



**Judicial Council of California**  
ADMINISTRATIVE OFFICE OF THE COURTS

455 Golden Gate Avenue • San Francisco, California 94102-3688  
Telephone 415-865-4200 • Fax 415-865-4205 • TDD 415-865-4272

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## MEMORANDUM

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**Date**

February 9, 2006

**Action Requested**

Please Review

**To**

Hon. M. Lynn Duryee, Presiding Juvenile Court Judge  
Superior Court of Marin County

**Deadline**

N/A

Hon. Harvey Goldfine, Commissioner  
Superior Court of Marin County

**Contact**

Carrie Zoller, attorney  
Telephone: 415-865-8829  
Facsimile: 415-865-7217  
carrie.zoller@jud.ca.gov

Ms. Cheri Brannon, Court Manager  
Superior Court of Marin County

Ms. Teresa Torrence-Tillman, Probation Supervisor  
Marin County Probation Department

**From**

Carrie Zoller, Juvenile Court Consultant  
Center for Families, Children & the Courts  
Judicial Review and Technical Assistance Project

**Subject**

Title IV-E Compliance Site Visit—Delinquency  
February 7, 2006

This Title IV-E Site Visit Memorandum is a companion document to the Judicial Review and Technical Assistance (JRTA) Title IV-E Compliance Report. This memorandum includes the compliance figures for the hearings reviewed, summarized on the last page, as well as some general comments and suggestions. The hearings reviewed were held between June 2004 and February 2006.

When the JRTA team reviews files to collect the data necessary for the compliance report, we often see specific patterns and trends emerge. This memorandum examines some of the data in the context of the procedures and practices in your county. It is hoped that this information will

be helpful and provide a fresh perspective on the ways delinquency cases are handled in Marin County.

### **Court Order-Format**

The findings and orders form must make specific reference to the title and date of the probation officer's report as well as other reports and documentation submitted to the court to support the findings and orders.<sup>1</sup> In Marin County delinquency cases, the report is referenced, however, the specific title and date of the report are not cited in the minute orders.

In Marin County, the probation department includes a recommended findings and orders section in their report. The recommended findings and orders section of the probation officer's report, or a copy, are not attached to the minute order and can only be located by turning to the probation officer's report contained within the court file. While the judicial officer generally does sign the recommended findings and orders, the document only indicates that the judge has read and considered the report instead of stating that the court is adopting the recommended findings and orders. Because of these factors, credit could not be given for the recommended findings and orders that were not also listed in the minute orders.

The detention findings and orders must be made on the record and included in the written, signed order. (California Rule of Court 1475(d).) This practice is followed in Marin County.

### **Report Requirements**

The probation officer's report must contain factual information that supports the court's findings and orders. It is the court's responsibility to reach the legal conclusions (findings) based on the facts presented to the court.

A detention report must be filed at the detention hearing if the probation officer is of the opinion that the child is at risk of entering foster care<sup>2</sup>. The general practice in most counties is to prepare a written detention report and include the required information whenever a child is removed from the home of a parent<sup>3</sup> because, in the majority of cases, the child is at risk of entering foster. The detention report must include:

1. The reasons for removal from the parents;
2. Any prior referrals for abuse or neglect, or dependency actions regarding the child;

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<sup>1</sup> The court must reference the documentation provided by the probation officer and other evidence relied upon in reaching its decision and this should be reflected in the minute order. See Welfare and Institutions Code sections 636(d), 727.2(e), and 727.3(a)(4)

<sup>2</sup> "Foster care" is defined in Welfare and Institutions Code sections 727/4(d)(1) and 11402, and includes residential care provided in an approved relative's home, a licensed foster home, a licensed group home, the home of a legal guardian, and a licensed transitional housing facility.

<sup>3</sup> All references to "parent(s)" are to be read to include "legal guardian(s)". A "legal guardian" is an individual named in a court order as the child's "legal guardian" and for whom letters of guardianship have issued.

3. The need, if any, for continued detention;
4. The available services to facilitate the child's return home to the child's parents;
5. The availability of relatives who are able and willing to provide effective care and control of the child;
6. Documentation that continuance in the home is contrary to the child's welfare; and
7. Documentation that reasonable efforts were made to prevent or eliminate the need for removal of the child from the home and the nature and results of the services provided (Welfare and Institutions Code<sup>4</sup> sections 635, 636(c)).

The dispositional report recommending a child's removal from the home and placement in foster care must identify the services the family—the parents and the child—requires to make it possible for the child to return to a safe environment so the court can order the child and parents to participate in the identified services. The non-custodial parent should be included in the assessment, and efforts made by the probation department to engage that parent in services. That portion of the court order related to the parents' service needs should reference the specific services in which the parent must participate to address the issues that contributed to the child's removal from the home. In the hearings that were reviewed, the dispositional report did contain this information.

The probation officer's report for the review hearings must contain the factual information that will form the basis for the court's findings and orders.

Division 31, Chapter 31-325 of the California Department of Social Services' Child Welfare Services Manual, sets forth the regulations related to the probation department's contact with the parents of children in out of home placement as well as the other foster care regulations. The manual is available on the Internet at:

[http://www.dss.cahwnet.gov/ord/CDSSManual\\_240.htm](http://www.dss.cahwnet.gov/ord/CDSSManual_240.htm)

### **Case Plan Requirements**

The case plan forms the framework for the child's care and treatment during the foster care placement and for the services to be provided to the family. The case plan must be prepared within sixty days of removal from the home or by the date of the dispositional hearing, whichever occurs first. The case plan and dispositional report must be submitted to the court at the time of the dispositional hearing and updates of the case plan must be submitted to the court for subsequent review hearings. The probation department in Marin County consistently provides cases plans and case plan updates.

The child and parents must be given the opportunity to participate in the development of the case plan, to sign it and receive a copy. The reason for the absence of the signatures of the child and/or parents should be included when the child and/or parents do not sign the case plan or case plan update.

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<sup>4</sup> All code references are to the Welfare and Institutions Code unless otherwise noted.

For a child who is 16 years old or older, the case plan must contain a description of the programs and services which will help the child transition to independent living and the court must make a determination regarding the services needed to assist the child. The successful transition of a young person from foster care to independent living is difficult and complex. It must be carefully planned and closely monitored. A total of seven hearings were reviewed where the child was 16 years of age or older. Only two of those cases included the child's Transitional Independent Living Plan, and made the necessary finding.

The charts, *Written Report Requirements for Delinquency Foster Care Cases* and *Delinquency Foster Care Requirements for Probation Departments* are useful sources of information. Copies are included with this site visit memo.

### **Notice Requirements**

Notice of the prepermanency hearing, permanency hearing, and post permanency hearings as well as an opportunity to be heard are important components of title IV-E. The individuals entitled to these rights include the parents (custodial and non-custodial) as well as the group home agency, foster parents, and relative caregivers. Proof of the notice must be filed with the court. Notice requirements are set forth in section 727.4(a).

### **Timeliness**

#### **Detention Hearing**

The detention finding, "Continuance in the home is contrary to the child's welfare," must be made at the first court hearing following the child's physical removal from the home and may not be delayed even for a one-day continuance pursuant to section 638. If this finding is not made at the first court appearance, the child is not eligible for title IV-E foster care funding for that entire stay in care.

Section 636(d)(4) requires the court to make the "contrary to the welfare" finding or release the child from custody when continuing a detention hearing. The court may make a temporary finding at the first court appearance pending a further determination at the continued hearing.

A detention hearing is not considered timely if it is continued for even one day and this finding is not made.

The detention timeliness figure for Marin County was 100 percent, with all six hearings being timely.

#### **Prepermanency Hearing, Permanency Hearing, and Post Permanency Hearing**

A situation that occurs in delinquency proceedings and frequently results in untimely hearings is where a previously scheduled prepermanency, permanency, or post permanency hearing is vacated and reset for six months from the date of the disposition on a violation of probation. The best practice, and the one that results in compliance with the requirements of ASFA, is to hold

the hearings as originally scheduled. An alternative approach is to make the appropriate prepermanency, permanency or post permanency findings at the dispositional hearing on the violation of probation.

The previously scheduled prepermanency, permanency, and post permanency hearings must also be held for a child who is in runaway status. These hearing may not be taken off calendar pending the child's return. The report of the probation officer must contain information addressing the required determinations and the efforts to locate the child.

The timeliness compliance figures for Marin County were:

Prepermanency	80 %
Permanency	100 %
Post Permanency	100 %

### **Specific Findings and Orders**

The underlying purpose of the court review system is to ensure the fulfillment of the original goals of the federal legislation, i.e. child safety, reunification when feasible and permanency—a stable home for the child to grow and develop into a happy and productive adult. The court's findings and orders are viewed as “important safeguards(s) against inappropriate agency action” and are to be more than a “mere pro forma exercise in paper shuffling to obtain Federal funding.” (Senate Report No. 336, 96th Cong., 2nd Session (1980).)

The findings and orders discussed below are required for title IV-E eligibility and/or ASFA compliance purposes. The many other findings and orders required by California statutes are beyond the purview of this memorandum.

### **Detention Hearing**

*“Continuance in the home is contrary to the child's welfare.”*

*“Temporary placement and care is vested with the child welfare agency.”*

*“Reasonable efforts have been made to prevent removal.”*

For federal title IV-E purposes there must be a detention hearing and the two detention findings and order must be made every time a child is physically removed from the home of a parent. This includes the removal from the home for violation of a condition of release or probation of a child on electronic monitoring, home detention, furlough, or probation.

The findings and order must also be made at a dispositional hearing if the child remained in the home of the parents pending the dispositional hearing. The only difference would be the omission of the word “temporary” in the “vesting order”.

The detention finding, “Continuance in the home is contrary to the child's welfare”, must be made at the first court hearing following the child's removal.

The finding, "Reasonable efforts to prevent removal", must be made within 60 days of the child's removal and must refer to reasonable efforts made before removal.

A failure to make the "vesting" finding causes ineligibility until the date the finding is made.

It is best practice and we recommend making the two findings and order at the first hearing

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*Finding A*

*"Continuance in the home is contrary to the child's welfare."*

The removal of a child from the home can have a severe and lasting impact on the child and the family. The Congressional intent in requiring this finding was to ensure that children are protected from unnecessary removals.

Marin County received a compliance figure for this finding of 100 percent.

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*Order B*

*"Temporary placement and care is vested with the child welfare agency."*

The order was made in all Marin County detention hearings reviewed for a compliance figure of 100 percent.

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*Finding C*

*"Reasonable efforts have been made to prevent removal."*

The level of effort by the department must be found to have been reasonable. The department may assess the situation of the child and family and decide that, **due to concerns for the child's safety**, efforts beyond the initial response and assessment are not warranted. In that event, if the court views the department's assessment as accurate and its actions appropriate, the level of effort will have been reasonable and the court can find that reasonable efforts have been made. The Marin County compliance figure for this finding was 83.33 percent. It was found in five of six hearings reviewed. The minute order of the sixth hearing left the box for that finding blank.

**Prepermanency Hearing, Permanency Hearing, and Post Permanency Hearings**

*Finding D1*

*Prepermanency Hearing, Permanency Hearing, and Post Permanency Review Hearings*

*"The child's placement is necessary and appropriate."*

Please note that this is a two-part finding. The first issue is whether the child's placement in foster care continues to be necessary. The second is whether the current foster care placement meets the child's needs.

This finding is required at the **prepermanency, permanency, and post permanency** hearings.

The Marin County compliance figure for all hearing types was 100 percent.

*Finding D2*

*Prepermanency Hearing and Permanency Hearing*

*“The agency has complied with the case plan by making reasonable efforts to make it possible for the child to safely return home AND to complete whatever steps are necessary to finalize the permanent placement of the child.”*

This finding is required at the time of the **prepermanency** hearing and the **permanency** hearing. It addresses the issue of concurrent planning.

The initial goal when a child is removed from the parents’ care as a ward of the court and placed in foster care is reunification with the parents. Services need to be offered to the family—parents and child. The department must, at the same time, develop an alternative permanent plan for implementation in the event reunification is not possible.

The Marin County figure for this finding was 60 percent for prepermanency hearings and 0 percent for permanency hearings<sup>5</sup>. The finding was not marked on the minute order in the hearings that did not receive credit.

*Finding D2*

*Post Permanency Hearing*

*“The department has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent placement of the child.”*

This finding is required at the **post permanency** case review hearings. Following the termination of reunification services, the focus of the case plan shifts to achieving permanency for the child. The change in Finding D2 reflects this focus on permanency.

The Marin County post permanency hearing compliance figure for this finding was 0 percent. The language that complies with the federal requirements was not contained in the minute orders for the three post permanency hearings reviewed.<sup>6</sup>

<sup>5</sup> Note that there was only one permanency hearing reviewed, so all permanency compliance figures will either be 100% or 0%.

<sup>6</sup> At least one of the hearings made a finding that appears to be aimed at meeting the D2 requirement with the language, “continued placement is in compliance with the case plan.” However, federal requirements mandate making specific reference to efforts to finalize the permanent placement or plan.

*Finding D3*

*Prepermanency Hearing and Permanency Hearing*

*“The extent of progress which has been made toward alleviating or mitigating the causes necessitating placement...  
by the mother has been \_\_\_\_\_  
by the father has been \_\_\_\_\_  
by the child has been \_\_\_\_\_”*

It is intended that there be an assessment of the overall progress which can be characterized with a qualitative descriptor such as “none, minimal, moderate or substantial”. The progress by the mother and father as well as the child must be assessed and a separate finding must be made as to each individual.

This finding is required at the time of the **prepermanency** hearing and the **permanency** hearing.

The finding was made in three out of five prepermanency hearings, and one out of one permanency hearings, for compliance figures of 60 percent and 100 percent, respectively. One of the prepermanency cases did not receive credit because the minute order (and probation report) only indicated the extent of the progress of the grandparent and did not state the progress made by the minor. The other prepermanency hearing that didn't receive credit both failed to state the progress of the minor and to make a separate finding for each parent.

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Under federal law, a finding must be made at each six-month periodic review “projecting the likely date by which the child may be returned to and safely maintained in the home or placed for adoption or legal guardianship.” (42 U.S.C. § 675(5)(B).) The federal reviewers have notified us that all six-month periodic reviews must project a date by which a permanent plan will be finalized. Federal law also requires the holding of a permanency hearing within twelve months of the date the child entered foster care.

We recommend making finding D4 at the prepermanency hearing and findings D5 and D6a or D6b at the permanency and post permanency hearings as set forth below to fulfill the mandates of the law and ensure that the most secure and permanent placement will be found for each child under the court's jurisdiction.

*Finding D4*

*Prepermanency Hearing*

*“The likely date by which the child may be returned to and safely maintained in the home OR placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in placed in an identified placement with a specific goal is \_\_\_\_\_.”*

This finding is required at the time of the **prepermanency** hearing. The correct date is the date of the scheduled permanency hearing because that is the date the child will be returned home or one of the other permanency hearing options will be ordered. The full date must be inserted. For example, December 5, 2004 is correct. December 2004 is not correct.

This finding was not made in any of the five prepermanency hearings reviewed, for a Marin County compliance figure of 0 percent. Several cases did not receive credit because the date was not specific and only gave a range, such as "September 2005" or "within the next 6 to 12 months."

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*Finding D5 Permanency Hearing and Post Permanency Hearings*

*"The permanent plan of*

- return home* *or*
- adoption* *or*
- legal guardianship* *or*
- permanent placement with \_\_\_\_\_, a fit and willing relative*  
*or*
- placement with \_\_\_\_\_ and a specific goal of \_\_\_\_\_ (Provide the name of the placement and select a goal of return home, adoption, guardianship, placement with a relative, a less restrictive foster care setting, or emancipation with identification of a long-term mentor.)*

*is appropriate and is ordered as the permanent plan."*

This finding is required at the **permanency** hearing and **post permanency** hearings.

California law provides for several options at the time of the permanency hearing. The court may:

1. Return the child to the parent's home;
2. Order up to six additional months of reunification services<sup>7</sup>;
3. Terminate reunification services and order placement with a specified "fit and willing relatives" or order a placement with an identified foster family, group home, or residential center and a specific goal<sup>8</sup>; or

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<sup>7</sup> The court must find a "substantial probability that the child will be returned" and that the child and parent "have demonstrated the capacity and ability to complete the objectives of the case plan" when ordering up to six additional months of services. Welfare and Institutions Code section 727.3(b)(2). See also ACF Child Welfare Policy Manual, section 8.3C.2c The Manual is available on the ACF website at:

<http://www.acf.hhs.gov/programs/cb/laws/cwpm/index.jsp>

<sup>8</sup> When entering an order at a permanency hearing or a post permanency hearing for an identified placement with a specific goal, the court must find by clear and convincing evidence that a compelling reason exists for determining that a plan of termination of parental rights and adoption is not in the child's best interests. Welfare and Institutions Code section 727.3(b)(6).

4. Terminate reunification services, identify adoption as the permanent plan and order the matter set for a hearing pursuant to section 727.31 to terminate parental rights.

Credit is given by the JRTA team for this finding at the 12 month permanency hearing when one of the above options is selected and at the 18 month permanency hearing when option 1, 3, or 4 is selected.

Include the name of the specific relative with whom the child is placed if the permanent plan option chosen is "permanent placement with \_\_\_\_\_, a fit and willing relative."

Include the name of the group home, residential treatment center, or foster family if the permanent plan option chosen is an identified placement with a specific goal. Choose as a specific goal the option that provides the child with a more family like and permanent setting. The appropriate specific goal will depend upon the circumstances of the child's situation. For example, for a child in a group home placement, the goal could be placement with a foster family or a relative.

The Marin County compliance figure for the permanency hearing reviewed was 0 percent. Although this case should have been a permanency hearing, it was treated more like a case review and no permanent plan was chosen. Since the court did not make a finding that there was a substantial likelihood of that the minor would be returned within the next six months (see footnote 7, above), a permanent plan should have been chosen.

The Marin County compliance figure for the post permanency hearings reviewed was also 0 percent. One hearing would have received credit if the recommended findings and orders contained in the probation report had been adopted by the court and referenced by and/or attached to the minute order. The other two hearings both occurred in a case where the child had been made a dependent of the court in the late 1990's and was a dependent at the time the child was made a ward. The delinquency court should have maintained the timeline established by the dependency court and recognized that the reviews should be addressing the permanent plan. Instead, it appears that at least one of the permanent plan review hearings was treated more like an initial case review. It is also important to note that overall this appears to be a very confused case. For example, the finding was made that "reasonable efforts will continue to be made to reunify the minor with the family, this will likely occur within six to twelve months time," however, the parental rights had been terminated by the dependency court, the progress made by the parents was listed as none, and the report indicated a plan of adoption with emancipation.

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*Finding D6 Permanency Hearing and Post Permanency Hearings*

*Finding D6a*

*"The likely date by which the agency will finalize the permanent plan  
is \_\_\_/\_\_\_/\_\_\_.*

OR

*Finding D6b*

*The likely date by which the child's specific goal will be achieved is \_\_\_/\_\_\_/\_\_\_."*

The date selected as the likely date for finalization of the permanent plan or the likely date the child's specific goal will be achieved must be based on a realistic assessment of the circumstances of the case. For example, for a child in an identified placement in a high level group home for sex offenders with a specific goal of placement in a regular group home, the likely date for achieving the specific goal may be in twelve months based on the objectives of the child's treatment plan; however, for a child in an identified placement in a regular group home with a specific goal of placement with a relative, the likely date for achieving the specific goal might be in four months.

At the permanency hearing in which the court extends reunification services for six months after finding a substantial probability of return and identifies return home as the permanent plan, the likely date by which the agency will finalize the permanent plan of return home by filing a motion with the court to vacate the placement order and return the child to the home, might be in four months because that is the date of the child's anticipated graduation from the treatment program and the completion by the parents of their case plan requirements.

Credit is also given at the permanency hearing for the D6 finding when the court orders six additional months of reunification services, finds a "substantial probability that the child will be returned" and uses the finding "The likely date the child may be returned to and safely maintained in the home OR placed for adoption, appointed a legal guardian, placed permanently with a relative or placed in an identified placement with a specific goal is \_\_\_\_\_".  
(Date of 18-month review hearing)

The compliance figure for both permanency and post permanency hearings in Marin County was 0 percent for the same reasons discussed for the D5 finding.

*Finding D7*

*Prepermanency Hearing, Permanency Hearing, and  
Post permanency Hearings*

*"The court finds that the services set forth in the case plan include those needed to assist the child in making the transition from foster care to independent living."*

During each hearing (prepermanency, permanency, and post permanency) for a child 16 years of age or older, the court must assess the services provided by the agency as set forth in the case plan as well as the child's *Transitional Independent Living Plan* (TILP) to determine whether the services will assist the child in making the transition from foster care to independent living. If so, the finding should be made. If not, the case plan should be amended and an appropriate finding made on the basis of the amended case plan. The successful transition of a young person from foster care to independent living is difficult and complex. It must be carefully planned and closely monitored.

This finding was made in 2 of the 7 hearings in which it was required, resulting in a Marin County compliance figure of 28.57 percent.

Title IV-E Delinquency Compliance Review Results  
Marin County—February 2006 Site Visit

<b># Hearings reviewed</b>	<b>6</b>
A	100 %
B	100 %
C	83.33 %
Timely	100 %
<b>Pre-permanency</b>	
<b># Hearings reviewed</b>	<b>5</b>
D1	100 %
D2	60 %
D3	60 %
D4	0 %
D7** (1 of 4)	25 %
Timely	80 %
<b>Permanency</b>	
<b># Hearings reviewed</b>	<b>1</b>
D1	100 %
D2	0 %
D3	100 %
D5	0 %
D6	0 %
D7** (1 of 1)	100 %
Timely	100 %
<b>Post Permanency</b>	
<b># Hearings reviewed</b>	<b>3</b>
D1	100 %
D2	0 %
D5	0 %
D6	0 %
D7** (0 of 2)	0 %
Timely	100 %
<b>**D7 for all review hearings</b>	
<b># Hearings required to make finding</b>	<b>7</b>
<b>percentage made finding as required</b>	<b>28.57 %</b>