

Answers to Questions Received During April 22, 2020 Webinar: Overview of Laws and Policies During COVID-19

Rules of Court

Does the language regarding suspending visits in Emergency Rule 6¹ require a court hearing?

Emergency Rule 6 still requires a detriment finding to be made by the court when suspending all court ordered visitation.² If a parent or child cannot access technology and that is the reason visits are not occurring, the court will need to decide how to address that issue.

There has been a question regarding the vehicle to use to ask for court review of visitation orders. Should this be via a 388 petition³ or should a simple motion procedure be used?

The vehicle for court review of visitation is left to the local courts. The rule is intentionally silent on this issue as courts are operating in various ways. The court, in collaboration with the juvenile court stakeholders, should decide how visitation orders will be processed for review.

To maintain IV-E eligibility, reasonable effort finding must be made within 12 months from the date the child entered foster care. This finding can be made without prejudice and reconsidered at a full hearing. It sounds to me like Pre-Permanency and Post Permanency hearings are not essential and may be continued by the court. Does that sound correct? And, the 12-month (Permanency Hearing) reasonable effort finding must occur, but this can be via stipulation via minute order?

Federal law and guidance require the court to make a reasonable efforts determination every 12 months.⁴ In a letter from the Children's Bureau dated March 27, 2020, it was clarified that a hearing is not needed to make the reasonable efforts determination.⁵ To the extent that courts are still open and able to hold hearings in-person or virtual⁶, all hearings should proceed as scheduled, including prepermanency and postpermanency hearings. To the extent that courts must prioritize hearings because of limited court operations, it is imperative that the court try to hold the essential hearings under Emergency Rule 6.

¹ Emergency Rule 6 can be found here: <https://www.courts.ca.gov/documents/appendix-i.pdf>

² The court made no finding of detriment and granted Charmaine monitored visitation "as can be arranged." While the court granted visitation in theory, none was permitted in reality. In re Hunter S., 142 Cal. App. 4th 1497, 1505, 48 Cal. Rptr. 3d 823, 828 (2006)

³ Welf & Inst. Code section 388; *Request to Change a Court Order* (Form JV-180)

⁴ 42 USC Section 675

⁵ Letter dated March 27, 2020 from Jerry Milner, Associate Commissioner, Children's Bureau, Administration of Children and Families.

⁶ See Emergency Rule 3 for guidance on virtual hearings

Court Process

Will there be a way to figure out how to do adoption finalizations?

Courts and juvenile court stakeholders are working together to determine if there is a way to hold adoption finalization hearings virtually⁷. It is unclear whether adoption finalization hearings can be done through stipulation; courts do have authority to forgo the regular process for vetting local rules and forms to develop rules that will help courts deal with the COVID-19 emergency.⁸

Can a NMD reenter extended foster care if they were under legal guardianship?

Yes. Nothing in section 388 of the Welfare and Institutions Code has changed regarding the reentry of nonminor dependents under legal guardianship.⁹

For NMD's re-entering, I believe our county needs a court order in order to complete things in our system for an NMD to start receiving services. So how do we get around that?

That is not correct. The county does not need a court order to begin services if the nonminor signs the voluntary reentry agreement.¹⁰ A petition must be filed with the court within 15 days,¹¹ but services begin at the signing of the voluntary reentry agreement.¹²

Agency Questions

Are there restrictions to RFA if the RFA placement is out of county and can probation (602) foster youth be placed with CPS (300) foster youth?

ACL 20-43 addresses RFA placements out of county. The ACL states that there are no changes to out of county protocol. The process should remain the same as described in Written Directives section 4-07.

ACIN I-75-16 addresses whether foster youth under juvenile delinquency jurisdiction can be placed with foster youth under juvenile dependency jurisdiction. The answer is yes if some conditions are met. The ACIN states: "The WIC section 16514 permits voluntarily placed minors, minors with a pending WIC 300 petition, dependent minors, or non-minor dependents to be placed with WIC 601 or WIC 602 wards in a short-term residential therapeutic program, group home, licensed foster family home, resource family home or licensed foster family agency home as long as the social worker or probation officer with placement authority has determined that the placement setting has a program that meets the specific needs of the youth being placed and there is a commonality of needs with the other youth in

⁷⁷ Fam. Code Section 8316.5

⁸ See March 23, 2020 order from Chief Justice Cantil-Sakauye

⁹ Welf. & Inst. Code section 388.1

¹⁰ "A nonminor described in subdivision (a) may enter into a voluntary reentry agreement as defined in subdivision (z) of Section 11400 in order to establish eligibility for foster care benefits under subdivision (e) of Section 11401 before or after filing a petition to assume dependency jurisdiction." Welf. & Inst. Code section 388.1(e)(1)

¹¹ "If the nonminor completes a voluntary reentry agreement with a placing agency, the placing agency shall file the petition to assume dependency jurisdiction on behalf of the nonminor within 15 judicial days of the date the agreement is signed, unless the nonminor elects to file the petition at an earlier date." Welf & Inst. Code section 388.1(e)(2)

¹² "If the nonminor enters into a voluntary reentry agreement prior to filing the petition, the nonminor is entitled to placement and supervision pending the court's assumption of jurisdiction." Welf. & Code section 388.1(e)(1).

the placement setting.”

Can STRTPs refuse to take a child back into the facility if they AWOL? If so, is there a time frame they can do that or is it immediate? What's the expectation of the STRTP should they refuse to take a kid back? Do we report it?

It is our understanding that CDSS is working on guidance to the STRTPs to help follow public health guidelines.