



Frequently Asked Questions: AB 12 for Probation Youth

Derived from the *AB 12 Question of the Week Blog* by the John Burton Foundation and the Alliance for Children's Rights



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1) DELINQUENCY VS. DEPENDENCY AND ELIGIBILITY FOR EXTENDED FOSTER CARE

Does a delinquency youth have the same re-entry rights and process as a dependency youth?

Youth in the delinquency system are eligible for extended foster care if they are under an order for foster care placement on their 18th birthday. Further, the California Fostering Connections to Success Act provides mechanisms for certain wards to enter transition jurisdiction prior to their 18th birthday, which would provide those youth with eligibility for extended foster care benefits in the same manner as youth under dependency jurisdiction upon turning 18. Youth who are either (1) under the court's transition jurisdiction or (2) under the court's delinquency jurisdiction AND under an order for foster care placement on their 18th birthday have all the rights as youth in the dependency system to participate in extended foster care, including the right to re-enter care. (*Welfare & Institutions Code § 388(e)*).

Note: As long as a youth is still adjudicated as a 602 (delinquent) after turning 18, this youth does not have the same rights to exit and re-enter because they are still subject to the terms of their probation. However, if there was an order for foster care placement on the youth's 18th birthday, then once the youth finishes the terms of probation, s/he will transfer to transition jurisdiction and then have all the same rights to exit and re-enter as any other non-minor dependent.

2) RE-ENTRY TO FOSTER CARE AFTER INVOLVEMENT WITH ADULT CRIMINAL JUSTICE SYSTEM

If a youth exits foster care and becomes involved with the adult criminal justice system, does that disqualify him from re-entering extended foster care?

No; the existence of a criminal conviction does not bar the court from resuming either dependency or transition jurisdiction. If placement in a licensed or approved foster or relative home with dependent minors in the residence is planned for a youth who is re-entering, the county may elect to do a background check of the youth. The background check is solely for purpose of determining appropriate placement. Although the Health and Safety Code requires that adults residing in a licensed foster family home are subject to criminal background clearances, these sections do not apply to non-minor dependents residing in licensed foster family homes, because they are considered clients. This also applies to non-minor dependents in relative and non-related extended family member homes. (*All County Letter No. 12-12*).

3) EXTENDED FOSTER CARE ELIGIBILITY FOR A NON-MINOR DEPENDENT ON ADULT PROBATION STATUS

If a non-minor dependent (NMD) is arrested as an adult and put on adult probation status, will the adult probation status affect his/her eligibility for extended foster care?

The adult probation status does not change the NMD's eligibility for extended foster care; although, there may be circumstances when the adult probation status may be taken into account when determining the most appropriate placement for the NMD. While a NMD who becomes subject to adult probation has a right to a placement and also has the same range of placement options available, including THP-Plus Foster Care or a Supervised Independent Living Placement, the placing county must find a placement that ensures the safety and well-being of all other minor dependents and NMDs who are residing in the same setting.

Each county has the obligation of revising their county protocols (known as the WIC 241.1 protocols) to determine who will supervise and oversee a NMD's case if and when a NMD becomes subject to adult probation. *(All County Letter No. 11-85, page 8).*

4) INCARCERATED NON-MINOR DEPENDENTS' ELIGIBILITY FOR EXTENDED FOSTER CARE

Are non-minor dependents (NMDs) eligible for extended foster care while incarcerated?

No, NMDs are not eligible for extended foster care while incarcerated because they are unable to reside in a licensed or approved placement, which is one requirement of extended foster care. Once the NMD is released, s/he is eligible to re-enter foster care provided s/he meets all relevant eligibility criteria. *(All County Letter No. 11-69, page 4).*

5) EXTENDED FOSTER CARE ELIGIBILITY FOR AN 18-YEAR OLD IN JUVENILE HALL

If a youth turns 18 while in juvenile hall, will s/he be eligible for extended foster care?

In order to be eligible to participate in extended foster care a youth must have ***an order for foster care placement on his/her 18th birthday***. This requirement applies to all youth including wards in juvenile court (i.e. 602 youth). Therefore, if a youth is in juvenile hall but that youth has an order for foster care placement on his/her 18th birthday (which occurs when the youth is waiting for a placement to become available), then s/he is eligible to participate in extended foster care. If there is no order for foster care placement and the youth is detained in juvenile hall on his/her 18th birthday, then that youth will not be eligible for extended foster care. *(All County Letter No. 11-85).*

6) THE EFFECT OF PLACING A WARD ON RELEASE STATUS ON AB 12 SERVICES

I am a probation officer and am working with a 17 year-old ward who is scheduled to go to court next month. He currently has a placement order and is living with his aunt. He is making good progress and I expect that the judge will remove the placement order and put him on "release status." If this occurs, how will it affect his eligibility for extended services to age 21, under Assembly Bill 12?

If the judge puts the youth on release status and removes the placement order, the youth will not be eligible for extended support services when he turns 18 years-old. In order to be eligible for extended services to age 21, under Assembly Bill 12, the youth must have an order for foster care placement on his/her 18th birthday. In this particular instance, if the judge maintained the placement order with the aunt, the youth could have probation dismissed at age 17.5 or later, and become a transition dependent under WIC 450. As a transition dependent, the youth would be eligible for AB 12 related benefits, including housing, continued funding, and extended Medi-Cal. (*Welfare & Institutions Code §11403(b)*).

7) RIGHTS OF YOUTH WITH A 602 STATUS

I am the probation officer of an 18 year-old non-minor dependent who is placed in a group home. He is under delinquency jurisdiction (602 status) and is expected to complete his rehabilitative goals in July at which time the judge will likely place him in transition jurisdiction. His group home is allowing him to own and use a cell phone and to be allowed to go and enter at will, citing the Community Care Licensing Interim Standards, even though these actions violate the youth's probation terms that disallow either of those activities.

My question is as follows: Does this youth have the same rights as a youth who is in extended foster care under transition jurisdiction (450 status) or dependency (300 status) or do probation rules trump the non-minor dependent's rights under Community Care Licensing?

No; this youth under delinquency jurisdiction does not have the same rights as a youth under transition or dependency jurisdiction. This youth will have the full rights as a non-minor dependent (NMD) once the court has found that he has successfully met his rehabilitative goals. Assembly Bill 1712 clarified that the 602 NMD is not required to compete the mutual agreement, and their decision-making may be limited by the terms of their probation.

Specifically, WIC 303(d)(2) states that a NMD who remains under delinquency jurisdiction in order to complete his or her rehabilitative goals and is under a foster care placement order is not required to complete the mutual agreement as described in subdivision 9u) of Section 11400. His or her adult decision making authority may be limited by and subject to the care, supervision, custody, conduct, and maintenance orders as described in section 727.

8) AB 12 ELIGIBILITY FOR YOUTH WITH 602 STATUS

I have a youth who remains a 602, but was told that he could be eligible for AB 12 and get funding because he was 18 years-old. Is that correct? So in other words, these kids would be AB 12-eligible automatically upon turning 18 years-old. I'm not sure how that is possible. How can they be a 602 and 450 at the same time? Can you provide me with some clarification?

If a probation youth with an order for out-of-home placement turns 18 years-old and remains a 602 they are entitled to continue to receive benefits and also remain subject to the terms of their probation. Once rehabilitative goals have been met and 602 status is being dismissed (assuming the youth meets other AB12 eligibility criteria), the youth is eligible to continue to participate in extended foster care under 450 jurisdiction, and has all the rights and responsibilities of any other non-minor dependent once s/he is participating under 450 jurisdiction. (*Welfare & Institutions Code § 14000(v), Welfare & Institutions Code § 450 et seq. 76, Welfare & Institutions Code § 607.2 et seq.*)

9) PLACEMENT OPTIONS FOR WARDS PARTICIPATING IN EXTENDED FOSTER CARE

I am a probation officer for an 18 year-old ward who would like to participate in AB 12. The one thing preventing termination of 602 wardship and placing him into transition jurisdiction is that he still owes restitution. My question is regarding his placement options as a ward. Can we place him in a Supervised Independent Living Placement (SILP) or THP-Plus Foster Care?

Yes, as a ward participating in extended foster care, he may be placed in a Supervised Independent Living Placement (SILP) or THP-Plus Foster Care, as specified in WIC 11402. This question has been raised due to a lack of clarity in the code section that addresses placement of wards. Assembly Member Mark Stone's bill (AB 787) includes language that removes any ambiguity and makes it clear that these are eligible placements.

10) GROUP HOME RESTRICTION FOR A NON-MINOR WARD (UNDER 602 JURISDICTION)

Is a non-minor ward (under 602 jurisdiction) over age 19 subject to the group home placement restriction?

Yes, a non-minor ward (under 602 jurisdiction) is subject to the group home placement restriction. This restriction prohibits the continuation in or admission to a group home after a non-minor dependent either completes high school or attains his or her 19th birthday, whichever is earlier unless it is necessary to remain in the group home due to a documented medical condition.

The possible exception to this is if a judge orders ongoing group home placement for a non-minor ward (under 602 jurisdiction) to meet his or her rehabilitative goals. In this circumstance, the judge's order would supersede the restriction. (*Welfare & Institutions Code § 16501.1 (c)(1); All County Letter 11-77; All County Letter 11-69*).

11) AB 12 ELIGIBILITY FOR PROBATION YOUTH WITH VACATED ORDERS

I am a volunteer for youth in our county juvenile probation department and am currently working with a young woman, age 18. I was told by her probation officer that she is not eligible for AB 12 services because her "orders were vacated" prior to turning 18 after being on run-away status for an extended time. What does that mean and is eligible or not?

If a youth is absent from their placement for a specified period of time, the court has the discretion to "vacate the orders" of the youth, which essentially means to cancel the youth's placement orders. If the youth did not have a court order for foster care placement in place on her 18th birthday, then the probation officer is correct and she is not be eligible for extended foster care.

Given this, it is important for minor's attorneys and public defenders to work to ensure that a court does not vacate the orders of a youth under the age of 18, not only because it closes off the opportunity to participate in AB 12 services at a later time, but because this youth is still a minor who has found to be unable to return home due to abuse and neglect and is the state's responsibility. Vacating the orders for placement means that no one is responsible for this young person's well-being, even though the court had previously determined that the youth cannot live at home safely.
