

Changing Placements after Termination of Parental Rights/.26(n) Procedures

(Revised 03/13/20)

[Forms](#)

[Policy](#)

[Prospective Adoptive Parent Status](#)

[Termination of Prospective Adoptive Parent Status](#)

[Removal of a Child from a Prospective Adoptive Parent's Home/.26\(n\) procedures](#)

[Emergency Removals from a Prospective Adoptive Parent](#)

[Hearing on Removal from a Prospective Adoptive Home](#)

[Moving the Child Post-.26 from a Non-Prospective Adoptive Parent](#)

[Documents for Change of Placements](#)

[References](#)

[Alignment with SET](#)

Forms

The following forms are referenced in this file:

- 02-10 Adoption Case Consultation Form (CWS/CMS template)
 - 04-75 Dangerous propensities (CWS/CMS template)
 - 04-75sp Dangerous propensities - Spanish (CWS/CMS template)
 - 04-168A Change of Placement Ex-parte (CWS/CMS template)
 - 04-258 Placement Needs & Services Plan (CWS/CMS template)
 - 04-258sp Placement Needs & Services Plan- Spanish (CWS/CMS template)
 - 04-275 Agency/Caregiver Placement Agreement
 - 04-275sp Agency/Caregiver Placement Agreement – Spanish
 - [AD 42R](#) Agency Adoption Program - Individual Case Report
 - [AD 580](#) Notice of Removal of Child from Adoptive Home
 - [AD 907](#) Adoptive Placement Agreement
 - [JV 321](#) Request for Prospective Adoptive Parent Designation
 - [JV 322](#) Confidential Information-Prospective Adoptive Parent
 - [JV 323](#) Notice of Intent to Remove Child
 - [JV 324](#) Notice of Emergency Removal
 - [JV 325](#) Objection to Removal
 - [JV 326](#) Proof of Notice
 - [JV326-INFO](#) Instructions for Notice of Prospective Adoptive Parent Hearing
-

Policy

In order to change a child's placement after parental rights have been terminated, a SW must determine if the move is in the child's best interest and if .26 (n) procedures apply.

A SW will follow .26(n) procedures for all moves when:

- parental rights have been terminated through a 366.26 hearing or modified through in a Tribal Customary Adoption and
- the child is placed with a caregiver who has qualified or may qualify as a prospective adoptive parent, even if the caregiver has asked for the removal of the child(ren).

366.26(n) procedures do not apply to cases when either of the following is true:

- The case is pre-366.26. In these cases, the SW will follow the change of placement policy (see Change of Placement Requirements).
 - The child is in a home with caregivers who do not qualify as prospective adoptive parents.
-

**Prospective
Adoptive Parent
Status**

When parental rights are terminated through the juvenile court and a child must move from their caregivers home, the SW must determine if the caregiver(s) meets the designation of prospective adoptive parent. The court may designate a caregiver as a "Prospective Adoptive Parent" on its own motion or if the caregiver, child, SW, child's Indian tribe, or attorney requests it and the following three criteria are met:

1. The child has lived with the caregiver for at least six months.
2. The caregiver currently expresses a commitment to adopt the child.
3. The caregiver has initiated at least one step in the adoption process. According to 366.26(n)(2) this includes, but is not limited to:
 - Applying for an adoption home study.
 - Cooperating with an adoption home study.
 - Being designated by the court or the adoption agency as the adoptive family.
 - Requesting de facto parent status.
 - Signing an adoptive placement agreement.
 - Engaging in discussions regarding a post-adoption contact agreement.
 - Working to overcome any impediments that have been identified by the county adoption agency.
 - Attending classes required of prospective adoptive parents.

The court may also take into consideration whether the caregiver is listed in the 366.21 assessment as an appropriate person to be considered as an adoptive parent for the child and/or the recommendation of the adoption agency.

NOTE: If the caregiver meets the definition of a prospective adoptive parent but the court has not made this designation, the Agency must provide the caregiver with notice, giving the caregiver the ability to object to the removal of the child(ren).

Termination of Prospective Adoptive Parent Status

If a caregiver no longer meets the criteria of a Prospective Adoptive Parent (PAP), a 388 can be filed to vacate the PAP order.

Removal of a Child from a Prospective Adoptive Parent's Home/.26 (n) Procedures

Prior to a change of placement from a prospective adoptive parent, and as soon as possible after a decision to remove is made, the SW will:

Step	Action
1	<p>Determine if changing placements is in the child's best interest by completing the following:</p> <ul style="list-style-type: none">• Case consultation• Child and Family Team Meeting• SDM• consult with county counsel <p>NOTE: Child and Family Team Meetings are required for all non-emergency change of placements.</p>
2	<p>Determine if the caregiver(s) qualify as prospective adoptive parent(s).</p> <p>NOTE: The minute order from the .26 hearing may indicate the prospective adoptive parent designation. Even if the caregiver is not given the designation, but meets the criteria, continue with Step 3.</p> <p>If the caregivers do not qualify as prospective adoptive parents, follow the procedures outlined here.</p>

**Removal of a Child
from a Prospective
Adoptive Parent's
Home/.26 (n)
Procedures (cont.)**

Step	Action										
3	<p>Complete the following forms:</p> <table border="1"> <thead> <tr> <th>Form</th><th>Additional Instructions</th></tr> </thead> <tbody> <tr> <td>JV 322</td><td>This form will be kept in the court file under seal. Only the court, child's attorney, agency, and the child's CASA can have access to this information.</td></tr> <tr> <td>JV 323</td><td>Use additional sheets if necessary to describe reasons for removal, however only the basic information is needed. If a hearing is scheduled an in depth report with necessary attachments can be submitted at that time.</td></tr> <tr> <td>JV 325</td><td>Leave blank.</td></tr> <tr> <td>JV 321</td><td>Only needed if the caregiver does not yet have prospective adoptive parent status. Fill in the child's name and case number but leave the caregiver(s) information blank.</td></tr> </tbody> </table> <p>NOTE: The forms must be filled out even if the caregiver has given notice to remove a child.</p>	Form	Additional Instructions	JV 322	This form will be kept in the court file under seal. Only the court, child's attorney, agency, and the child's CASA can have access to this information.	JV 323	Use additional sheets if necessary to describe reasons for removal, however only the basic information is needed. If a hearing is scheduled an in depth report with necessary attachments can be submitted at that time.	JV 325	Leave blank.	JV 321	Only needed if the caregiver does not yet have prospective adoptive parent status. Fill in the child's name and case number but leave the caregiver(s) information blank.
Form	Additional Instructions										
JV 322	This form will be kept in the court file under seal. Only the court, child's attorney, agency, and the child's CASA can have access to this information.										
JV 323	Use additional sheets if necessary to describe reasons for removal, however only the basic information is needed. If a hearing is scheduled an in depth report with necessary attachments can be submitted at that time.										
JV 325	Leave blank.										
JV 321	Only needed if the caregiver does not yet have prospective adoptive parent status. Fill in the child's name and case number but leave the caregiver(s) information blank.										
4	<p>Notice in person or by first-class mail at the last known address:</p> <ul style="list-style-type: none"> • The caregiver(s) • The child if over 10 years old • Child's attorney • Child's CASA (if applicable) • Child's Indian tribe (if applicable) • Child's Indian custodian (if applicable) <p>By providing forms:</p> <ul style="list-style-type: none"> • JV 323 • JV 325 • JV 321 if applicable <p>NOTE: If noticing is done by first-class mail, once service is completed the time to respond is extended by five calendar days.</p>										

**Removal of a Child
from a Prospective
Adoptive Parent's
Home/.26 (n)
Procedures (cont.)**

Step	Action
5	<p>Complete the JV 326 and notice the court by contacting the court's department clerk to inform him/her of the filing.</p> <p>Then submit the following forms to court:</p> <ul style="list-style-type: none">• JV 322• JV 323• JV326
6	<p>Contact the court after 5 court days or 7 calendar days, whichever is longer, to determine if an objection to the removal has been filed and/or a hearing date set. The court may also notify the SW of a hearing via email.</p> <p>NOTE: The court may extend the filing period for good cause.</p> <p>If a hearing is scheduled, prepare an addendum as outlined here.</p> <p>If a hearing is not scheduled, move the child and fill out the paperwork found here. In addition, determine what, if any, ongoing contact with the caregivers will be needed in order to help the child transition successfully.</p> <p>NOTE: Neither a 388 nor a 387 is needed even when moving a child with an order of Adoption to a higher level of care because the Agency has the care, custody, and control of the child. However, if you are also changing the permanent plan, follow the steps found in Recommending a Permanent Plan Other than Adoption.</p>

**Emergency
Removals from a
Prospective
Adoptive Parent**

If a child(ren) is at risk of physical or emotional harm, the agency may remove the child from a prospective adoptive parent without prior notice of removal.

In these circumstances, as soon as possible and not longer than two court days after the removal, the SW must:

Step	Action										
1	<p>Determine if the caregiver(s) qualify as prospective adoptive parent(s).</p> <p>NOTE: The minute order from the .26 may designate the prospective adoptive parent. Even if the caregiver is not given the designation, but meets the criteria, continue with Step 3.</p> <p>If the caregivers do not qualify as prospective adoptive parents, follow the procedures outlined here.</p>										
2	<p>Complete the following forms:</p> <table><tr><th>Form</th><th>Additional Instructions</th></tr><tr><td>JV 322</td><td>None</td></tr><tr><td>JV 324</td><td>Use additional sheets if necessary to describe reasons for removal, however only the basic information is needed. If a hearing is scheduled an in depth report with necessary attachments can be submitted at that time.</td></tr><tr><td>JV 325</td><td>Leave blank</td></tr><tr><td>JV 321</td><td>Only needed if the caregiver does not yet have prospective adoptive parent status. Fill in the child's name and case number but leave the caregiver(s) information blank.</td></tr></table>	Form	Additional Instructions	JV 322	None	JV 324	Use additional sheets if necessary to describe reasons for removal, however only the basic information is needed. If a hearing is scheduled an in depth report with necessary attachments can be submitted at that time.	JV 325	Leave blank	JV 321	Only needed if the caregiver does not yet have prospective adoptive parent status. Fill in the child's name and case number but leave the caregiver(s) information blank.
Form	Additional Instructions										
JV 322	None										
JV 324	Use additional sheets if necessary to describe reasons for removal, however only the basic information is needed. If a hearing is scheduled an in depth report with necessary attachments can be submitted at that time.										
JV 325	Leave blank										
JV 321	Only needed if the caregiver does not yet have prospective adoptive parent status. Fill in the child's name and case number but leave the caregiver(s) information blank.										

**Emergency
Removals from a
Prospective
Adoptive Parent
(cont.)**

Step	Action
3	<p>Notice in person or by first-class mail at the last known address:</p> <ul style="list-style-type: none"> • The caregiver(s) • The child if over 10 years old • Child's Attorney • Child's CASA (if applicable) • Child's Indian tribe (if applicable) • Child's Indian custodian (if applicable) <p>By providing forms:</p> <ul style="list-style-type: none"> • JV 324 • JV 325 • JV 321 if applicable <p>NOTE: If noticing is done by first-class mail, once service is completed the time to respond is extended by five calendar days.</p>
4	<p>Complete the JV 326 and notice the court by contacting the court's department clerk to inform him/her of the filing.</p> <p>Then submit the following forms to court:</p> <ul style="list-style-type: none"> • JV 322 • JV 324 • JV326
5	<p>Contact the court after 5 court days or 7 calendar days, whichever is longer, to determine if an objection to the removal has been filed and/or a hearing date set. The court may also notify the SW of a hearing via email.</p> <p>NOTE: The court may extend the filing period for good cause.</p> <p>If a hearing is scheduled, prepare an addendum as outlined here.</p> <p>NOTE: Neither a 388 nor a 387 is needed even when moving a child with an order of Adoption to a higher level of care because the Agency has the care, custody, and control of the child. However, if you are also changing the permanent plan, follow the steps found in Recommending a Permanent Plan Other than Adoption.</p>

Hearing on Removal from a Prospective Adoptive Home

The court clerk may set a Special Hearing if there is objection to the child being removed from the home. The child, child's attorney, or prospective adoptive parent must file an objection to the removal within five court days or seven calendar days of receiving the notice. A hearing may also be set if the court objects to the child's removal from the placement.

The hearing will be scheduled within five days of the objection being filed with the court.

It is set to determine:

- If the caregiver has met the criteria to be designated as a prospective adoptive parent. If the court finds that the caregiver does not meet the criteria for a prospective adoptive parent status, the petition objecting to the proposed removal filed by the caregiver will be dismissed.
NOTE: If the court does designate the caregiver a prospective adoptive parent, the designation does not make the caregiver a party to the dependency proceedings or give the caregiver any legal standing to object to any other action unless the court has declared the caregiver a de facto parent prior to the notice to remove was served.
- If the proposed removal is in the child's best interests.

When a hearing is set, the SW will create an Addendum Report that:

1. Addresses the reason for removal
2. Includes an assessment of the child's best interest for placement, including safety, permanence, and well-being
3. Provides supporting documentation as attachments to the report.

Moving the Child Post-.26 from a Non-Prospective Adoptive Parent

At times, children with an order of adoption are in placements with caregivers that do not meet the definition of a prospective adoptive parent. These include, but are not limited to, placements:

- With the child in the home for less than six months
- Without a caregiver expressing the interest to adopt
- In group homes or Polinsky Children's Center

In these cases, 26(n) procedures are not necessary and the SW will instead notify the child's attorney and the court through a Change of Placement Ex-Parte (04-168A) and [fill out the paperwork found here](#).

NOTE: Neither a 388 nor a 387 is needed even when moving a child with an order of Adoption to a higher level of care because the Agency has the care, custody, and control of the child. However, if you are also changing the permanent plan, follow the steps found in Recommending a Permanent Plan Other than Adoption.

Documents for Change of Placements

For change of placements, the SW must:

Step	Action
1	Submit a 04-168A to notice all parties on the change of placement.
2	Submit a 07-65.
3	<p>Give the new placement the following documents:</p> <ul style="list-style-type: none">• 04-75• 04-258• 04-275 or AD907 <p>NOTE: If giving the family an AD 907, the Telling meeting must have occurred (see Adoption Tellings).</p>
4	<p>If adoptive placement papers were signed with the caregiver(s) that the child was removed from, complete forms:</p> <ul style="list-style-type: none">• AD 580 and AD42R. Submit the forms to the Applicant Desk clerk to in order to notify the state of the dissolved adoptive placement.

References

- Welfare and Institutions Code 366.26(n)
- Family Code 8704
- CA Rules of Court 5.726, 5.727, 5.728

Alignment with SET This policy supports SET [Value 2](#) and the agency practice to keep safety, permanency, and well-being of the child/youth at the forefront. It also supports SET [Value 3](#) and the guiding principle to hold a sense of urgency when seeking permanency for children, as well as the agency practice to value the most permanent option for the child/youth.
