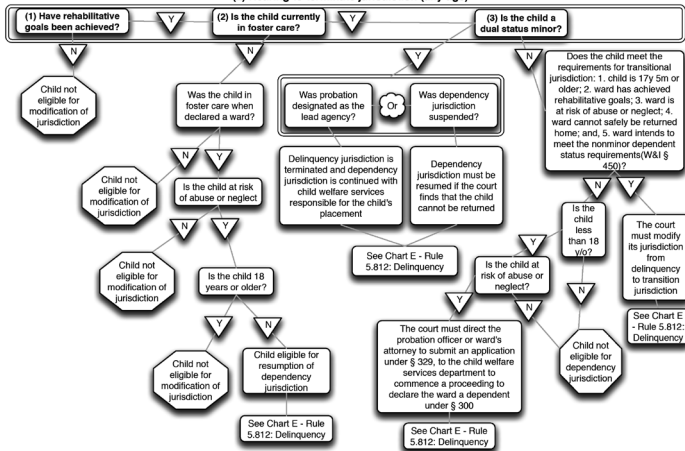
# 450 Jurisdiction

## Youth Under Transition Jurisdiction

- Jurisdiction (WIC 450) for youth no longer on probation.
- Designed to encourage youth to take advantage of extended benefits without forcing them to remain under “delinquency” supervision.

### Modification from Delinquency Jurisdiction to Transition or Dependency Jurisdiction

Wards: (1) Last status review if 17 years 5 months & less than 18 years of age  
(2) Hearing to terminate jurisdiction (any age)







## Supervision of Youth in Transition Jurisdiction

- Counties must decide whether **Probation or Child Welfare** will be charged with supervising youth eligible for AB 12/212 under transition jurisdiction based on the needs of the youth.
  - WIC 451(c)
- It will be the responsibility of the counties to modify its protocol for Section 241.1 to include a provision for determining which agency shall supervise.
- The protocol must also address specifically what to do when a 300, 602 or 450 NMD are also under adult probation.
- WIC 241.1(b)(3); 300.3; 450

## Planning For Extended Foster Care in the Juvenile Court

## Minor Approaching the Age of Majority Hearing

- The last status review hearing prior to 18<sup>th</sup> birthday.
- TILCP required. *WIC 727.2(j); WIC 16501.1(g)(16); rule 5.812(e)(2)(J)*
- To inform the court about whether the child intends to participate in extended foster care, and if so, apprise the court of the status of the child's plan to meet the participation conditions of extended foster care.
- 727.2(i), (j) 16501.1(g)(16); rule 5.812

## Minor Approaching the Age of Majority Hearing

- Report must address what efforts have been made to explain EFC to the child and efforts to assist in meeting eligibility requirements.
  
- Probation report must address the issue whether to modify jurisdiction and assume section 450 jurisdiction.
  - WIC 727.2(i)(1)
  
- JV-460

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## Youth Under Delinquency Jurisdiction

- To continue AFDC-FC eligibility, at the last review hearing before an eligible ward's 18<sup>th</sup> birthday:
  - The court must ensure that the TILCP provides for the ward meeting one of the 5 participation conditions for EFC.
  - The Ward must indicate an intent to sign mutual agreement agreeing to participate and agreeing to remain in a supervised placement.

*WIC 727.2(i)&(j)*

**\*NOTE: Once the ward meets his/her rehabilitative goals, the court may assume transition jurisdiction over eligible youth.**

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## What about youth not eligible for Transition Jurisdiction?

- If youth does not qualify for transition jurisdiction at the time court is terminating delinquency jurisdiction (i.e. under 17.5 years old), but the youth cannot return home because it is **not safe**, the delinquency judge decides if jurisdiction should be modified to dependency jurisdiction.  
*WIC 607.2(b) & 727.2 (i)*
  
- Procedural mechanism for modification would depend on whether child was a prior dependent.
  - If yes, court would re-open that petition (WIC 241.1(f); 607.2(b)(3)).
  - If no, court can order (defense counsel or probation) to apply for 300 petition pursuant to WIC 329 process. *WIC 607.2(b) & 727.2 (i) (2)*

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## Extended Foster Care-the court process

### NMD's Responsibilities

- Work to gain greater adult responsibility and ensure eligibility (with the Agency's assistance and guiding hand)
- Report changes of eligibility
- Demonstrate incremental responsibility and compliance with goals of TICLP and TILP
- Participate in hearings in person or telephonically
- Reside in an approved placement

### NMD Attorney's Role

- NMDs continue to have legal counsel
- Counsel is charged with representing the wishes of the NMD except when advocating for those wishes conflicts with the protection or safety of the NMD. WIC 317(e)
- NMD can designate attorney to appear on behalf of NMD. Rule 5.900(d)(3)
- Upon re-entry, youth can request former attorney to represent him/her for re-entry. Rule 5.906(b)(2)(F)



## AB 12 Placements

- ACL 11-77
- NMD have adult decision making authority to determine where to live, but:
  - required to live in approved placement to maintain eligibility;
  - not true for 602 youth
- SILP (can be home of parents; ACL 17-83)
- Relatives
- Foster homes
- Transitional Housing Placement Programs
- STRTP

## STRTPs

- Court review under section 727.12 required for NMDs
- Rule 5.816

## Status Review Hearings for NMD

- IV-E case plan review requirements are still in place.
- Youth continue to have status review hearings every 6 months.
  - WIC 366.31
- Every other review may be an administrative review.
  - WIC 16503

\*\*\*Form for Findings and Orders: JV-462

\*\*\*WIC 366.31; rule 5.903

## Conduct of Hearings

- Conducted in a manner that respects the person's legal status as an adult.
- Should facilitate candid conversations between NMD and other parties.
- Resolve disputes when necessary, including disputes regarding:
  - Placement
  - Participation
  - Other issues that may arise

## Contents of Hearing (WIC 366.31)

- At each review hearing, the Court is to:
  - Ensure that the youth is meeting one or more of the participation conditions as described in the TILP.
    - SW/PO is to ensure ample supports for the youth to remain eligible
  - Inform the youth of his/her right to have the Court's jurisdiction terminated.
  - Ensure that the social worker/probation officer is assisting the youth in meeting the participation conditions.
  - **Reasonable Efforts**-to finalize permanent plan and prepare for independence
  - Focus on the goals and services of the TILCP and TILP and efforts to achieve permanence.
  - Review the efforts to assist the youth in obtaining permanent connections with care and committed adults.

## Contents of Hearing (WIC 366.31) (cont.)

- ICWA case, whether, in consultation with the nonminor's tribe, the nonminor should be placed for tribal customary adoption.
- The adequacy of services provided to the nonminor dependent. (391 documents and services)
- Reasonable efforts to maintain sibling relationships.
- Identify services to help the youth transition to adulthood.
- APPLA requirements (state compelling reason; ask youth about permanence; explain reason for APPLA)

## A couple new requirements...

- If the nonminor dependent is in high school and has been under the jurisdiction of the juvenile court for a year or longer, whether the social worker or probation officer has taken the actions described in section 366(a)(1)(F).
  - See JV-462 item 29 or JV-459(a).
  - Sexual health rights and education.
  
- Whether the probation officer has, pursuant to the requirements of section 16501.1(g)(22), identified the person or persons who shall be responsible for assisting the child or nonminor dependent with applications for postsecondary education and related financial aid, or that the child or nonminor dependent stated that they do not want to pursue postsecondary education, including career or technical education.

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## Title IV-E findings and orders

- E1. The NMD's continued placement is necessary. The NMD's current placement is appropriate.
- E2. The agency has made ongoing and intensive efforts to finalize the permanent plan (APPLA)
- E3. The extent of progress made by the NMD toward meeting the Transitional Independent Living case plan goals has been \_\_\_\_\_.

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## Title IV-E findings and orders (cont.)

- E5. The NMDs permanent plan selected below is appropriate and ordered:
  - Return Home
  - Adoption
  - Tribal Customary Adoption
  - Placement with a fit and willing relative
  - Family Reunification services are continued
  - APPLA
- E6. The likely date by which it is anticipated the NMD will achieve independence is \_\_/\_\_/\_\_. (*Insert date of NMD's 21st birthday*).
- E7. The Transitional Independent Living Case Plan includes appropriate and meaningful independent living skill services that will assist the youth transition from foster care to \_\_\_\_\_ successful adulthood.

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## What Must Occur at the Hearing to Terminate Jurisdiction

- SW/PO to ensure nonminor is present unless nonminor chooses to participate in the hearing telephonically/virtually.
- Court **shall** continue jurisdiction, unless
  - Nonminor does not wish to remain in care, or
  - Nonminor is not participating in reasonable and appropriate TILCP, or
  - Nonminor cannot be located and SW/PO documents reasonable efforts to locate nonminor.
- Prior to the Court terminating jurisdiction, it must inform the youth of:
  - Their right to remain in care
  - The benefits of remaining in care
  - Their right to reenter care if under the age limits
- **391 documents and service have been provided**
- WIC 452; Rule of Court 5.555; JV-365; JV-367

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## Recent Court of Appeal decision ...

- *In re Jonathan C.M.* (2023) A165931
- Best interest standard of rule 5.555(c)(1)(A), (d)(1)(B)
- Where a probation department and juvenile court failed to consider the best interests of a nonminor dependent before terminating transition jurisdiction, the order terminating jurisdiction must be reversed and the matter remanded.
- Youth was not maintaining eligibility, but court still had to consider his best interest before dismissing.

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## Necessary Documentation at the Hearing to Terminate Jurisdiction

- **Transitional Independent Living Case Plan** WIC 11400 (y)
- Most recent **Transitional Independent Living Plan (TILP)**
- **Completed 90-day Exit Transition Plan.** WIC 16501.1(g)(16)  
Developed with the youth. Should be as personalized and detailed as the youth directs. Must discuss:
  - Options for housing, health insurance, education, local opportunities for mentors and continuing support services & workforce and employment services.
  - Information regarding the advance health care directive form
  - Information regarding any current applications for SSI and Special Juvenile Immigration Status.

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### Available Benefits for Youth Who Exit Care

- Extended Medi-CAL up to age 26 without interruption. (verify Medi-Cal eligibility and that youth has Medi-Cal Benefits Card prior to dismissal) *WIC 14005.28*
- Aftercare ILP services up to age 21
- Non-federally funded THP-Plus to age 24 (space is limited)
- CalFresh (Food Stamps)-all NMD's are eligible  
*In addition, youth also remain eligible for re-entry if they meet the age requirements of NMDs.*

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### General Jurisdiction

- If the Court terminates jurisdiction, it will maintain **general jurisdiction** until the youth no longer meets the age eligibility requirements of an NMD.
- This allows for re-entry into foster care without a new finding of abuse or neglect.
- There is no court or agency supervision of the youth (for all practical purposes the case is closed, but can be re-opened).
- WIC 303(b) & WIC 366.31(c)

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## RE-ENTRY

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## The Basics of Re-entry

- Youth who have their case closed can re-enter unlimited times prior to no longer meeting the age eligibility requirements of NMDs.
- Youth must be informed of right to reentry at termination hearing.
- Re-entry process is intended to be as accessible and easy as possible.

**\*\*The goal of re-entry is to permit youth to experience independence, while allowing a safety net.**

## A note on dismissal of wardship...

- Can dismiss jurisdiction entirely *if* they don't meet eligibility as a 450 or 300
  - *WIC 607.2(b)(6)*
- *Can turn around and re-enter as a 450*

## Two Ways to Re-Enter (Rule 5.906)

- Re-entry is requested by:
  - Signing a **Voluntary Re-Entry Agreement** documenting:
    - Willingness to re-enter foster care
    - Be placed in a supervised placement setting
    - Participate in eligibility requirements
    - Have a transitional independent living case plan
    - Participate in the filing of the 388 (must be done by social worker/probation officer within 15 judicial days or sooner by the youth/youth representative. *WIC 388(e)*)

OR

- Filing a **388 (e) petition** in the county of residence or the county of jurisdiction

WIC 11400 (z), 388 (e), 11403 (e)

**\*\*\*Forms Related to Re-entry:JV-464, JV-466, JV-468**

## Timelines

- WIC 11403(e):
  - “The beginning date of aid for either federal or state AFDC-FC for a reentering nonminor who is placed in foster care is the date the voluntary reentry agreement is signed...”
- The court has **15 court days** from the filing of the 388 to set a hearing if the 388 (e) makes a prima facie showing (*liberally construed in favor of sufficiency*) that the youth intends to satisfy one of the participating conditions.
  - NMD may appear telephonically
  - If jurisdiction is resumed, the supervising agency has **60 days** to develop a new Transitional Independent Living Case Plan to submit to court. *WIC 388(e)*

## County of Jurisdiction vs. Residence

- NMD can sign VRA or submit 388(e) in the county of general jurisdiction OR the county of physical residence.
- If filed in county of physical residence, court has **5 court days** of filing to transfer case to county of general jurisdiction. *WIC 388(e)*
- Case and payment remains with the county of general jurisdiction over NMD. However, existing intercounty transfer (ICT) may be used.

## Other Important Facts About Re-entry

- Youth must meet the age limits of 388(e) (over 18, under 21).
- A background check on the petitioning youth *may* be completed to assess appropriateness and safety of placing the youth in foster care with minor dependents. *WIC 16504.5(a)(1)(D)*
  - **However, convictions are NOT a bar to re-entry.**
- If a former ward files for re-entry, the court may access a sealed file for limited purpose of verifying prior 602 status. *WIC 781(e)*
- IV-E eligibility for youth re-entering is based on “child-only case,” not parental income.

## Transfer of Jurisdiction

- WIC 375, can transfer if:
  - a resident in the county for a year
  - Intent to remain
  - WIC 17.5(f)
- Best interest-court must consider whether transfer is in NMD's best interest (rule 5.613(b))
- Motion for Transfer Out (JV-548), and
- Juvenile Court Transfer—Out Orders (JV-550)

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## Specific Issues ...

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Transitioning 602 NMDs to 450s when “the rehabilitation goals as stated in the case plan...” have NOT been met; perhaps they are terminated unsuccessfully from juvenile probation...

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602's who are committed to institutional programs with no break in wardship; placement order is set aside/terminated during commitment, but upon release they opt to "reenter" non minor dependency...

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Addressing requests for placement orders for youth over 17 1/2 for the sole purpose of AB 12 eligibility, when there is no intent to place in a RF/STRTP...

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Situations where reentering NMD does NOT appear to be in the best interest of the youth ...

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NMD's who are court ordered to complete drug treatment not being able to use that setting as a SILP because it's not a voluntary placement...

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THP do's and don't's for keeping all/some of infant supplements

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Proper ways to address termination when youth is no longer meeting terms of mutual agreement or case plan...

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