

DSS Policy and Procedure Guide

Division 03: Child Welfare

Chapter 06: Court

Item 27: Removing Dependents From a Parent, Relative, NREFM or Guardian and Placing in a Higher Level of Care

Suggested changes send to: [DSS PSOA Mailbox](#)

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References: [Welfare and Institutions Code §387](#)

Replaces Issue: **NEW**

Policy

Department of Social Services (DSS) Social Work staff shall follow the procedures set forth in this Policy and Procedure Guide to submit legally sufficient petitions to the court which helps support child safety and timely permanency.

Purpose

To inform Child Welfare Social Work staff of the Departmental policies and procedures and social work “best practice” that shall be followed when removing a court dependent from a parent, relative, Non-Relative Extended Family Member (NREFM) or Legal Guardian and placing the child in a higher level of care. It also defines the role of the Dependent Investigation Unit (DIU) social worker, the time frames for documentation in CWS/CMS, filing court documents and notices for Detention, Jurisdiction and Disposition hearings.

Overview of the Juvenile Court process

A petition pursuant to WIC 387 ([JV-150](#), “Supplemental Petition for More Restrictive Placement”) is required when the DSS seeks an order for the removal of a dependent child from the physical custody of a parent, relative, NREFM or Legal Guardian and placement of the child in a more restrictive setting (higher level of care).

Dependent Child Removed from the Physical Custody of a Parent, Relative, Non-Relative Extended Family Member or Guardian

If a dependent child is taken into temporary custody under Welfare and Institutions Code (WIC) Sections 387, a petition ([JV-150](#)) must be filed within 2 court days (48 judicial hours) of the child's removal and the Detention hearing must be held by the court the next judicial business day from the date the petition is filed (72 hours- 3 court days). During the hearing, the court determines whether the child shall remain detained.

Dependent Child Not Removed

When a dependent child **has not been removed** from the physical custody of a parent, relative, NREFM or Legal Guardian (when there is no issue of immediate risk to the child) the JV-150 petition may be filed at any time when the investigation of a petition request or the supervision

of a family leads to the conclusion that the safety and protection of a child requires court intervention, but immediate removal is not warranted. In this situation, the hearing regarding the petition must take place within 30 days of the filing.

NOTE: When DSS seeks an order to place a dependent child in a similar setting when the court has ordered that the child not be removed from his/her current placement without further order of the court, an Ex-Parte shall be filed to place the matter on the court's calendar. A JV-180, "Request to Change Court Order" shall be utilized to seek the court's approval for the change in placement at the court hearing. Notice shall be provided to all required persons as specified on the JV-180.

Definitions

Allegations

An allegation is a statement of the facts establishing that the dependent child has been abused or neglected or is at risk of abuse or neglect by a parent, relative, NREFM or Legal Guardian.

Supporting Facts

Supporting facts include the allegation and a nexus (language that connect the allegation to the act resulting in endangerment of the child). Each supporting fact must be stated separately (S-1, S-2, S-3, etc.) and obtain concise statements to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the child or, in the case of a placement with a relative, sufficient to show that the placement is not appropriate in view of the criteria in [WIC §361.3](#).

Procedure

- When it has been determined that a dependent child residing with his or her parent(s) on Court Ordered Family Maintenance (FM), placed in out-of-home-care with a relative, NREFM or residing with Legal Guardian cannot safely remain in the in the home the child shall be immediately removed from the home.
- For dependent children removed from the parent's care while on Court Ordered FM, the case managing social worker (CM SW) shall make every effort to place the child in the same placement home in which the child resided prior to returning to the parent(s) home on Court Ordered FM, providing the placement home continues to meet the child's needs.
- Safety Plans may be approved by the CM SW if the child is not determined to be in Immediate risk of abuse or neglect. If the CM SW determines that the child's safety will not be endangered by the arrangement of a temporary safety plan for the child, the CM SW shall schedule an Imminent Risk TDM as soon as possible to determine if the child may safely remain in the physical custody of the parent, relative, NREFM or guardian. An Imminent Risk TDM shall also be held if the family's circumstances indicate the child may be at risk if further intervention does not occur.

Case Managing Social Worker Responsibilities

Observations by the Case Managing Social Worker (CM SW)

- If during a face to face contact with a dependent child, the child's parent, care provider or guardian a CM SW observes non-accidental injuries to the child, unsanitary conditions of the home or learns of any other issues that indicate that the child cannot safely remain in his/her home/placement home the CM SW shall immediately remove the child from the home. The CM SW shall not permit the child to remain in the home pending the arrival of the DIU SW.
- Risk factors shall also be considered. Risk factors may include but are not limited to the refusal or inability of the parent(s) to remain free of drug or alcohol use, maintain "no contact" between the child and a third party or any repeated failure of the parent(s) to discontinue any action that places the child at risk of abuse.
- The CM SW shall determine whether reasonable efforts can be made to prevent the child's removal. If the child cannot safely remain in the home due to the nature of the circumstances, the child must be immediately removed.
- A protective hold is not required for **dependents** residing with their parents on Court Ordered FM or placed with a relative/NREFM or guardian.
- **The CM SW shall consult with his/her social work supervisor (SWS) any time the SW is uncertain regarding the assessment of the child's safety.**

When to Contact Law Enforcement

There are circumstances when law enforcement should be called to respond. These circumstances include, but are not limited to:

- The home's condition poses a threat to the child's health or safety. (The officer may document the incident in his/her report and/or arrange for photographs to be taken of the home's condition);
- The child has injuries that are reported as or appear to be non-accidental or the result of neglect by a parent;
- The child has been sexually abused by anyone;
- The SW suspects or has reason to believe that a child under the age of 12 or a child that is at high risk for abuse or neglect (developmental delays, physical or mental health disability or other high risk conditions) is home alone. Contacting law enforcement is necessary as SWs may not enter the home without an adult resident's permission;
- The parent, relative, NREFM or guardian flees or attempts to flee with the child,
- The SW has reason to believe the parent, relative, NREFM or guardian is under the influence of alcohol or drugs, (the officer is qualified to assess the parent);

- The social worker believes his or her safety is endangered;
- Any time the child's safety is in question, and
- Any time best social work practice determines the necessity to contact law enforcement.

Referrals Requiring Investigation by the Dependent Investigation Unit (DIU)

- If the CM SW is in the office and receives a report of suspected physical or sexual abuse of a dependent child, the CM SW shall be responsible for completing a [CWS/CMS Off-Line Intake Screening Form](#) with a full report of the suspected abuse and submitting it to the Child Protection Hotline. (See [PPG 3-3-23](#)) The CM SW shall request that a DIU SW be assigned to the referral.
- If the CM SW is out in the field when the suspected physical or sexual abuse of a dependent is discovered, the CM SW shall contact the CPS Hotline (255-8320 or 453-6466) to make a referral and request that a Dependent Investigation Unit (DIU) social worker respond to the scene. This shall be done any time the social worker observes or suspects that a dependent child has been physically or sexually abused.
 - Neglect allegations shall be assessed and handled by the CM. A DIU SW is not required to investigate neglect allegations. If an exception is requested, the CM SW's SWS and the DIU SWS shall discuss the situation and come to an agreement. (For additional information, please refer to [PPG 3-3-9](#), *Referrals on Dependent Minors*.)
- The DIU SW shall assume responsibility for the investigation upon arrival.
- All referrals shall be investigated according to normal investigation procedures per [PPG 3-3-8](#), *Assessment in Investigation of Abuse/Neglect Reports*.
- If there are other children living in the home the CM SW and DIU SW shall follow the policies and procedures in [PPG 1-3-2](#), *Incident Investigation*.

NOTE: The investigating DIU SW shall collaborate with the CM SW regarding the decision on whether to remove the minor. However, if they can't agree on the decision, the issue shall be advanced to the supervisor of each SW to discuss and come to a mutual agreement. If either SWS is unavailable, the DIU SW shall have the responsibility to make the decision.

- If the dependent child is removed from the physical custody of a parent, relative, NREFM or guardian, the DIU SW shall make note of and document the exact time that the child was removed in the Narrative section of CWS/CMS.
- If the child is removed the DIU SW shall document all investigation narratives in the Narrative section of CWS/CMS no later than 9:00 AM the following work day.
- The CM SW shall complete and email the initial incident report per [PPG 1-3-1](#), *Incident Reporting*.

- The CM SW shall arrange for a Team Decision Making (TDM) meeting and advise the parent, relative, NREFM or guardian of the TDM date, place and time.

When Reports of Abuse/Neglect of Dependent Children are Made Directly to the CPS Hotline

- The Hotline social worker shall assess the referral allegations per [PPG 3-3-9](#), *Referrals on Dependent Minors*.
- Referrals reporting the physical or sexual abuse of dependent minors received directly by the CPS Hotline are given an Immediate Response priority and assigned to in the Dependent Investigation Unit (DIU).
- Neglect allegations shall be assessed and handled by the CM. A DIU SW is not required to investigate neglect allegations. If an exception is requested, the DIU SWS and the CM SW's SWS shall discuss the situation and come to an agreement.
- The Hotline SW shall immediately send an email with all reported information regarding the known or suspected abuse to the CM SW, the unit SWS, the division PM, the Licensing SWS and the FPR SWS.
- The assigned DIU SW shall contact the case manager and/or the Social Work Supervisor (SWS) assigned to the minor by phone to advise them of the referral and to obtain any additional information regarding the child and the parent(s).
- Whenever possible, the CM SW shall respond with the investigating DIU SW.
- The CM SW shall complete and email the initial incident report per [PPG 1-3-1](#), *Incident Reporting*.
- The CM SW shall arrange for a Team Decision Making (TDM) meeting and advise the parent(s), relative, NREFM or guardian of the TDM date, place and time.

Court Related Timeframes

The timeframes for an initial removal also apply when a child is removed from his or her parents while on Court Ordered FM, a relative, NREFM or guardian.

- **The CM SW must complete and file a JV-150 petition with the juvenile court clerk's office within 48 hours from the time the child was removed. For removals that occur after 5:00 PM, the 48-hour clock begins at 8:00 AM the following court day.**

Completion of Court Documents

- The CM SW is responsible for writing the JV-150 petition, even if a DIU SW has assisted the CM SW with the investigation and removal.

- The petition shall clearly explain the circumstances that led to the removal of the child from the physical custody of the parents, relative, NREFM or Legal Guardian and why the child cannot safely remain in the home.
- When the petition is completed, the CM SW shall place the petition in the designated basket to be taken by the designated office assistant (OA) and filed with the juvenile court clerk's office. The petition must be placed in the basket with sufficient time for the OA to meet the 48-hour filing deadline.
- The CM SW shall also be responsible for the following:
 - Providing notices of hearing per [WIC §290.1 and WIC §291](#)
 - Ensuring notice of hearing is completed in accordance with [WIC §224.2](#) if the CM SW knows or has reason to know that an Indian child is involved.
 - Writing the Detention Report
 - Creating Discovery Packets for each appointed attorney and the DSS Court Officer. Each packet must have [form 6098](#) to identify the attorney by name and office. (Form 6098 may be located in DSS Net- Forms- Child Welfare Forms.)
 - Placing the Detention report and Discovery packets in the identified basket no later than 10:00 AM on the day of the Detention hearing to ensure that the documents are delivered to court staff on time.

Court Hearings

It is not mandatory that the CM SW attend the petition hearings (Detention, Jurisdiction, and Disposition). However, if the CM SW has reason to believe that his or her presence may be necessary, the CM SW shall arrange to be "on-call" for the hearing or plan to attend any of the hearings. The CM SW shall also attend any hearing for which he/she has been ordered to attend.

Notices of Hearing

- If a dependent child **has** been removed, the notice shall be given to the persons required to be noticed as soon as possible and at least five days before the hearing, unless the hearing is set less than five days and then at least 24 hours prior to the hearing.
- If the child **has not** been removed, the notice shall be given to those persons required to be noticed at least 10 days prior to the date of the hearing.
- Pursuant to [WIC §290.1 and WIC §291](#) notice of hearing shall be provided to:
 - The mother;
 - The father or fathers, presumed and alleged;

- The relative or NREFM care provider, if applicable;
- The legal guardian or guardians, if applicable;
- The child, if the child is 10 years of age or older;
- Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the juvenile court;
 - If the sibling is 10 years of age or older, the sibling, the sibling's caregiver, and the sibling's attorney.
 - If the sibling is under 10 years of age, the sibling's caregiver and the sibling's attorney. Notice is not required to be given to any sibling whose matter is calendared in the same court on the same day.
- Each attorney of record
- If the CM SW knows or has reason to know that an Indian child is involved, the CM SW must ensure that notice is completed in accordance with [WIC §224.2](#)

Detention Hearing

- At least twenty four (24) hours prior to the Detention hearing notice of the hearing shall be provided to all persons entitled to notice. Service of the notice shall be written or oral. If the person being served cannot read, notice shall be given orally.
- At the Detention hearing the CM SW may request that the court set a combined Jurisdiction/Disposition hearing rather than schedule two separate hearings.
- At the Detention hearing the CM SW may request that the judge waive the Jurisdiction and Disposition hearings. This may only be requested under limited and specific circumstances (not to include the removal of a child from a parent). If the CM SW believes this request may be appropriate, the CM SW shall discuss the matter with his/her supervisor prior to making the request in court.

Jurisdiction Hearing

- The CM SW is responsible for writing the Jurisdiction hearing report and ensuring that timely notice is sent to all required parties.
- Notice shall be given to the persons required to be noticed as soon as possible and at least five calendar days before the hearing.
- At the Jurisdictional hearing the court must determine by *a preponderance of the evidence* whether:

- The factual allegations are true; and
- The previous placement was ineffective to protect the child.

Dispositional Hearing

- Per California Rule of Court 5.565(f) a Disposition hearing shall be held if the court has found the WIC §387 petition allegations true.
- Notice shall be given to the persons required to be noticed as soon as possible and at least five calendar days before the hearing.
- At the Disposition hearing the court must find by *clear and convincing evidence* that for his or her safety, the child shall be removed from the physical custody of the parent(s), relative care provider or guardian.

Continued Court Hearings

There are times when a scheduled court hearing is continued to a future date. When this occurs, the CM SW shall:

- Provide updated Discovery to all entitled parties;
- Consult with his/her SWS or County Counsel, as necessary.