CALIFORNIA JUDGES BENCHGUIDES

Benchguide 101

JUVENILE DEPENDENCY JURISDICTION HEARING

[REVISED 2013]

ADMINISTRATIVE OFFICE OF THE COURTS

JUDICIAL AND COURT OPERATIONS SERVICES DIVISION

CENTER FOR JUDICIARY EDUCATION AND RESEARCH

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I. [§101.1] SCOPE OF BENCHGUIDE

This benchguide provides a procedural overview of dependency jurisdiction hearings, held generally under Welf & I C §§300 and 325–356 and Cal Rules of Ct 5.501–5.688. This benchguide includes two procedural checklists, a brief summary of the applicable law, and spoken and written forms. The discussion covers grounds for jurisdiction, contested and uncontested hearing procedures, and required findings and orders.

Throughout this benchguide, the agency that handles abused or neglected children will be referred to as the Department of Social Services (DSS) and the person who investigates and resolves dependency cases will be called the social worker. See Welf & I C §215.

The purpose of the jurisdiction hearing is for the court to determine which of the allegations of the petition, if any, have been proved by a preponderance of evidence. See Welf & I C §355(a); discussion in §101.4.

II. PROCEDURAL CHECKLISTS

A. [§101.2] Uncontested Hearing

(1) *Attorneys serving as temporary judges should obtain a stipulation from the parties, following the procedures set out under* Cal Rules of Ct 2.816. If it is desired that a referee (or commissioner assigned as a referee) hear a case as a temporary judge, a written stipulation must be obtained from the parties. See discussion in §101.34.

(2) *Call the case.* In many counties, the social worker assigned to the court as court officer or the deputy county counsel calls the case and announces the appearances.

Note: Some judicial officers will first call the entire calendar to determine which cases are ready and in what order they will be taken.

(3) *Determine the identity of those present and each person's interest in the case before the court.* Welf & I C §§346, 349; Cal Rules of Ct 5.530(b).

- *Exclude all persons from the court except parties (including the child), counsel for the parties, or anyone found by the court to*

have a direct and legitimate interest in the particular case or the work of the court. Welf & I C §§345–346, 349.

- *Ask each parent or guardian to confirm for the court his or her permanent mailing address.*
- *Remind each parent or guardian that the designated mailing address will be used by the court and the social services agency for notification purposes until the parent or guardian provides a new address in writing to the court or social services agency.* Welf & I C §316.1(a); Cal Rules of Ct 5.534(m). Judges should also advise the parents that they may change the addresses by written notice as often as they need to. Judicial Council form, Notification of Mailing Address (JV-140), must be completed by the parent or guardian and filed with the court.

(4) *Make a finding whether notice has been given or attempted as required by law.* See Cal Rules of Ct 5.534(*l*).

(5) *If a parent or guardian has been notified and fails to appear, make a finding to that effect and indicate that the hearing is going to proceed in the absence of that parent or guardian.* See, *e.g., In re Christopher A.* (1991) 226 CA3d 1154, 1162, 277 CR 302. There is no "default" procedure in juvenile dependency hearings. See *In re Stacy T.* (1997) 52 CA4th 1415, 1422 n4, 61 CR2d 319. "Evidence preclusion" is an inappropriate sanction for a parent who fails to appear or appears late for a jurisdiction or disposition hearing that had been rescheduled a few times; proceeding in the parent's absence is a better alternative. *In re Vanessa M.* (2006) 138 CA4th 1121, 1129–1131, 41 CR3d 909.

(6) *Unless the inquiry was conducted and resolved at the initial or detention hearing, the court must inquire about the identities and addresses of the presumed or alleged parents.* If a parentage inquiry was made at the initial or detention hearing, and the question of parentage was not fully resolved, the judge should inquire as to the progress made to resolve the issue (*e.g.,* whether there are results of paternity tests, etc.). Welf & I C §316.2. See discussion in California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §§100.32–100.33 (Cal CJER).

(7) *Inquire whether the child has American Indian heritage and, if so, take steps to ensure that proper inquiry is made and if required proper ICWA notice is given.* See California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §§100.49–100.51 (Cal CJER).

Note: The steps that follow (including appointment of counsel) will normally have been done at the detention hearing, and therefore may not have to be taken at the jurisdiction hearing.

(8) *Ask whether the factual information (names, dates, addresses, ages, etc.) on the petition is correct.* The judge should order that the petition be corrected by interlineation if, on inquiry, any of the participants provides corrections to the names, dates, addresses, ages, or other factual information in the petition. If one of the parents is a victim of domestic violence and is living apart from the batterer-parent, the address of the victim parent must remain confidential. Welf & I C §332(e).

(9) *If a parent, guardian, or Indian custodian is not already represented by counsel, advise him or her of the statutory right to counsel, including appointed counsel if appropriate.* The judge should appoint counsel for the parent, guardian, or Indian custodian as warranted, including any incarcerated or institutionalized parent, guardian, or Indian custodian. Welf & I C §317(a).

(10) *If child, nonminor, or nonminor dependent is unrepresented, determine if it is still the case that he or she would not benefit from appointment of counsel, and, if so, make findings as to why.* Welf & I C §317(c). Otherwise appoint counsel to represent the child, *nonminor, or nonminor dependent*, and designate the attorney as the Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem. See Welf & I C §317; Cal Rules of Ct 5.534(g)–(h), 5.662(c).

(11) *Unless waived by counsel, read, or have the clerk read, a copy of the petition to those present.* Unless waived by counsel, the judge should explain the meaning and content of the allegations, as well as the nature of the hearing, procedures, and possible outcomes. Welf & I C §353; Cal Rules of Ct 5.682(a).

(12) *Advise the parties of their hearing rights, and inquire whether they understand and wish to waive those rights.* Cal Rules of Ct 5.682(b), (c). If the parties did not attend the initial or detention hearing, the judge should give the advisements discussed in California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §100.25.

(13) *Ask whether the parent or guardian wishes to admit, plead no contest, or deny the allegations in the petition, or submit the matter on the reports.* Cal Rules of Ct 5.682(c), (e).

(14) *If the parent or guardian denies the allegations and does not submit the matter on the reports, follow the checklist in* §101.3, *Contested Hearing.* Cal Rules of Ct 5.682(c).

(15) *If the parent or guardian neither admits nor denies the allegations, state on the record that the parent or guardian does not admit the allegations and follow the checklist in* §101.3, *Contested Hearing.* Cal Rules of Ct 5.682(c).

(16) *If the parent or guardian wishes to admit the allegations, plead "no contest," or submit the matter based on the social worker's reports, determine whether the parent or guardian understands the allegations, knowingly and intelligently waives the right to a contested hearing on the*

petition, and understands the consequences of the admission, plea of "no contest," or submission. Cal Rules of Ct 5.682(c). Judicial Council form, Waiver of Rights (JV-190), must be used for taking this waiver. See discussion in §101.32.

☛ JUDICIAL TIP: If the parent or guardian has submitted the matter, the judge should ask each attorney (including the child's attorney) whether cross-examination of the social worker is waived and ask the parent and attorney to complete JV-190.

(17) *If there is an admission, plea of "no contest," or submission, make a finding on the record that the parent or guardian understands the allegations and understands and waives hearing rights.* Cal Rules of Ct 5.682(c). See script in §101.53.

☛ JUDICIAL TIP: If the parent or guardian is submitting the matter, the judge should inquire whether the submission is on the reports or on the reports *and* recommendation. See *In re Richard K.* (1994) 25 CA4th 580, 589–590, 30 CR2d 575; discussion in §101.26. The court should also inquire as to whether any submission is the result of a negotiated settlement and, if so, have the terms set forth on the record.

(18) *If the parent or guardian has pleaded no contest or has submitted the jurisdictional determination based on information provided in the social worker's report, review the report and any attached documents to determine if they support the allegations in the petition*. If the parent or guardian has admitted the allegations, the judge should review the social worker's reports and any attached documents to determine a factual basis for the plea.

(19) *If the positions of all parents and guardians have been considered, make findings of whether the child is described by Welf & I C §300 and, if so, under which specific subsections; make additional findings required in uncontested cases under Cal Rules of Ct 5.682(f).*

(20) *If jurisdictional findings have been made, proceed to a disposition hearing or continue the matter for a disposition hearing under Cal Rules of Ct 5.686 and 5.690.* Welf & I C §358; Cal Rules of Ct 5.682(g).

(21) *If DSS had alleged that Welf & I C §361.5(b)* or (*e)(1) (no reunification services) may be applicable, continue the disposition hearing for a period not to exceed 30 calendar days.* Welf & I C §358(a)(3); Cal Rules of Ct 5.686(b). The court must order DSS to notify each parent of Welf & I C §361.5(b) and must inform each parent that if no reunification is ordered at the disposition hearing for any parent or guardian, a .26 hearing (a hearing held under Welf & I C §366.26) will be held and parental rights may be terminated. Welf & I C §358(a)(3); Cal Rules of Ct

5.686(b). When the parent is present at the hearing and has had an opportunity to review the recommendations, the court need not continue the matter if the parent waives that right and permits disposition to proceed. See generally discussion in §101.50. If the parent or guardian was not present at the detention hearing, the court should also give the more detailed advisements noted in California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §100.25 (Cal CJER).

B. [§101.3] Contested Hearing

(1) *Follow steps (1) through (14) from checklist in* §101.2*, Uncontested Hearing.*

(2) *Receive the evidence, including the social worker's report and attachments, the report of any court-appointed special advocate, and any testimony.* Except as provided in Welf & I C §355.1 and subdivisions (c), (d), and (e) of Cal Rules of Ct 5.684, judges should rule on admission or exclusion of evidence according to the Evidence Code as it applies to civil cases. Cal Rules of Ct 5.684(b). The social worker who prepared the report must be available for cross-examination. Cal Rules of Ct 5.684(c)(2). The preparer may be on telephone standby if the preparer can be present in court within a reasonable time. Cal Rules of Ct 5.684(c)(2).

- *If the child's testimony is required, plan for and facilitate the child's testimony as appropriate.* See Welf & I C §350; Cal Rules of Ct 5.534(c). See also §§101.42–101.46
- *Receive the social worker's report and any attachments if the social worker is available for cross-examination or is on telephone standby and can be present in court within a reasonable time.*
- *Do not base jurisdiction findings or any other finding of ultimate fact on which a jurisdiction finding is made on hearsay contained in the report if a party objects to particular hearsay in the report and provides DSS a reasonable period to meet the objection unless:*
  - The hearsay is admissible under any statutory or judicial hearsay exception;
  - The hearsay declarant is a child under 12 years of age who is the subject of the petition, except if the objecting party establishes that the statement was produced by fraud, deceit, or undue influence and is therefore unreliable;
  - The hearsay declarant is a peace officer, health practitioner, social worker, or teacher and the statement would be admissible if the declarant were testifying in court; or

— The hearsay declarant is available for cross-examination. Welf & I C §355(c); Cal Rules of Ct 5.684(d)(4). See also discussion in §§101.40, 101.43.

- *Consider the operation of any applicable presumptions.* Welf & I C §355.1; see discussion in §101.19.

(3) *Make findings as to whether the child is one described by Welf & I C §300 as alleged in the petition* or find, based on proof, that the child is described by a different subsection of Welf & I C §300 than that alleged in the petition. The court may amend the petition to conform to the evidence if necessary, including striking any portion of the petition found to be not proved. See Welf & I C §348. The allegations must be proved by a preponderance of the evidence. Welf & I C §355(a).

(4) *If the child is found to come within Welf & I C §300, make findings required by Welf & I C §356 and Cal Rules of Ct 5.684(f).* See discussion in §101.48 and form in §101.54.

(5) *If the child is not found to come within Welf & I C §300, dismiss the petition, order that any previously ordered detention be terminated, and make findings required by Cal Rules of Ct 5.684(h).* See Welf & I C §356. In such an instance, the court must order the child returned to the parents' or guardians' custody within two working days unless the parent or guardian and DSS agree to a later date. Cal Rules of Ct 5.684(h).

(6) *If jurisdictional findings have been made, proceed to a disposition hearing or continue the matter for a disposition hearing under Cal Rules of Ct 5.686 and 5.690.* See Welf & I C §358(a); Cal Rules of Ct 5.684(g).

(7) *If DSS had alleged that Welf & I C §361.5(b) or (e)(1) (no reunification services) may be applicable, the disposition hearing must be continued for a period not to exceed 30 days.* The court must order DSS to notify each parent of Welf & I C §361.5(b) and must inform each parent that if reunification is not ordered at the disposition hearing, a .26 hearing will be held, and parental rights may be terminated. Welf & I C §358(a)(3); Cal Rules of Ct 5.686(b). See discussion in §101.50. If the parent had been present at the hearing and has had an opportunity to review the recommendations, the court need not continue the matter if the parent waives that right and permits disposition to proceed, with the understanding that a .26 hearing may result.

III. APPLICABLE LAW

A. [§101.4] Purpose of Jurisdiction Hearing

The purpose of the jurisdiction hearing is for the court to determine whether the allegations in the petition should be sustained and, if so, whether the child is a person described by one or more sections of Welf & I C §300. See Welf & I C §355(a). The court does not adjudge the child a

dependent of the court at this hearing or decide where the child will live. *In re Heather B.* (1992) 9 CA4th 535, 543, 11 CR2d 891. These decisions are made at the disposition hearing if jurisdiction is found. See Welf & I C §§360, 361, 361.2; *In re La Shonda B.* (1979) 95 CA3d 593, 599, 157 CR 280.

The goal of Welf & I C §300 is to provide maximum safety and protection for children who have been or are currently being physically or sexually abused; who are being emotionally abused, neglected, or exploited; or who are at risk of being so harmed. Welf & I C §300.2. Nothing in Welf & I C §300 is intended to disrupt the family unnecessarily or to intrude inappropriately into family life. Welf & I C §300.

Because the purpose of dependency proceedings is protection of the child, the court takes jurisdiction over children (not over parents) when the actions of either parent bring the child within one of the statutory definitions in Welf & I C §300; the court gains jurisdiction over a parent only when that parent is properly notified. *In re Joshua G.* (2005) 129 CA4th 189, 202, 28 CR3d 213.

B. Background Issues

1. [§101.5] Focus of Dependency Petition

Dependency petitions are brought on the child's behalf and not to punish the parent. *In re La Shonda B.* (1979) 95 CA3d 593, 599, 157 CR 280. Therefore, if the child comes within the Welf & I C §300 description, the petition is simply "sustained"; it is not sustained against a parent or as to one or both parents. Because the focus of the petition is the child, there may be situations in which a petition is sustained, but DSS is required to pursue its case plan with minimal disruption to the family. See, *e.g.*, *In re Matthew S.* (1996) 41 CA4th 1311, 1321, 49 CR2d 139 (children were reasonably well adjusted and close to mother who was conscientious but delusional).

Previous case law required that the jurisdictional allegations be proved to exist as of the date of the jurisdiction hearing. See, *e.g., In re Melissa H.* (1974) 38 CA3d 173, 175, 113 CR 139, requiring that the court make a finding that the parent's home is unfit. As a result, parents would often clean their home, stop using physical discipline, or otherwise claim to have changed in an effort to defeat the taking of juvenile court jurisdiction. However, most of the current subdivisions of Welf & I C §300 now provide for the assumption of jurisdiction in one of two ways: (1) The child has already suffered serious physical harm, illness, or sexual abuse, or (2) the child is at substantial risk of suffering such harm. Although evidence of current circumstances is still relevant to allegations based solely on substantial risk, such as in the case of siblings, this type of

evidence is not relevant to a jurisdictional finding based on harm already suffered by the child. Nevertheless, in cases in which there is evidence of changed circumstances, the current circumstances remain relevant to dispositional considerations, such as whether to declare the child a dependent and, if so, whether to remove the child.

The Legislature has made clear that courts should not assume jurisdiction under Welf & I C §300 merely because the parent is disabled; instead, courts must determine whether the disability prevents the parent from exercising care and control. Welf & I C §300. Similarly, a child whose parent is himself or herself a dependent would not come under the jurisdiction of the juvenile court solely because of the parent's age, dependent status, or foster care status. Welf & I C §300.

2. [§101.6] Child in Custody of One Parent

Jurisdiction can be established without regard to custody orders or arrangements concerning the child. In fact, there is no need to have allegations relating to both parents. If conditions arise or acts occur that place the child at risk, those allegations will support a petition, regardless of whether the child was in the physical custody of both parents or was in the sole legal or physical custody of only one parent at the time that the conditions giving rise to jurisdiction occurred. Welf & I C §302(a). A petition may be sustained even when one parent is capable of providing for the child and there is no mention of that parent in the allegations. *In re Jeffrey P.* (1990) 218 CA3d 1548, 1552–1554, 267 CR 764. Under these facts, the circumstances of the noncustodial parent may be relevant as a dispositional consideration. See Welf & I C §361.2(a).

Because jurisdictional allegations concern the child and not any particular parent, jurisdictional findings cannot be made until the court has dealt with all parents and guardians on the subject of jurisdiction. See Welf & I C §§332(e), 291(a)(1)–(3). Even a parent or guardian who is not alleged to have done anything to contribute to the harm or risk of harm to the child has the right to contest whether the child is described by Welf & I C §300, and each parent is entitled to notice, an attorney, and the right to contest proceedings, whether or not that person is mentioned in the allegations of the petition. See Welf & I C §§317, 291(a)(1)–(3), 353; Cal Rules of Ct 5.684.

☛ JUDICIAL TIP: Frequently, social workers, attorneys, and judges speak of parents as "offending" and "nonoffending." These generalizations may be misleading and are inconsistent with the intent of the legislature to concentrate on the child's needs. A "nonoffending" parent might often be characterized more accurately as "nonprotecting." It is best to limit the use of such terms and use instead only "custodial" and "noncustodial."

For an in-depth discussion of this issue, see Edwards, *The Relationship of Family and Juvenile Courts in Child Abuse Cases,* 27 Santa Clara L Rev 241–245 (1987) and, in particular, the comparison between *In re Jennifer P*. (1985) 174 CA3d 322, 219 CR 909 (custodial parent who becomes aware of abuse may take sufficient steps to render juvenile court jurisdiction unnecessary), and *In re Nicole B.* (1979) 93 CA3d 874, 881–882, 155 CR 916 (nonabusing custodial parent cannot prevent juvenile court from taking jurisdiction when that parent has not taken adequate steps to prevent further abuse).

The court must ask the mother the names and addresses of all possible fathers of the child, who must then be provided notice of the proceedings and the right to appear. Welf & I C §316.2(a)–(b). In certain cases, counsel must be appointed for a possible father. See *In re Zacharia D.* (1993) 6 C4th 435, 451, 24 CR2d 751 (parent is defined as a mother or a presumed father as used in dependency statutes). Judicial officers should appoint counsel for a biological father who has established paternity and has taken steps toward filling a parental role in the child's life.

☛ JUDICIAL TIPS:

- Once a possible father appears and requests custody of the child, paternity should generally be determined, unless a judgment of paternity already exists. Only presumed fathers are entitled to reunification services. If an alleged father has been determined to be a biological, although not presumed, father, the court has discretion to order services if the child's best interests will be served. See Welf & I C §361.5(a). If an alleged father is eliminated by testing or other evidence, he will not have standing to contest the proceedings nor will he be entitled to the appointment of counsel.
- Issues of paternity should be resolved at the earliest possible stage in the proceedings. Identifying a presumed, biological, or alleged father at an early stage may eliminate unnecessary delay that would be caused by the father appearing at a later stage, and may additionally provide the court with other resources, including another placement option.
- Although a finding of paternity or nonpaternity is the functional equivalent of a judgment of paternity or nonpaternity, many judges prefer to enter "judgments," rather than "findings," when dealing with paternity issues.
- Any alleged father should be required to complete and submit Judicial Council Statement Regarding Paternity form JV-505.

3. [§101.7] Independence of Jurisdictional Allegations

Each jurisdictional allegation brought under a different subdivision of Welf & I C §300 must stand on its own to justify an assumption of jurisdiction under that particular subdivision. A simple test to determine this is to ask whether the allegations under one subdivision would be sufficient to support a jurisdictional finding if the allegations under the other subdivisions were found to be untrue. For example, if the father beat the child causing serious injury and the mother's whereabouts were unknown, an allegation under Welf & I C §300(a) could be sustained because the only necessary finding is that the child was seriously injured by the father. This would be true whether or not the mother's whereabouts were known. However, an allegation under Welf & I C §300(g) (no parent or guardian able to care for child) could not be sustained merely because the mother's whereabouts are unknown, because if the allegation that the father had beaten the child were found to be untrue, there would be no need to assume jurisdiction.

4. [§101.8] Issues Previously Raised in Family Court

The juvenile court has exclusive jurisdiction and is the only division of the superior court that may hear proceedings relating to issues of child custody once a petition has been filed. Welf & I C §304. If the same or similar issues are being or have been litigated in the family or probate division of the superior court, the juvenile court is not collaterally estopped from "relitigating" those same issues. See *In re Desiree B.* (1992) 8 CA4th 286, 293, 10 CR2d 254. The issues before the family law or probate court are different even if some or all of the facts of abuse or neglect adduced in the other proceedings are the same. 8 CA4th at 292. The purpose and interests of the juvenile court are different from those of the family or probate court and because the juvenile court includes the state (DSS) as a litigant and provides for representation of children when appropriate, it is generally "the best forum for considerations of issues concerning custody." 8 CA4th at 293.

Juvenile court is not the best forum, however, when each parent's sole aim is to take custody from the other. See *In re John W.* (1996) 41 CA4th 961, 976–977, 48 CR2d 899. Moreover, a court should not sustain a petition based on an ongoing custody dispute unless the child shows severe anxiety, depression, withdrawal, or untoward aggressive behavior. See *In re Brison C.* (2000) 81 CA4th 1373, 1379, 97 CR2d 746.

Courts around the state and nation have begun experimenting with consolidating the juvenile, family, probate, and domestic violence "divisions" to avoid inconsistent or contradictory orders, eliminate or reduce duplication of services, reduce the number of court appearances, and provide a more "holistic" approach to dealing with families in crisis.

For more information on the concept, endorsed by the American Bar Association, see *Symposium on Unified Family Courts,* 32 Fam LQ 1 (1998).

C. Grounds for Jurisdiction

1. [§101.9] Serious Physical Harm by Parent or Guardian—Welf & I C §300(a)

A child who has suffered or is at substantial risk of suffering serious physical harm inflicted nonaccidentally by a parent or guardian is described by Welf & I C §300(a). In this regard, "nonaccidentally" does not mean that the parent must have intended the serious injury to occur. It means only that the act that caused the injury must be a nonaccidental (or volitional) act. Expert medical testimony that the injury was inconsistent with an accident shifts the burden to the parent or guardian of proving that the injury was a result of an accident. Welf & I C §355.1(a); see *In re Richard H.* (1991) 234 CA3d 1351, 1363, 285 CR 917 (nonaccidental injury). "Serious physical harm" does not include reasonable and age-appropriate spanking on the buttocks when there is no evidence of serious physical injury. Welf & I C §300(a).

A court may find a child to be described by this section when it finds a substantial risk of future serious injury based on the manner in which a less serious injury was inflicted, a history of repeated infliction of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. Welf & I C §300(a). For example, allegations based on this subsection were properly sustained when a child had been pinched in anger, the father was indifferent to the child's pain, and the father had previously injured the mother and stepbrother. See *In re Benjamin D.* (1991) 227 CA3d 1464, 1472, 278 CR 468. Moreover, serious physical harm under Welf & I C §300(a) may include a threat of future serious injury based on the manner in which the less serious injury was inflicted and/or a history of physical injuries inflicted on the child or siblings. *In re Mariah T.* (2008) 159 CA4th 428, 434, 71 CR3d 542 (mother hit children with a belt on arms and stomach, raising deep bruises). The permissive language of Welf & I C §300(a) regarding "siblings" merely sets forth scenarios in which the statute may apply. *In re Marquis H.* (2013) 212 CA4th 718, 151 CR3d 284 (risk of future harm based on past abuse of grandchildren living in the home).

Intentional infliction of serious physical harm by a parent is sufficient to establish jurisdiction under Welf & I C §300(a) even if there is no evidence that the harm is still occurring at the time of the jurisdiction, unless there has been a long time lapse between the alleged harm and the

jurisdiction hearing. *In re David H.* (2008) 165 CA4th 1626, 1641, 1644, 82 CR3d 81.

See also Welf & I C §355.1(d) (prior conviction for sexual abuse is prima facie evidence that child is described by Welf & I C §300(a)) and discussion in §101.19.

2. [§101.10] Failure To Protect From Serious Harm or Illness—Welf & I C §300(b)

A child is described by Welf & I C §300(b) when he or she has suffered, or is at substantial risk of suffering, serious physical harm or illness because of the parent's or guardian's failure to provide for the child's needs or to protect and adequately supervise the child. This is the broadest of the jurisdictional subdivisions. The failure to protect may have been due to inadequate supervision or the fact that the parent or guardian has been unable to provide for the child's care because of his or her own mental illness, developmental disability, or substance abuse. For example, a mother's refusal to believe that the child was molested, coupled with proof that the father physically assaulted the child were found to support Welf & I C §300(b) jurisdiction. *In re Katrina W.* (1994) 31 CA4th 441, 447, 37 CR2d 7 (petition was sustained based on Welf & I C §300(b), (i), and (j)). But see *Blanca P. v Superior Court* (1996) 45 CA4th 1738, 1752–1754, 53 CR2d 687 (confronted with a somewhat similar fact pattern, the court discussed the "confession dilemma" faced by a parent who is falsely accused of molesting his or her child).

The elements for a Welf & I C §300(b) finding are: (1) neglectful conduct by the parent; (2) which causes harm; and (3) serious physical harm or illness, or substantial risk of such harm or illness in the future. *In re David M.* (2005) 134 CA4th 822, 829, 36 CR3d 411; *In re Savannah M.* (2005) 131 CA4th 1387, 1396, 32 CR3d 526. Jurisdiction under Welf & I C §300(b) cannot be based on failure to supervise or protect the child unless there is also a finding of parental unfitness or neglect. *In re Precious D.* (2010) 189 CA4th 1251, 1260–1261, 117 CR3d 527.

Substantial risk of future harm requires that this risk exist at the time of the jurisdictional hearing. *In re R.M.* (2009) 175 CA4th 986, 989, 96 CR3d 655; *In re Destiny S.* (2012) 210 CA4th 999, 1004, 148 CR3d 800 (conduct occurred nine years before current petition was filed).

Although jurisdiction may be established under Welf & I C §300(a), (b), or (d), by a showing that the child has suffered *prior* physical harm under Welf & I C §300(b), jurisdiction may not be continued unless the risk of harm continues. *In re J.K.* (2009) 174 CA4th 1426, 1433–1434, 95 CR3d 235. In that case, because there was a short time lapse between the most recent instance of abuse and the filing of the petition, and because the incidents were severe, the court could reasonably find that the child was at risk of future harm despite the fact that there were only two

instances of abuse. 174 CA4th at 1440. On the other hand, a single incident during which both parents were intoxicated and the children were injured will not support a Welf & I C §300(b) finding if there is no evidence of parental substance abuse or indication that the children were at future risk of physical harm. *In re J.N.* (2010) 181 CA4th 1010, 1022–1023, 104 CR3d 478.

The presence of dangerous drugs in a child's body at birth is not by itself a basis for a suspected child abuse report, but with other factors would be considered in determining if the child is at risk. Pen C §11165.13. Depending on the totality of the circumstances, even an older child exposed to a parent's drug use may come within Welf & I C §300(b), however, if that child has been placed in an environment permitting access to drugs. *In re Rocco M.* (1991) 1 CA4th 814, 825, 2 CR2d 429.

A finding of substance abuse must be based on evidence sufficient to (1) show that the parent or guardian was diagnosed as having a current substance abuse problem by a medical professional, or (2) establish that the parent or guardian has a current substance abuse problem as defined in the Diagnostic & Statistical Manual of Mental Disorders (4th ed. 2000 Am. Psychiatric Assn. p. 199.) *In re Drake M.* (2012) 211 CA4th 754, 766, 149 CR3d 875.

In addition, children may be found to be described by Welf & I C §300(b) although they have suffered no direct harm, when there is a pattern of domestic violence that has not been corrected. In such situations of "secondary abuse," evidence that the child was present and witnessed domestic violence with the expected result that the child suffered emotional abuse is sufficient to sustain a petition. *In re Heather A.* (1996) 52 CA4th 183, 194, 60 CR2d 315. See also *In re S. O.* (2002) 103 CA4th 453, 461–462, 126 CR2d 553 (mother had permitted unsupervised visit with perpetrator of domestic violence). However, if the evidence does not establish that the child was present and witnessed the violence, the fact of domestic violence in the home may not be sufficient to sustain the petition. See, *e.g., In re Alysha S.* (1996) 51 CA4th 393, 398, 58 CR2d 494.

Although domestic violence that endangers children is often filed as a Welf & I C §300(b) allegation (see *In re R.C.* (2011) 210 CA4th 930, 941–942, 148 CR3d 835, in appropriate cases it may also be filed as a Welf & I C §300(a) or (c). But see *In re Daisy H.* (2011) 192 CA4th 713, 120 CR3d 709 (no evidence of "serious emotional harm" under subd. (c); cannot assert emotional harm under subds. (a) and (b), which are based on physical harm). For further discussion of domestic violence in dependency cases, see Seiser & Kumli, California Juvenile Courts: Practice and Procedure §2.84[14] (LexisNexis 2013). See also Fam C §§3011(b) (history of domestic abuse is a factor in determining child's best interest),

3020(a) (domestic violence in a household in which a child resides is detrimental to the child), and 6203 (defines abuse).

Spanking children with a wooden paddle, hitting children on the head, face, and arms, and verbally abusing them may constitute a risk of serious physical harm under Welf & I C §300(b). *In re Tania S.* (1992) 5 CA4th 728, 734, 7 CR2d 60. The court may also consider the parent's conduct with respect to an unrelated child in deciding to sustain a petition under Welf & I C §300(b). *In re Y.G.* (2009) 175 CA4th 109, 115−116, 95 CR3d 532. Likewise, a risk of harm under §300(b) may arise because the parent is unable to meet a child's needs or respond to emergency situations because of developmental disability. *In re Diamond H.* (2000) 82 CA4th 1127, 1136, 98 CR2d 715. There must be a causal connection, however, between the parent's conduct and the child's serious emotional problems. *In re Nicholas B.* (2001) 88 CA4th 1126, 1136, 106 CR2d 465 (father's inappropriate and threatening physical demeanor seemed to be unconnected to child's problems).

When there is testimony of a competent medical professional that the injury sustained by the child is of such a nature as would ordinarily not be sustained except as the result of the unreasonable or neglectful acts or omissions of either parent, that is prima facie evidence that the child is a person described by Welf & I C §300(b). Welf & I C §355.1(a). This presumption may be rebutted by evidence that the injury could have been caused accidentally, such as in an athletic contest. See *In re Esmeralda B.* (1992) 11 CA4th 1036, 1040, 14 CR2d 179.

Jurisdiction is sustainable under Welf & I C §300(b) when there is evidence of continuous and sustained violence between the parents and against the children even if there were no recent burn marks or scars on the children's bodies. *In re Veronica G.* (2007) 157 CA4th 179, 185–186, 68 CR3d 465. Another example of substantial evidence supporting allegations under Welf & I C §300(b) is as follows: the incarcerated father was unable to care for his children; there was urine and feces on the floors; the home was so cluttered that the social worker could not enter one of the rooms; the children had head lice, skin rashes, decaying teeth, and scabies; and the mother permitted a convicted sex offender to live with the children. *In re James C.* (2002) 104 CA4th 470, 471, 128 CR2d 270. But incarceration alone does not provide a basis for jurisdiction. *In re Noe F.* (2013) 213 CA4th 358, 366, 152 CR3d 484 (mother provided two suitable replacement caretakers).

In making a finding that the child comes within Welf & I C §300 because he or she is in need of medical care, the court must give consideration to treatment provided through spiritual means. Welf & I C §300.5. When it is alleged that the child comes within the court's jurisdiction because the parent's spiritual beliefs have prevented the parent from obtaining standard medical treatment, the court must not assume

jurisdiction unless necessary to protect the child from serious harm. Welf & I C §300(b). Under this subsection, in making its decision, the court must consider

- The nature of the treatment proposed by the parent;
- The risks to the child posed by the treatment or nontreatment proposed by the parent;
- The risk, if any, of the treatment proposed by DSS; and
- The likely success of the various courses of proposed treatment.

Cases involving parental religious beliefs forbidding blood transfusions fall under this subsection.

Prior conviction for sexual abuse is prima facie evidence that child is described by Welf & I C §300(b). See Welf & I C §355.1(d) and discussion in §101.19.

Dependency may not be based on Welf & I C §300(b) when any mental disorder or substance abuse could not be tied to any harm or risk of harm to the children who are well cared for and loved, and when the parents' problems do not impact their ability to care for the children. *In re David M.*, *supra*, 134 CA4th at 829–830. Similarly, when the parents communicated well with each other, loved their children, and met the children's medical and educational needs, it was error to sustain a petition under Welf & I C §300(b) because of the mother's mental illness and substance abuse when DSS was unable to specify any particular risk of harm. *In re James R., Jr.* (2009) 176 CA4th 129, 137, 97 CR3d 310.

Moreover, although failing to send children to school may cause psychological, emotional, financial, and social harm, it is not by itself a basis for sustaining a petition under this section (*In re Janet T.* (2001) 93 CA4th 377, 388–389, 113 CR2d 163), nor is abject poverty alone (*In re P.C.* (2008) 165 CA4th 98, 103–107, 80 CR3d 595; *In re G.S.R.* (2008) 159 CA4th 1202, 1212, 72 CR3d 398), the use of medical marijuana without more (*In re Alexis E.* (2009) 171 CA4th 438, 453, 90 CR3d 44), or failure of a father to provide for his child before learning of his paternity (*In re X.S.* (2010) 190 CA4th 1154, 1160–1161, 119 CR3d 153).

3. [§101.11] Serious Emotional Damage—Welf & I C §300(c)

The juvenile court may take jurisdiction of a child who is suffering or is at substantial risk of suffering serious emotional damage as evidenced by severe anxiety, depression, untoward aggressive behavior, or withdrawal, if this damage is caused by the parent's or guardian's conduct or the child has no parent or guardian who is able to provide suitable care. Welf & I C §300(c). This subdivision authorizes the taking of jurisdiction under three types of situations:

(1) When the parent's actions are responsible for the initial onset of the emotional damage, such as when the parent seriously abuses the child resulting in emotional damage;

(2) When the parent's actions are responsible for the child continuing to suffer the emotional damage, such as when the parent minimizes or denies the seriousness of the child's emotional damage and refuses to seek appropriate care for the child's emotional suffering; and

(3) When the parent is unable, because of the lack of financial resources or insurance, to provide suitable care for the child's emotional suffering. Welf & I C §300(c).

Serious emotional harm under Welf & I C §300(c) can occur when the child is emotionally fragile and the parent is unable to put the child's needs above his or her own. *In re Amy M.* (1991) 232 CA3d 849, 869–870, 283 CR 788. However, when the allegations in the petition are solely that the parent caused the initial onset of the emotional damage, but the evidence focuses only on the child's reactions and not on the parent's initial causal conduct, a finding that the child comes within Welf & I C §300(c) is improper. See *In re Alexander K.* (1993) 14 CA4th 549, 557, 18 CR2d 22.

A case involving an acrimonious custody dispute that causes a child great emotional stress or psychological harm may justify the assumption of jurisdiction. See, *e.g., In re Anne P.* (1988) 199 CA3d 183, 244 CR 490 (jurisdiction taken under former Welf & I C §300(a)). Similarly, when parents' acrimony involved coaching children to make abuse accusations against each other and resulted in 30 DSS referrals, jurisdiction under Welf & I C §300(c) may be appropriate. *In re Christopher C.* (2010) 182 CA4th 73, 84, 105 CR3d 645.

The question is whether the child is suffering serious emotional damage at the time of the hearing, or is at a substantial risk of suffering serious emotional damage. *In re A.J.* (2011) 197 CA4th 1095, 1104–1105, 128 CR3d 341 (anxiety and emotional damage demonstrated by the child's nightmares, her fear of her mother, and her belief that her mother was crazy, and therefore was also at a very substantial risk of suffering severe emotional damage if she continued to be exposed to the abuse).

The court should be cautious in such cases, however, and, unless there is evidence that the child has suffered serious emotional damage, should not assume jurisdiction merely because the parties cannot work together or desire juvenile court involvement. *In re John W.* (1996) 41 CA4th 961, 977, 48 CR2d 899. When a child is well-adjusted except for a deep fear and dislike of one parent, there is no basis for taking jurisdiction under §300(c) even when the parents have subjected the child to a rancorous family law dispute. *In re Brison C.* (2000) 81 CA4th 1373, 1381–1382, 97 CR2d 746.

A court may sustain a petition under Welf & I C §300(c) even when the child is reasonably well adjusted and has a close relationship with the mother but the mother's mental illness and delusions confuse the child. *In re Matthew S.* (1996) 41 CA4th 1311, 1320, 49 CR2d 139. The court cautioned DSS to pursue its case plan in an unobtrusive manner with minimal disruption to this loving but marginally functional family. 41 CA4th at 1321.

If the failure to provide suitable mental health care is based on a sincerely held religious belief and if a less intrusive judicial intervention is available, the juvenile court must not find the child to be described by this section. Welf & I C §300(c).

See also discussion in §101.19.

4. [§101.12] Sexual Abuse—Welf & I C §300(d)

When a child has suffered or is at risk of suffering sexual abuse as defined by Pen C §11165.1 and the parent or guardian either caused the abuse or failed to protect the child from the abuse, the child is subject to juvenile court jurisdiction under Welf & I C §300(d).

A child may be found to be sexually abused under Welf & I C §300(d) when a sibling, rather than the child, was abused, and the child did not actually witness the abuse; there must be evidence, however, that a child would be disturbed or offended by the conduct directed at the sibling. See *In re Karen R.* (2001) 95 CA4th 84, 89–91, 115 CR2d 18 (the child, who was male, did witness his sister being physically abused and humiliated). Similarly, there may be sufficient evidence that male siblings of a molested female child come under Welf & I C §300(d) (and Welf & I C §300(b)) when the father had access to the boys as they awoke at night and when they were approaching the age that their sister had been when her father molested her. *In re P.A.* (2006) 144 CA4th 1339, 1345–1346, 51 CR3d 448. A boy who was not himself a victim of abuse may nevertheless be described by Welf & I C §300 (b), (d) and (j) because of sexual abuse suffered by his sisters even though he was currently much younger than his sisters had been during the period when the abuse occurred. *In re Andy G.* (2010) 183 CA4th 1405, 1414–1415, 107 CR3d 923.

☛ JUDICIAL TIP: The California Supreme Court has confirmed that a father's prolonged and egregious sexual abuse of his own daughter may provide substantial evidence to support dependency jurisdiction over all siblings regardless of gender. *In re I.J.* (2013) 56 C4th 766, 776–778, 156 CR3d 297; see §101.18.

A child may also be adjudged a dependent under this section when there is evidence that the custodial parent failed to protect a sibling from abuse by the other parent and that the custodial parent is still dependent on

the alleged abuser. See *In re Tiffany Y.* (1990) 223 CA3d 298, 303, 272 CR 733. In addition, a court may exercise dependency jurisdiction under Welf & I C §300(d) when the parents have the children pose for sexually suggestive photographs, exhibiting the children's genitals; the photographs do not need to depict obscene acts under Pen C §11165.1(c)(1), as long as they depict the children engaging in "sexual conduct" under Pen C §311.4(d)(1). *In re Ulysses D.* (2004) 121 CA4th 1092, 1095–1098, 18 CR3d 430.

The identity of the person who molested the child need not be ascertained in order to sustain a petition; the facts that the child was a victim of sexual abuse and that the parent was unable or unwilling to protect the child are sufficient for jurisdiction. *In re Christina T.* (1986) 184 CA3d 630, 640, 229 CR 247. See also Welf & I C §355.1. However, the perpetrator's identity may be relevant to dispositional findings and orders. See also discussion in §101.19 of Welf & I C §355.1(d) (prima facie evidence that a child is described by Welf & I C §300(d) if a parent, guardian, or custodian has previously been convicted of sexual abuse in California or out-of-state (see Pen C §11165.1), has been found in a prior dependency proceeding to have committed sexual abuse, or has been required to register as a sex offender). The mere failure of the parents to confess to abuse (and therefore to protect the child from it) may be insufficient evidence on which to sustain a petition; the court must be sensitive to the fact that the denial may be legitimate. See *Blanca P. v Superior Court* (1996) 45 CA4th 1738, 1752–1754, 53 CR2d 687. See discussion of the "confession dilemma" situation in §101.10.

A finding of current risk to the child is necessary for jurisdiction under Welf & I C §300(b) and (j) but not for jurisdiction under Welf & I C §300(d). *In re Carlos T.* (2009) 174 CA4th 795, 803, 94 CR3d 635.

5. [§101.13] Severe Physical Abuse of Child Under the Age of Five—Welf & I C §300(e)

When a child who is under the age of five has suffered severe physical abuse by a parent or by someone known to the parent and the parent knew or should have known of the abuse, the child is subject to juvenile court jurisdiction under Welf & I C §300(e). "Severe physical abuse" means any one of the following:

- A single act of abuse causing such trauma that, if left untreated, would cause permanent disability, disfigurement, or death.
- A single act of sexual abuse that has caused significant bleeding, deep bruising, or significant external or internal swelling.
- More than one instance of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

- The willful, prolonged failure to provide adequate food.

To sustain a petition under Welf & I C §300(e), it is not necessary that the parent personally inflicted the severe physical abuse. Nor need the parents have actual knowledge of the abuse or of the identity of the perpetrator; the court must find only that they reasonably should have known. *In re E.H.* (2003) 108 CA4th 659, 670, 133 CR2d 740. For example, it may be enough that the parent knew the abuser and knew or reasonably should have known that the person was physically abusing the child. *In re Joshua H.* (1993) 13 CA4th 1718, 1729, 17 CR2d 282. It is also not necessary that the parent had knowledge of the severity of the abuse the child was suffering, because many of the injuries described in this subdivision are internal and may only be discovered after medical examination. *In re Joshua H., supra.*

☛ JUDICIAL TIP: In smaller counties in which doctors do not often see shaken baby cases and other types of child abuse injuries, some courts request that X-rays and other information on injuries be sent to teaching hospitals where doctors are more likely to have experience in these areas.

6. [§101.14] Causing Death of Another Child—Welf & I C §300(f)

A petition under Welf & I C §300(f) may be sustained because a parent or guardian has caused the death of another child through abuse or neglect. Under Welf & I C §300(f), the court may take jurisdiction of a child if the parent caused the death of another child by abuse or neglect, even without a finding of any risk of harm to the child at issue. *In re A.M.* (2010) 187 CA4th 1380, 1389, 115 CR3d 552. A findng under Welf & I C §300(f) does not require criminal negligence. *In re Ethan C.* (2012) 54 C4th 610, 626–630, 143 CR3d 565.

The appellate court in *In re Jessica F.* (1991) 229 CA3d 769, 776–778, 282 CR 303, held that a trial judge may properly find that a mother's nolo contendere plea to felony child endangerment (Pen C §273a), which was part of a plea bargain to an original charge of murder, is equivalent to a conviction for causing the death of another child through abuse or neglect under Welf & I C §300(f). The appellate court held that, in this situation, the trial court must look beyond the bare facts of the conviction to the circumstances giving rise to the prosecution.

☛ JUDICIAL TIP: Frequently, pleas are entered to lesser charges in criminal cases because the evidence will not support a conviction for the greater charge. The judge should therefore not presume that a plea to a charge reduced from murder or manslaughter will automatically be sufficient to support a finding under Welf & I C

§300(f). Careful consideration must be given to the underlying facts and any defenses.

7. [§101.15] Child Left Without Provision for Support—Welf & I C §300(g)

The child is subject to juvenile court jurisdiction under Welf & I C §300(g) in the following situations:

- When a child has been left without provision for support,
- When physical custody of the child has been voluntarily surrendered under Health & S C §1255.7 and the child has not been reclaimed within a 14-day period.
- When the parent has been institutionalized or incarcerated and cannot arrange for care,
- When the adult with whom the child resides or has been left is unable to provide care, or
- When the parents' whereabouts are unknown and efforts to locate the parents are unsuccessful.

There is no willfulness or bad faith requirement for Welf & I C §300(g). *D.M. v Superior Court* (2009) 173 CA4th 1117, 1128, 93 CR3d 418 (court may take jurisdiction over a child under Welf & I C § 300(g) when adoptive parents refuse to provide for one of their adoptive children even when their motive is to protect their other children from the child's harmful actions).

Allegations under this section cannot be sustained unless the child is left without provision for support by *both* parents. In *In re Matthew S.* (1996) 41 CA4th 1311, 1320, 49 CR2d 139, the court noted that because there was an absent father in Brazil and because the somewhat delusional mother had been supporting the child for years and there was no evidence that the child suffered from malnutrition or deprivation of shelter, clothes, or medical care, the petition could not be sustained under this subdivision. The fact that a father's whereabouts are unknown cannot, by itself, be a basis for sustaining a petition under Welf & I C §300(g). *In re Janet T.* (2001) 93 CA4th 377, 392, 113 CR2d 163. See also *In re Anthony G.* (2011) 194 CA4th 1060, 1064–1066, 123 CR3d 660 (no substantial evidence of failure to support).

If the parent is incarcerated or institutionalized but is able to arrange for the child's suitable care, Welf & I C §300(g) is inapplicable. See *In re S. D.* (2002) 99 CA4th 1068, 1077–1079, 121 CR2d 518. The issue is whether the parent *could* arrange for the child's suitable care, and DSS has the burden of proof on this issue to show that the care arranged by the parent is not suitable; there is no "Go to jail, lose your child rule" in

California. 99 CA4th at 1078. The parent has no obligation to affirmatively prove the suitability of her arrangements. 99 CA4th at 1079.

In accord is *In re Aaron S.* (1991) 228 CA3d 202, 209, 278 CR 861, which held that Welf & I C §300(g) requires proof that an incarcerated parent was unable to arrange for care at the time of the hearing, not that he or she had failed to do so at some earlier point. Additionally, a Welf & I C §300(g) petition should not be sustained based on the fact that the incarcerated parent's choice of a caretaker for the child during his or her incarceration might not be a suitable long-term placement, as long as the choice is "adequate," although only temporary. *In re Monica C.* (1995) 31 CA4th 296, 305, 36 CR2d 910.

A parent's failed attempt to have the grandparents declared legal guardians, which left them with custody as a matter of fact but not as a matter of law, was a situation in which the court could properly conclude that the parent had been unable to arrange for the child's care under Welf & I C §300(g). *In re Athena P.* (2002) 103 CA4th 617, 629–630, 127 CR2d 46 (grandparents had no authority to consent to medical treatment or enroll the child in school). A petition cannot be sustained, however, under Welf & I C §300(g) or (b) when a child who is a foreign national is temporarily absent from his or her home country while residing in California for medical treatment, and the home country did not decline to exercise jurisdiction. *In re A.C.* (2005) 130 CA4th 854, 862, 30 CR3d 431. When the parents have not abused or neglected the child in any way, a child who is a foreign national cannot be made the subject of the California juvenile dependency law simply because California offers better medical care than the child's home state. 130 CA4th at 868.

8. [§101.16] Child Freed for Adoption—Welf & I C §300(h)

When a child has been freed for adoption from one or both parents for a period of one year and no adoption petition has been granted, the child is subject to juvenile court jurisdiction under Welf & I C §300(h). Such cases are generally those in which the child has been relinquished to an adoption agency for adoptive placement but the placement has not been successful or an adoption petition has not been granted. When a child is adjudged a dependent under this section, the court must not order reunification services. Welf & I C §300.1. No subsequent petition under this subdivision is required when the child is already a dependent of the juvenile court and has been freed for adoption under the Welfare and Institutions Code.

9. [§101.17] Child Subject to Acts of Cruelty—Welf & I C §300(i)

When a child has been subjected to an act or acts of cruelty by a parent or guardian or by a member of the household, or when the parent or guardian has failed to protect the child adequately from an act or acts of cruelty and the parent or guardian knew or reasonably should have known that the child was in danger of being so treated, the child is subject to juvenile court jurisdiction under Welf & I C §300(i). See, *e.g.*, *In re Benjamin D.* (1991) 227 CA3d 1464, 1472, 278 CR 468 (multiple severe pinchings causing physical pain). This section does not require evidence of an actual physical harm or illness to be suffered by the child, nor does it require evidence of emotional trauma. It is enough that the act or acts to which the child was subjected were cruel in nature. Welf & I C §300(i).

☛ JUDICIAL TIP: Although any serious abuse or neglect is generally seen as cruelty to a child, the creation of a separate subdivision covering this specific point suggests that jurisdiction under this subdivision is meant to be reserved for children who have been subjected to an act or acts that "shock the conscience."

10. [§101.18] Abuse or Neglect of Siblings—Welf & I C §300(j)

When a child's sibling has been abused or neglected as defined in Welf & I C §300(a), (b), (d), (e), or (i) and there is a substantial risk that the child will be similarly abused or neglected, the child is subject to juvenile court jurisdiction under Welf & I C §300(j). This subdivision does not require that a dependency petition be filed or sustained concerning the sibling or that the sibling must still be a child. It is enough that the sibling had been abused or neglected as a minor and that the child who is the subject of the petition is at substantial risk of the same or similar abuse or neglect. Welf & I C §300(j). If there had been a finding of abuse of a sibling made in an earlier dependency proceeding, a parent is collaterally estopped from contesting this finding when it is part of an allegation under Welf & I C §300(j); however, the parent may still contest the question of whether the child is at substantial risk of the same or similar abuse or neglect. *In re Joshua J.* (1995) 39 CA4th 984, 993–994, 46 CR2d 491. One court has held, however, that Welf & I C §300(j) is not limited to situations in which children have been abused or neglected in the same manner (or under the same subsections) as their siblings have been. *In re Maria R.* (2010) 185 CA4th 48, 64, 109 CR3d 882.

More recently, the California Supreme Court held that a father's prolonged and egregious sexual abuse of his daughter may provide substantial evidence to support dependency jurisdiction over all siblings regardless of gender. *In re I.J.* (2013) 56 C4th 766, 776–778, 156 CR3d

297. The court must consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child. Welf & I C §300(j).

CAUTION: The Supreme Court in *I.J.* summarized cases that considered whether sexual abuse of a daughter supports a finding of dependency jurisdiction over a son, with sharply conflicting results. The *I.J.* majority agreed with those cases finding the evidence to be sufficient. See, *e.g.*, *In re Karen R.* (2001) 95 CA4th 84, 89–91, 115 CR2d 18; *In re P.A.* (2006) 144 CA4th 1339, 1347, 51 CR3d 448.

The Supreme Court disapproved, to the extent they are inconsistent with *I.J.*, the following cases: *In re Alexis S.* (2012) 205 CA4th 48, 139 CR3d 774; *In re Maria R.* (2010)_185 CA4th 48, 109 CR3d 882; and *In re Rubisela E.* (2000) 85 CA4th 177, 101 CR2d 760. An express finding regarding the sibling is not required as a predicate to jurisdiction. *In re Ashley* (2011) 202 CA4th 968, 980–981, 135 CR3d 659 (implied finding that deceased sibling was abused or neglected).

The fact that there had been jurisdiction asserted over older siblings because of the parent's drug use, unsanitary home, and failure to provide appropriate mental health care, is insufficient by itself to support a finding that a child is described by Welf & I C §300(j); there must be additional evidence that there would be a substantial risk that the child would suffer serious physical harm because of the failure to supervise or protect the child arising out of the substance abuse or from the inability to provide adequate food, clothing, shelter, or treatment. *In re Ricardo L.* (2003) 109 CA4th 552, 566–567, 135 CR2d 72. Moreover, allegations sustained more than four years earlier with respect to another child are not sufficient for sustaining a Welf & I C §300(j) petition when there is no evidence that the children have been harmed in any way. *In re David M.* (2005) 134 CA4th 822, 832, 36 CR3d 411.

Welfare and Institutions Code §300(j) adds little or nothing for children who are at substantial risk under Welf & I C §300(a), (b), or (d) because petitions can be filed under those subdivisions as well. It is most significant when a sibling has been subjected to acts of cruelty that do not leave demonstrable evidence of physical injury or emotional trauma. In those cases, if the child is at risk of similar cruel acts, jurisdiction can be assumed under this subdivision even though there may be no evidence that the child is at risk under subdivisions (a), (b), or (d).

D. [§101.19] Applicable Presumptions

When the court finds, based on competent professional evidence, that an injury would not have been sustained without unreasonable or neglectful acts of the parent or guardian, it is prima facie evidence that the child is described by Welf & I C §300(a), (b), or (d). Welf & I C §355.1(a). The presumption affects the burden of producing evidence. Welf & I C §355.1(c). When the court finds that a parent, guardian, or custodian has previously been convicted of sexual abuse in California or out-of-state (see Pen C §11165.1), has been found in a prior dependency proceeding to have committed sexual abuse, or has been required to register as a sex offender, this will be prima facie evidence that the child is described by Welf & I C §355.1(a)–(d) and is at substantial risk of abuse or neglect. Welf & I C §355.1(d); see *In re E.B.* (2010) 184 CA4th 568, 577, 109 CR3d 1 (when the finding that father is a registered sex offender goes unrebutted, that is prima facie evidence that the children are described by Welf & I C §300(b) and (d) and are at substantial risk of abuse or neglect under Welf & I C §355.1(d)).

This presumption affects the burden of producing evidence. Welf & I C §355.1(d). This presumption applies even if the registered sex offender is a parent with whom the child does not live. *In re John S.* (2001) 88 CA4th 1140, 1144–1145, 106 CR2d 476.

Evidence of nonaccidental head injuries is prima facie evidence that the child is described by Welf & I C §300. *In re Richard H.* (1991) 234 CA3d 1351, 1363, 285 CR 917 (a doctor testified that these injuries do not ordinarily occur in the absence of wrongful parental conduct and there was no rebuttal). However, the presumption of Welf & I C §355.1 may not be used to establish jurisdiction unless (1) a professional testifies that the single incident does not ordinarily occur in absence of neglectful or unreasonable conduct, and (2) the presumption is not rebutted. *In re Esmeralda B.* (1992) 11 CA4th 1036, 1040, 1041, 14 CR2d 179. In that case, the child was held not to come under Welf & I C §300(b) although she had slight vaginal bleeding and a torn hymen. Because there was no evidence that these injuries could not occur in the absence of parental actions and there was evidence that these injuries could have been caused by athletic injuries, the presumption could not be invoked to find the allegations in the petition true.

☛ JUDICIAL TIP: When a young child has suffered serious nonaccidental injuries for which the parents have no reasonable explanation, jurisdiction is usually appropriate under this presumption under one of three theories: (1) The parent or guardian committed the injury; (2) the parent or guardian failed to protect the child from the injury; or (3) because the parent or guardian does not know who or what caused the injury, he or she

will not be able to protect the child in the future, thereby placing the child at substantial risk. See, *e.g.*, *In re Christina T.* (1986) 184 CA3d 630, 640, 229 CR 247 (court need not determine perpetrator of abuse in order to sustain petition).

E. [§101.20] Initiating the Hearing

Whether or not a child is detained, the dependency case is initiated by the filing of a petition. If the child has been detained, there must first be a detention hearing, and the jurisdiction hearing should be scheduled at that time. See §101.24.

The contents of the petition are prescribed by Welf & I C §332. The petition must be on a required Judicial Council form, with variations for additional children or for local practice, as set out in Cal Rules of Ct 5.524(c).

An unverified petition may be dismissed without prejudice. Welf & I C §333. However, once a verified petition has been filed, it may not be dismissed by DSS without notification to all interested parties so that DSS and the child may have an opportunity to be heard and to object. *Allen M. v Superior Court* (1992) 6 CA4th 1069, 1074, 8 CR2d 259.

In the initial "pleading" stage, the function of the petition is to communicate the social worker's specific concerns to the parent. *In re Jessica C.* (2001) 93 CA4th 1027, 1037, 113 CR2d 597. After the hearing on the petition, however, the focus is on the substance of the allegations and, unless the variance is material, it is too late to challenge the "idiosyncratic particulars of the social worker's precise language." See *In re Jessica C., supra,* 93 CA4th at 1037–1038. When the court finds the variance between the allegations in the petition and the proof to be material (misleading to the adverse party), the court may order the petition to be amended as set out in CCP §§469–475. Welf & I C §348; Cal Rules of Ct 5.524(d).

☛ JUDICIAL TIP: If both sides stipulate to small changes in the petition and the court agrees, the court may treat the stipulation as a motion to amend the petition and grant the motion. The court should have the changes read into the record, make the changes on the written petition form, accept a written draft of the changes, and order DSS to prepare an amended petition for filing.

1. [§101.21] Notice of Hearing

Once the jurisdiction hearing is set, the juvenile court clerk must issue a notice of hearing to the child (if ten years of age or older), the parents, guardians, or appropriate adult relative, the parties' attorneys, the foster parents, preadoptive parents, present caregiver, dependent siblings and/or their caregivers and attorneys (in certain circumstances), and any

court-appointed special advocate. Welf & I C §291(a)(1)–(7); Cal Rules of Ct 5.524(e). If the hearing is combined with a disposition hearing that also serves as a permanency hearing under Welf & I C §361.5(f), notice must also be given to the current caregiver. Welf & I C §291(d)(8). Notice is not required for a parent whose parental rights have been terminated. Welf & I C §291(b).

The Indian custodian and the tribe of that child must be notified in accordance with Welf & I C §224.2 if the court knows or has reason to know that an Indian child is involved. Welf & I C §291(g). If the identity or location of the parent, Indian custodian, or the tribe cannot be determined, the Bureau of Indian Affairs must also be notified. Welf & I C §§291(g), 224.2(a). Notice to some but not all possible tribes in which a dependent child may be eligible for membership does not violate the Indian Child Welfare Act (ICWA) when notice is also given to the Bureau of Indian Affairs. *In re Edward H.* (2002) 100 CA4th 1, 4, 122 CR2d 242.

The notice must include the name and address of the person to be notified, the nature of the hearing, the date, time, and place of the jurisdiction hearing, the name of the child on whose behalf the petition was brought; each code section and subdivision under which the proceeding was brought, and a copy of the petition. Welf & I C §291(d)(1)–(5), (7). The notice must also include a statement that the parents, guardians, or adult relatives and the child are entitled to have an attorney present at the jurisdiction hearing (including a court-appointed attorney for an indigent parent, guardian, Indian custodian, or adult relative if they notify the court that they cannot afford an attorney) and a statement that the parent, guardian, or adult relative may be responsible for the cost of any appointed counsel and for the child's support in out-of-home placement. Welf & I C §291(d)(6). Parents, custodians, and relatives must also be notified that if they fail to appear, the court may proceed in their absence. Welf & I C §291(d)(6)(A). When the child is an Indian child, the notice must contain a statement that the parent or Indian custodian and the tribe may intervene in the proceedings and may be given an additional 20 days in order to do so. Welf & I C §224.2(a)(5)(G).

For notice of the jurisdiction hearing to be valid, the court must have notified the parent of the nature and consequences of the jurisdiction hearing in advance. See *In re Wilford J.* (2005) 131 CA4th 742, 750–753, 32 CR3d 317 (court conducted jurisdiction hearing immediately following pretrial resolution conference without further explanation). Although the court may have personal jurisdiction over absent children, when there is no record that the court exercised due diligence in notifying parents of hearings, the court necessarily lacks jurisdiction over those parents. *In re Claudia S.* (2005) 131 CA4th 236, 247–250, 31 CR3d 697 (parents had taken children to Mexico).

2. [§101.22] Service of Notice and Petition

If the child is detained, the notice and petition must be served on all the persons required to receive notice as soon as possible and at least five days before the hearing, or at least 24 hours before the hearing if the hearing is set less than five days after the petition is filed. Welf & I C §291(c)(1). If the persons to be notified were not present at the initial hearing, they must be personally served or notified by certified mail, return receipt requested. Welf & I C §291(e)(1). When notice is sent by certified mail, return receipt requested, if there is evidence that the parent received notice, it is not necessary that DSS have received a signed receipt. *In re J.H.* (2007) 158 CA4th 174, 183–184, 70 CR3d 1. If the persons to be notified were present at the initial hearing, notification may be by personal service or first-class mail. Welf & I C §291(e)(2).

If the child has not been detained, the notice and petition must be served on all persons required to receive notice at least ten days before the hearing. Welf & I C §291(c)(2). Notification may be by personal service or first-class mail unless the person to be served lives outside the county, in which case service must be by first-class mail. Welf & I C §291(e)(3). In the case of an Indian child, notice must be given no less than ten days before the hearing by registered or certified mail, return receipt requested. Welf & I C §224.2(a)(1).

Any of the required notices may be waived by a party in person, through counsel, or by signed written waiver filed on or before the hearing date. Welf & I C §291(f).

In locating a parent for notification purposes, DSS must use the information it has available to find a parent. See *In re Arlyne A.* (2000) 85 CA4th 591, 599, 102 CR2d 109 (due diligence declaration appeared valid on its face, but DSS had failed to check directory assistance for town of father's family residence when informed that the father lived there); *David B. v Superior Court* (1994) 21 CA4th 1010, 1016, 26 CR2d 586 (DSS failed to inquire about father's whereabouts in the armed services although his name and the fact that he was in the Marines was on the child's birth certificate). Once a parent has been located and notified of the proceedings, it becomes the obligation of that parent to inform DSS of further address changes. *In re Raymond R.* (1994) 26 CA4th 436, 441, 31 CR2d 551. See also Welf & I C §316.1 (parent must designate permanent mailing address; the court must advise parent that designated address will be used for notice unless new address provided in writing).

When a parent, who has left the country, had previously appeared at the detention hearing, subsequent notice of the jurisdiction and disposition hearing under California law is sufficient; compliance with the Hague Service Convention is not necessary. *Kern County Dep't of Human Servs. v Superior Court* (2010) 187 CA4th 302, 311, 113 CR3d 735.

3. [§101.23] Requiring Appearances

In addition to the notices required by Welf & I C §291and Cal Rules of Ct 5.524, the court may also issue a citation ordering a parent or guardian to appear at the jurisdiction hearing. See Welf & I C §338; Cal Rules of Ct 5.526(a). The citation must be personally served at least 24 hours before the time stated for appearance (Cal Rules of Ct 5.526(a)(2)) and must state that the parent or guardian may be required to participate in a counseling program (Cal Rules of Ct 5.526(a)(1)). Welf & I C §338. It also may direct the child's custodian to bring the child to court. Welf & I C §338; Cal Rules of Ct 5.526(a)(1).

If the court finds that a citation cannot be served or that it will be ineffective, or if the parent, guardian, or other person having custody of the child fails to obey the citation, the court may issue a warrant for the arrest of the parent, guardian, or custodian. Welf & I C §339; Cal Rules of Ct 5.526(b). The court may also issue a protective custody warrant for the child when the child's home environment endangers the child's health, person, or welfare; when the child has run away from a court-ordered placement; or when the parent, guardian, or custodian has absconded with or concealed the child. Welf & I C §340; see also Cal Rules of Ct 5.526(c) (court may issue arrest warrant for child when child's actions endanger self or others).

☛ JUDICIAL TIP: Warrants of arrest for missing parents are frequently issued by juvenile courts under the mistaken belief that this in some way "preserves jurisdiction." However, the only purpose of an arrest warrant in a dependency proceeding is to locate parents when they have fled with the child or to prosecute parents for contempt of court when they have violated a juvenile court order.

In addition, on request of any party or attorney, or on its own motion, the court must issue subpoenas under CCP §1985 requiring attendance of witnesses and production of documents or electronically stored information at the jurisdiction or other hearing. Welf & I C §341; Cal Rules of Ct 5.526(d).

An incarcerated parent has no statutory right under Pen C §2625 to attend a juvenile court hearing when the petition alleges a violation of Welf & I C §300(g) (parent incarcerated and is unable to make proper plans for child). *In re Iris R.* (2005) 131 CA4th 337, 342, 32 CR3d 146.

F. Time Limitations

1. [§101.24] Setting the Jurisdiction Hearing

The jurisdiction hearing must be set within 30 calendar days from the date the petition is filed if the child is not detained; if the child is detained,

the hearing must be set within 15 court days of the court order directing detention. Welf & I C §334; Cal Rules of Ct 5.670(f).

If the time requirements are not met, the court is not deprived of jurisdiction. See *Los Angeles County Dep't of Children's Servs. v Superior Court* (1988) 200 CA3d 505, 509, 246 CR 150 (failure to observe time limits for filing of petition does not require that child be released from detention); *In re Charles B.* (1986) 189 CA3d 1204, 1209–1211, 235 CR 1 (juvenile court time requirements are generally not mandatory—review hearing).

A court may also schedule a jurisdiction hearing within ten days of the detention hearing instead of holding a prima facie detention hearing. See Welf & I C §321; Cal Rules of Ct 5.680(d). See discussion in California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §100.45 (Cal CJER).

2. [§101.25] Continuances

The judge may grant a continuance if it would not be contrary to the child's best interests. Welf & I C §352; Cal Rules of Ct 5.550(a)(1). In determining whether to grant a continuance, the judge must give substantial weight to the need for prompt resolution of the child's custody status, the need to provide the child with a stable environment, and the damage that could be caused by prolonged temporary placements. Welf & I C §352(a); Cal Rules of Ct 5.550(a)(1). A grant of a continuance must be based on good cause (Welf & I C §352(a); Cal Rules of Ct 5.550(a)(2)), which does not include convenience of parties or stipulation between counsel (Welf & I C §352(a); Cal Rules of Ct 5.550(a)(2)), nor does it include the failure of an alleged father to return a certified mail receipt. See Welf & I C §316.2.

To request a continuance, written notice must be filed at least two court days before the date set for hearing. Welf & I C §352(a); Cal Rules of Ct 5.550(a)(4). The party seeking a continuance must submit affidavits or declarations showing specific facts demonstrating that a continuance is necessary, unless the judge for good cause permits an oral motion. Welf & I C §352(a); Cal Rules of Ct 5.550(a)(4). When granting a continuance, the facts that form the basis for the continuance must be entered in the court minutes. Welf & I C §352(a); see Cal Rules of Ct 5.550(a)(5).

When the child, parent, or guardian is represented by an attorney and a hearing is continued beyond the time limit within which it would otherwise be required to be held, an absence of objection is considered to be consent. Welf & I C §352(c).

In addition to any continuance authorized by Welf & I C §352, the judge may also continue the jurisdiction hearing for not more than ten days if the judge is satisfied that, within that time, a necessary and unavailable witness will become available (see Welf & I C §354), and

may continue the hearing for not more than seven days to appoint counsel, allow counsel to become acquainted with the case, or to determine whether the party can afford counsel (Welf & I C §353). The court must also continue the jurisdiction hearing as necessary to provide reasonable opportunity for the child or other party to prepare for the hearing (Welf & I C §353) or for up to ten days if the social study report was not timely provided to the parties (Welf & I C §355(b)(3)).

If the child has been detained, unless there are exceptional circumstances, the court may not grant continuances that would result in the disposition hearing being completed more than 60 days after the date the child was removed, and under no circumstances may the court grant continuances that could cause the disposition hearing to be completed more than six months after the detention hearing. Welf & I C § 352(b). See discussion in California Judges Benchguide 100: *Juvenile Dependency Disposition Hearing* §102.4 (Cal CJER).

Chronic court congestion in the juvenile court is not good cause for continuing the jurisdiction hearing; dependency cases demand priority. See, *e.g., Jeff M. v Superior Court* (1997) 56 CA4th 1238, 1242–1243, 66 CR2d 343. Without good cause for a continuance, a court may not schedule a trial for only a few hours per day, but must instead conduct trial all day every day until the conclusion. 56 CA4th at 1243. See also *Renee S. v Superior Court* (1999) 76 CA4th 187, 193–198, 90 CR2d 134 (continuing jurisdiction hearing to a date almost four months from removal and conducting trial only two days a week was held to be abuse of discretion; trial on continuous basis may be warranted in appropriate circumstances).

☛ JUDICIAL TIP: Every effort should be made to avoid continuances and to emphasize the importance of dependency proceedings and their precedence over other court matters. Welf & I C §345.

If the child was not properly notified of the right to be present at the jurisdiction hearing or was not given an opportunity to attend the hearing, the court may be required to continue the hearing to allow for the child's presence. Welf & I C §349(d). See discussion in §101.29.

G. [§101.26] Pretrial Resolution

Under Welf & I C §350(a)(2), each court should be encouraged to institute a dependency mediation program. California Rules of Ct 5.518 sets out mandatory standards for practice and administration for dependency mediation services. Cal Rules of Ct 5.518(a). These standards include educational and other requirements for mediators (see Cal Rules of Ct 5.518(e), (g), (i)), standards of conduct (Cal Rules of Ct 5.518(j)), and responsibilities of the court and the mediators (Cal Rules of Ct 5.518(c)).

There is a variety of other ways in which pretrial resolution of contested jurisdictional hearings and other issues may be attempted. Sometimes these involve settlement conferences with the court itself. See, *e.g.*, San Francisco Juvenile Dependency rules 12.28–12.30. Involving the extended family through the use of family group conferencing, family unity meetings, or family decision-making meetings is also a way in which the extended family may assist in resolving a case. Other times the court simply directs that all parties will meet and confer to resolve issues. The requirement that counsel submit memoranda detailing the issues to be contested and the witnesses to be called can lead to improved settlement discussions. Even providing the parties with "intended decisions" such as is often done in a law and motion department can sometimes be of assistance in encouraging resolution of cases. All these methods merit consideration, and the court may wish to consider using a combination of these procedures.

As a result of these various methods, parties often agree to amended language of the petition which they then admit or submit to the court. The case then proceeds to an uncontested jurisdiction hearing.

☛ JUDICIAL TIPS:

- Although a settlement is a negotiated resolution, sometimes the parties and the courts inadvertently term the presentation of the matter to the court as a "submission," thereby unintentionally leaving open the possibility of appeal. See, *e.g., In re Tommy E.* (1992) 7 CA4th 1234, 1237–1239, 9 CR2d 402. Negotiated settlements should be set forth on the record in a clear manner, indicating that the parent is agreeing with this resolution and waives the right to any appeal of the issue. See, *e.g., In re Richard K.* (1994) 25 CA4th 580, 589–590, 30 CR2d 575 (submitting on recommendation of the social worker waives right of appeal).
- The court is not bound by any mediated resolution or agreement. *In re Jason E.* (1997) 53 CA4th 1540, 1545, 1547–1548, 62 CR2d 416. Thus, any resolution must be consistent with the law, supported by the facts, and in the child's best interests in order for the court to accept it.
- Even if pretrial attempts to resolve the conflict fail, they may nonetheless be useful to narrow the issues and provide the court with an opportunity to inform the attorneys how the hearing will be conducted and what evidence will be relevant.

It is a violation of a parent's hearing rights for the court to conduct a jurisdiction hearing immediately following a pretrial resolution conference without having notified the parent of the nature and consequences of the

jurisdiction hearing. *In re Wilford J.* (2005) 131 CA4th 742, 750–753, 32 CR3d 317.

☛ JUDICIAL TIP: To avoid the result above, the better practice is to notify the parents of the dual nature of the hearings in advance. *In re Wilford J., supra,* 131 CA4th at 753.

H. [§101.27] Prehearing Disclosure

The Department of Social Services must disclose any evidence or information that is favorable to the child, parent, or guardian (Cal Rules of Ct 5.546(c)), and the parent or guardian must disclose to DSS relevant material on request (Cal Rules of Ct 5.546(e)). These duties are continuing ones. Cal Rules of Ct 5.546(k). Under Cal Rules of Ct 5.546(d), the DSS must disclose the following information within its possession or control:

- Probation reports;
- Records of statements, admissions, or conversations by the child, parent, or guardian;
- Records of statements, admissions, or conversations by anyone alleged to be a participant;
- Names and addresses of those who were interviewed;
- Records of statements of anyone interviewed;
- Experts' reports;
- Photographs or physical evidence; and
- Felony conviction records of witnesses.

Based on its inherent power to manage its calendar under Cal Rules of Ct 5.546, a juvenile court may require parties to submit witness lists shortly before trial without violating attorneys' work product protection. *In re Jeanette H.* (1990) 225 CA3d 25, 35–37, 275 CR 9.

☛ JUDICIAL TIP: Courts often specify procedures governing prehearing discovery using local rules; many of these rules require that discovery be conducted informally, permitting court intervention only after all informal means have been exhausted. See, *e.g.*, San Diego rule 6.1.7.

When jurisdiction is at issue, the court may not deny pretrial disclosure of documents in an ongoing investigation involving a sibling's death without at least conducting an in-camera review of the requested items. *Michael P. v Superior Court* (2001) 92 CA4th 1036, 1046, 113 CR2d 11.

If the court is requested to limit discovery, it may make protective orders or require that certain material be excised. See Cal Rules of Ct

5.546(f)–(i). Sanctions may be imposed for failure to comply with discovery orders. Cal Rules of Ct 5.546(j).

I. [§101.28] Psychological Evaluations

A court may not order a parent to undergo a psychological evaluation under Evid C §730 in preparation for a jurisdiction hearing; an assessment about whether a child is at substantial risk of harm under Welf & I C §300 is one that can be made without the assistance of an expert. *Laurie S. v Superior Court* (1994) 26 CA4th 195, 202, 31 CR2d 506 (once jurisdiction has been assumed, the parent's privacy and liberty interests yield to the child's interest in being protected).

☛ JUDICIAL TIPS:

- The court may "authorize" an evaluation of a parent so that the process of appointments and arrangements may begin if the parent agrees to participate.
- The parties may wish to agree to begin the process of psychological evaluation for a parent, stipulating that the results not be used for jurisdictional purposes. This reduces the potential delay at disposition when a psychological evaluation may be needed to assess placement and the granting or denial of services.
- Although appellate courts have not yet answered the question of whether the juvenile court can order the psychological evaluation of a *child* for use in a jurisdiction hearing under Welf & I C §300(c), some judges have made such orders when the child appears to be suffering or at risk of suffering serious emotional damage.

J. Conducting the Jurisdiction Hearing

1. [§101.29] In General

As with any juvenile court hearing, the jurisdiction hearing must be closed to the public, heard at a special or separate session of court, and granted precedence on the calendar. See Welf & I C §§345–346. No person on trial, accused of a crime, or awaiting trial may be permitted to attend juvenile court proceedings except when testifying as a witness, unless that person is a parent, guardian, or relative of the child. Welf & I C §345; Cal Rules of Ct 5.530(a).

The hearing must be conducted in an informal, nonadversarial manner, unless there is a contested issue of law or fact. See Welf & I C §350(a)(1); Cal Rules of Ct 5.534(b). Even then the court should be as informal as reasonably possible. The court must, however, control the proceedings with a view to expeditious and effective determination of the

facts and to obtaining maximum cooperation of the child and persons interested in the child's welfare. Welf & I C §350(a)(1); Cal Rules of Ct 5.534(a). Because of the importance of ascertaining all information relating to the child's welfare, under Welf & I C § 350(a)(1), the petition may include acts that occurred outside the county. *In re Hadley B.* (2007) 148 CA4th 1041, 1048, 56 CR3d 234 (court erred in not allowing DSS to amend original petition to include out-of-county evidence).

The proceedings must be transcribed by a court reporter if the hearing is conducted by a judge or commissioner, referee, or attorney acting as a temporary judge. Welf & I C §347; Cal Rules of Ct 5.532(a). If the hearing is before a referee or commissioner assigned as a referee who is not acting as a temporary judge, the juvenile court judge may nevertheless direct that the proceedings be recorded. Cal Rules of Ct 5.532(b).

The child, who is the subject of the proceeding, is a party. Welf & I C §317.5(b). If the child is 10 years of age or older and is not present, the court must determine whether he or she was properly notified of his or her right to attend the hearing and inquire whether the child was given an opportunity to attend. See Welf & I C §349(d); Cal Rules of Ct 5.534(p). If the child was not properly notified or if he or she wished to be present and was not given an opportunity to be present, the court must continue the hearing only for that period of time necessary to provide notice and secure the child's presence, unless the court finds that it is in the best interest of the child not to grant a continuance. Welf & I C §349(d); Cal Rules of Ct 5.534(p)(2). If the child is present at the hearing, the court must allow the child to address the court and participate in the hearing if he or she so desires. Welf & I C §349(c); Cal Rules of Ct 5.534(p)(1).

Welfare and Institutions Code §349(a) and Cal Rules of Ct 5.530(b) permit the parent or guardian or, if none can be found or none reside within the state, other adult relatives to be present. Rule 5.530(b) also permits the presence of attorneys for the parent or guardian, and other necessary persons such as the social worker and court clerk. See generally discussion in California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §100.26 (Cal CJER). The public is generally not admitted, but the judge has discretion to admit additional persons who have a direct and legitimate interest in the particular case or the workings of the court or to exclude nonparties. Welf & I C §346; Cal Rules of Ct 5.530(e). This section has been interpreted to permit the court to allow members of the press to be present during dependency proceedings, similar to the provisions in Welf & I C §676 (delinquency proceedings), unless the court finds that such access would be harmful to the child's best interests. *San Bernardino County Dep't of Pub. Social Servs. v Superior Court* (1991) 232 CA3d 188, 194–195, 207, 283 CR 332.

a. [§101.30] Explanation of Allegations and Procedures

Unless waived, the judge or clerk must read a copy of the petition to those present at the beginning of the jurisdiction hearing. See Welf & I C §353; Cal Rules of Ct 5.682(a). On request of the child, the child's attorney, the parent, guardian, or adult relative, the judge must explain the meaning and contents of the allegations in the petition, as well as the nature of the hearing, its procedures, and possible consequences. Welf & I C §353; Cal Rules of Ct 5.682(a).

b. [§101.31] Right to Counsel and CAPTA Guardian ad Litem

At each hearing, the judge must advise an unrepresented parent, guardian, or Indian custodian of the right to be represented by an attorney and the right of the indigent parent, guardian, or Indian custodian to have one appointed. Welf & I C §317; Cal Rules of Ct 5.534(g); 25 USC §1912(b). In particular, at the jurisdiction hearing, the judge must ascertain whether the parent or guardian, and, when appropriate, the child, have been represented by counsel, and if not, must advise them of the right to have counsel present. Welf & I C §§317, 353. The judge must advise the parties of their right to appointed counsel when they are presently financially unable to afford counsel. Welf & I C §353. However, the court has no obligation under Welf & I C §317 to appoint counsel for an indigent parent who has chosen not to appear and has made no request for counsel. *In re Ebony W.* (1996) 47 CA4th 1643, 1645, 55 CR2d 337.

The court must appoint a CAPTA guardian for *every* child who is the subject of a dependency petition. Cal Rules of Ct 5.662(c). The court must also appoint an attorney for the child, nonminor, or nonminor dependent unless it finds that the child, nonminor, or nonminor dependent would not benefit from the appointment of counsel. Welf & I C §§317(c), 326.5; Cal Rules of Ct 5.660(b). If an attorney is appointed, he or she will serve as the CAPTA guardian ad litem. Cal Rules of Ct 5.662(c). The court must identify the CAPTA guardian ad litem on the record. Cal Rules of Ct 5.662(c).

☛ JUDICIAL TIP: It is a standard practice to appoint an attorney for the child in nearly every case.

If the court finds no benefit from appointment of counsel for the child, it must appoint a court-appointed special advocate (CASA) to serve as CAPTA guardian ad litem. Welf & I C §326.5; Cal Rules of Ct 5.660(b)(3), 5.662(c). The court may also appoint a CASA for a child who has an attorney. Cal Rules of Ct 5.660(f)(4).

Each party who is represented by an attorney is statutorily entitled to competent counsel. Welf & I C §317.5(a); see Cal Rules of Ct 5.660(d)

(defining competence and discussing experience, contact requirements, and education and standards of representation). The court must establish a complaint process and must inform parties of the procedure (Cal Rules of Ct 5.660(e)), and may require evidence of competency (Cal Rules of Ct 5.660(d)(2)). Once a court has determined that an attorney has acted improperly, it must take appropriate action. Cal Rules of Ct 5.660(e). Counsel has an obligation to advocate for the protection, safety, and well-being of the child or nonminor dependent (Welf & I C §317(c)) and must not advocate for the return of the child if that course of action would endanger the child's safety (Welf & I C §317(e)). The child's counsel must not act as a mouthpiece for the child and espouse the child's wishes if that would endanger the child. *In re Alexis W.* (1999) 71 CA4th 28, 36, 83 CR2d 488.

When counsel is appointed to represent a nonminor dependent, counsel is charged with representing the wishes of the nonminor dependent, except when advocating for those wishes conflict with the protection or safety of the nonminor dependent. If the court finds that a nonminor dependent is not competent to direct counsel, the court must appoint a guardian ad litem. Welf & I C §317(e)(1).

The court must make a case-by-case determination as to whether the presence of counsel would make a "determinative difference" in deciding if a parent has a due process right to representation by counsel at a stage in the dependency proceeding in which parental rights may be terminated. *In re Ronald R.* (1995) 37 CA4th 1186, 1196, 44 CR2d 22. Once appointed, counsel may not withdraw because of lack of contact with the parent without establishing why the lack of contact prevents the performance of his or her duty (*In re Malcolm D.* (1996) 42 CA4th 904, 916, 50 CR2d 148) and must represent the client at all subsequent juvenile court proceedings (Welf & I C §317(d)).

Counsel should not be permitted to withdraw at the outset of a hearing at which the parent has failed to appear in the absence of a stated cause and without the appointment by the court of new counsel or a continuance. *In re Ronald R., supra,* 37 CA4th at 1194. Before counsel may be relieved, the court must conduct a hearing with notice to the concerned parents. *Janet O. v Superior Court* (1996) 42 CA4th 1058, 1066, 50 CR2d 57. If counsel requests relief from duties at a hearing from which the parent is absent, the court may either deny the request or delay acting on it until the hearing is finished. *In re Andrew S.* (1994) 27 CA4th 541, 547, 32 CR2d 670.

The question of ineffective assistance of counsel is normally raised only at the appellate court level. However, it can be raised during the dependency proceeding in a *Marsden*-type hearing (in camera, on the record). See, *e.g.*, *In re James S.* (1991) 227 CA3d 930, 934–936, 278 CR 295.

☛ JUDICIAL TIP: Generally, a parent may raise a claim that the child's counsel is ineffective only if the parent's and child's interests are intertwined and the parent is thus aggrieved by the actions of the child's attorney. See, *e.g.*, *In re Frank L.* (2000) 81 CA4th 700, 703, 97 CR2d 88 (parent had no standing to claim that child's placement was not in his best interests because it would lead to impairment of child's relationship with siblings and others). Nevertheless, if a parent claims that the child's counsel is ineffective, the court should consider it as a request for the court to invoke its own authority to oversee the competence of the child's counsel. An inquiry by the court on this issue may include speaking with the child in chambers, although most judges avoid this if at all possible. All inquiries and any determination of the issue should be made on the record.

An example of a local complaint process is found in San Mateo rule 6.3(d), which provides for complaints to be referred to the managing attorney of the Private Defender Program (panel of attorneys who are qualified to represent parties in juvenile court) who must then take appropriate action. If the issue remains unresolved, the party may submit the complaint to the juvenile court in writing, after which the court must make its own review and take appropriate action.

For a discussion of appointment of counsel for the parents, guardians, and the child, nonminor, or nonminor dependent, and for the handling of conflicts of interest, see California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §§100.16–100.23 (Cal CJER). For the definition of a "nonminor dependent," see Benchguide 100, §100.18.

An example of a local rule setting out duties of counsel for the child is Los Angeles rule 7.17(e)–(f), which includes such obligations as:

- Making necessary inquiries to determine if any conflict exists in representing any party.
- Being familiar with the requirements of Welf & I C §317(e) for the representation of children, and Cal Rules of Ct 5.660 regarding standards of representation caseload size.
- Informing the child of the nature of the proceedings and the roles of the attorney and the judge in language a child can understand, and informing clients of the potential and actual consequences of the proceedings.
- Contacting each child within a family unit separately when the attorney is representing more than one child.

- Conducting investigations and making recommendations to the court, including recommendations on the child's interests that must be protected in other administrative or judicial proceedings.
- Checking on timely implementation of the court's orders.
- Determining whether the child wishes to attend each hearing and conveying that information to the court.

c. [§101.32] Advisement of Rights

At the jurisdiction hearing, the court must inform the parties of their rights, including the right to counsel, unless the advisement is waived. See Welf & I C §353; Cal Rules of Ct 5.534(g), (k). Specifically, under Cal Rules of Ct 5.534(k) the court must advise the child, parent, or guardian of any right to assert the privilege against self-incrimination. However, it may not be an abuse of discretion for a judge to omit this advisement because of the "use immunity" provided by Welf & I C §355.1(f) (testimony of parent or guardian in dependency proceeding may not be used against parent or guardian in any other action or proceeding). *In re Amos L.* (1981) 124 CA3d 1031, 1039, 177 CR 783. Although the court may wish to inform the parent or guardian of the "use immunity" conferred by Welf & I C §355.1(f), the court is not required to do so when parents are represented by counsel. *In re Candida S.* (1992) 7 CA4th 1240, 1250, 9 CR2d 521.

The court must also advise parties of the right, under Cal Rules of Ct 5.534(k) and 5.682(b), to

- Confront and cross-examine the preparers of reports and any witnesses called against them (see Welf & I C §355(b)(2));
- Use the court's process to bring witnesses to court, including witnesses whose hearsay statements are contained in the social worker's reports (see Welf & I C §§341, 355; see also *In re Malinda S.* (1990) 51 C3d 368, 272 CR 787);
- Present evidence to the court; and
- Have the child returned to the parent or guardian (if the child had been removed) within two working days after the court finds that the child does not come within Welf & I C §300 unless DSS and the parent or guardian agree on a later date.

A personal waiver by the parent of any of these rights is required. *In re Monique T.* (1992) 2 CA4th 1372, 1377, 4 CR2d 198. Judicial Council form, Waiver of Rights (JV-190), must be used for taking this waiver.

At the jurisdiction hearing, the court must inform the child of his or her right to seek modification under Welf & I C §388 and the procedure for securing those rights. Welf & I C §353.1(a). If the child is 12 years of

age or older, the court must inform the child directly, using language appropriate to the child's development; if the child is under 12 years old, the court must inform the child through his or her guardian ad litem or attorney. Welf & I C §353.1(b).

In addition to the advisement of rights required by Cal Rules of Ct 5.534(k), Rule 5.682(b)(1) requires the court to advise the parent or guardian of the right to a hearing by the court on the issues raised in the petition.

d. [§101.33] Parent's or Guardian's Plea

The judge must inquire whether the parent or guardian intends to admit or deny the allegations contained in the petition. If the parent or guardian admits the allegations, pleads no contest, or submits the matter on the basis of the reports, the hearing will be an uncontested one (see §§101.35–101.37). If the parent or guardian denies or neither admits nor denies the allegations, the hearing will be a contested one (see §§101.38–101.47).

e. [§101.34] Referees and Commissioners Assigned To Sit as Referees

Jurisdiction hearings, like other juvenile court hearings, may be conducted by referees or by superior court commissioners who are assigned to sit as referees. See Cal Rules of Ct 5.536. Referees may perform subordinate judicial duties assigned by the presiding judge of the juvenile court. Cal Rules of Ct 5.536(a). They generally have the same power as judges (Welf & I C §248), except that the presiding judge of the juvenile court may require that certain referee's orders must be approved by a juvenile court judge before becoming effective (Welf & I C §251).

When a referee or commissioner who is assigned to sit as a referee receives a stipulation as a temporary judge under Cal Const art VI, §21, he or she is empowered to act fully as juvenile court judge (and thus his or her orders would require no approval by a judge). Cal Rules of Ct 5.536(b). The orders of a subordinate judicial officer who sits as a temporary judge are as final and nonreviewable as those of a judge. *In re Brittany K.* (2002) 96 CA4th 805, 815, 117 CR2d 813. Procedures to follow in obtaining a stipulation are set out in Cal Rules of Ct 2.816.

Failure to follow the procedures exactly will not void the stipulation and deprive the court of jurisdiction. *In re Richard S.* (1991) 54 C3d 857, 865, 2 CR2d 2. In fact, the failure to make a timely objection to a commissioner sitting as a judge is tantamount to an implied waiver of the required stipulation. *In re Brittany K., supra,* 96 CA4th at 813.

If a referee or commissioner assigned as a referee is not acting as a temporary judge, he or she must inform the child and parent or guardian

that review by a juvenile court judge may be sought. Welf & I C §248; Cal Rules of Ct 5.538(a)(2). A child, the parent or guardian, or DSS may apply for a rehearing at any time up to ten days after the service of a written order. Welf & I C §252; Cal Rules of Ct 5.542(a). If the referee's decision is one that requires approval by a juvenile court judge, the order becomes final ten calendar days after service of a written copy of the order or 20 judicial days after the hearing, whichever is later. *In re Clifford C.* (1997) 15 C4th 1085, 1093, 64 CR2d 873. For decisions by a referee that do not require approval by a juvenile court judge to become effective, a judge may make an order for a rehearing within 20 judicial days of the hearing, but not more than ten days following the service of a written copy of the order. *In re Clifford C., supra* (delinquency case reconciling Welf & I C §§250 and 253). If the proceedings that were before a referee were recorded by a court reporter, the reviewing judge may rule on the request for a rehearing on the basis of the transcripts. Welf & I C §252; Cal Rules of Ct 5.542(c). Rehearings are conducted de novo before a juvenile court judge, and applications for hearing must be granted as a matter of right if the original hearing had not been reported by a court reporter or other authorized reporting procedure. Welf & I C §252; Cal Rules of Ct 5.542(e).

If a juvenile court judge denies application for rehearing directed partly or solely at issues that arose at a contested jurisdiction hearing, the judge must advise the parties orally or in writing of the following (Cal Rules of Ct 5.542(f)):

- Right to appeal from court's judgment,
- Necessary steps and time for taking appeal,
- Right to appointed counsel for indigent appellant, and
- Right to free transcript for indigent appellant.

2. [§101.35] Uncontested Proceedings

The parent or guardian may admit the allegations in the petition, plead "no contest," or submit the jurisdictional determination based on information provided to the court and waive further jurisdiction hearing. Cal Rules of Ct 5.682(e). For the court to accept an admission, submission, or "no contest" plea, the court must be satisfied that the party knowingly and intelligently understood and waived his or her rights and understands the consequences of the decision not to contest the petition. See Welf & I C §353 and Cal Rules of Ct 5.682(a) (judge must explain possible outcomes of juvenile court proceedings), and Cal Rules of Ct 5.682(c) (court must state on the record that the party understands and waives rights). See also *In re Monique T.* (1992) 2 CA4th 1372, 1377, 4 CR2d 198 (personal waiver required). Judges should require that Judicial

Council form, Waiver of Rights (JV-190), is filed after having been executed by the party and the party's attorney, and the court has determined that the party read the form, understood all its provisions, and initialed each box. *Arlena M. v Superior Court* (2004) 121 CA4th 566, 570, 17 CR2d 321.

A no-contest plea in a jurisdiction hearing precludes a motion for reconsideration unless there has been a successful motion to set aside the plea. *In re Andrew A.* (2010) 183 CA4th 1518, 1526–1527, 108 CR3d 268.

a. [§101.36] Admission or "No-Contest" Plea

An admission to the allegations in the petition must be made personally by the parent or guardian. Cal Rules of Ct 5.682(d); *In re Monique T.* (1992) 2 CA4th 1372, 1377, 4 CR2d 198. When the parent or guardian admits the allegations of the petition at the jurisdiction hearing, he or she waives any objection to the petition based on inadequate notice of facts to be adduced at the jurisdiction hearing. *In re Rodger H.* (1991) 228 CA3d 1174, 1181, 279 CR 406.

If the parent or guardian wishes to admit the allegations in the petition, under Cal Rules of Ct 5.682(c), the court may accept the admission after finding and stating on the record that it is satisfied that the parent or guardian

- Understands the nature of the allegations,
- Understands the direct consequences of the admissions, and
- Understands and waives the rights outlined in Welf & I C §353 and Cal Rules of Ct 5.682(b).

A plea of no contest or an admission (Cal Rules of Ct 5.682(e)) at a jurisdiction hearing admits all matters essential to the court's jurisdiction over the child. When the parent knowingly acquiesces to the allegations of the petition, he or she waives the right to challenge the applicability of any of the allegations. *In re Troy Z.* (1992) 3 C4th 1170, 1181, 13 CR2d 724. Therefore, when parents plead "no contest" to a petition that alleges that the child comes under Welf & I C §300(e) (severe physical abuse), they may not contest the applicability of §300(e) on appeal. 3 C4th at 1170, 1172, 1180.

If the parent admits the allegations, the court must still find that there is a factual basis for the admission. Cal Rules of Ct 5.682(f)(6). Normally, the finding is made based on the court's reading of the social worker's report.

☛ JUDICIAL TIP: If there are unsubstantiated allegations in the petition that are not borne out in the report or by DSS's answers to the court's questions, the court should strike those allegations

and initial and date those strikeouts or state the changes on the record.

b. [§101.37] Submission on Social Worker's Report

The parent or guardian may also submit the jurisdictional determination based on information provided in the social services report. See Cal Rules of Ct 5.682(e); Welf & I C §355(b). Submission is not the same as an admission. *In re Tommy E.* (1992) 7 CA4th 1234, 1238, 9 CR2d 402. For a submission, the court is required to weigh the evidence before determining jurisdiction. *In re Tommy E., supra.* As such, a submission on the reports should not be construed as a submission to the court's dependency jurisdiction; counsel will often wish to present argument once the evidence is admitted. A parent may therefore appeal a jurisdictional decision even after agreeing to submit the jurisdictional determination on the information provided in the social services report under Cal Rules of Ct 5.682(e). *In re Tommy E., supra*.

☛ JUDICIAL TIP: If there is a submission, the court should inquire as to whether it results from a negotiated settlement, which may include amendments being made to the petition. If this is the case, the court may want to ask whether the parent waives the right to challenge the sufficiency of the evidence in return for the amendments or other benefits. The refusal of the party to waive the right should not prevent the court from proceeding on the basis of the submission.

When a parent contends on appeal that the petition failed to state a cause of action, submission on the report (along with failure to raise the issue below) has been deemed to act as a waiver. *In re Shelley J.* (1998) 68 CA4th 322, 328, 79 CR2d 922. In accord is *In re S. O.* (2002) 103 CA4th 453, 459, 126 CR2d 553. But see *In re Alysha S.* (1996) 51 CA4th 393, 397, 58 CR2d 494 (which permitted an appeal in this situation, relying on CCP §430.80 and civil cases for the proposition that a claim challenging the sufficiency of the petition may be raised for the first time on appeal).

☛ JUDICIAL TIP: When the parties have submitted the matter on the social worker's report, they are not arguing the truth of the statements contained in the report, but may nevertheless question the import and meaning of the statements. Therefore, if the parties desire it, a judge should permit arguments in the case of a submission. If the submitted reports do not support the allegations of the petition by a preponderance of the evidence, the court should find that the petition has not been proved, and dismiss it.

3. [§101.38] Contested Proceedings

If the parent or guardian denies the allegations of the petition, the court must hold a contested hearing to determine whether the allegations are true. Cal Rules of Ct 5.684(a); see Welf & I C §355(a). If the parent or guardian neither admits nor denies the allegations, the court must state on the record that the parent or guardian does not admit the allegations. Cal Rules of Ct 5.682(c).

a. [§101.39] Presentation of Evidence

At the jurisdiction hearing, any information that is relevant to the question of whether the child is a person described by Welf & I C §300 is admissible and may be received in evidence. Welf & I C §355(a). The Department of Social Services has the burden of proof on each fact necessary to sustain the petition. *In re S. D.* (2002) 99 CA4th 1068, 1077–1078, 121 CR2d 518.

Generally, except for the admissibility of the social worker's report (see §101.40) and certain privileges (see §101.41), the admission and exclusion of evidence at a jurisdiction hearing must be in accordance with the Evidence Code as it applies to civil cases. Cal Rules of Ct 5.684(b). A parent or guardian's failure to cooperate in the provision of services, except for good cause, may be used as evidence in a jurisdiction hearing. Evid C §1228.1(b).

Proof that a parent, a guardian, or another custodian of the child has abused, neglected, or cruelly treated another child is admissible. Welf & I C §355.1(b). Although hearsay statements of witnesses to physical abuse by mother cannot alone be the basis of a jurisdictional finding, they may be used when there is nonhearsay evidence to corroborate them under Welf & I C §355(c)(1). *In re B.D.* (2007) 156 CA4th 975, 984–986, 67 CR3d 810.

A parent or guardian has use immunity for any testimony given in a dependency proceeding. Welf & I C §355.1(f) (testimony given in a dependency proceeding cannot be used against the parent or guardian in any other proceeding). But the court may not order a parent to testify and then prohibit cross-examination or the presentation of evidence by that parent as a sanction after he or she has invoked the Fifth Amendment. *In re Brenda M.* (2008) 160 CA4th 772, 777, 72 CR3d 686. Because the use immunity granted by Welf & I C §355.1(f) is not coextensive with the Fifth Amendment privilege against self-incrimination, a grant of immunity under Welf & I C §355.1(f) will not deny a parent or other witness the right to invoke the Fifth Amendment. *In re Mark A.* (2007) 156 CA4th 1124, 1136, 1142, 68 CR3d 106.

From the time a §300 petition is filed until juvenile court jurisdiction is terminated, any interested person may advise the court of information

relevant to the child's interests or rights. Cal Rules of Ct 5.660(g). If the child's attorney or CASA acting as CAPTA guardian learns of any such interest or right, he or she must notify the court immediately and must seek directions on appropriate procedures to follow. Cal Rules of Ct 5.660(g)(2).

If the court determines that further action is necessary to protect the child's rights or interests, it can (Cal Rules of Ct 5.660(g)(3)):

- Refer the matter for investigation and require a follow-up report,
- Authorize and/or direct the child's counsel to take a particular action,
- Appoint a guardian ad litem who may be the CASA who was already appointed as a CAPTA guardian ad litem, or
- Take any other action to protect the child.

b. [§101.40] Social Worker's Report

Although they may contain hearsay and even multiple hearsay, social studies reports and their attachments are admissible and competent evidence on which to base findings in jurisdiction hearings if the preparer is present for cross-examination and the parent or guardian has the opportunity to subpoena and cross-examine the witnesses mentioned in the report. Welf & I C §§355(b), (d), 341; *In re Malinda S.* (1990) 51 C3d 368, 379, 385, 272 CR 787; Cal Rules of Ct 5.684(c), 5.526(d), 5.682(b); see also Welf & I C §281 (court is authorized to receive and consider probation department reports on issues involving custody, status, or welfare of children). A "social study" is a written report furnished by DSS to the court, the parties, and counsel. Welf & I C §355(b)(1). This report must be provided to all parties or their counsel within a reasonable time before the hearing. Welf & I C §355(b)(3). If the report is not made available within a reasonable time before the hearing, the court may grant a continuance not to exceed ten days on request of any party. Welf & I C §355(b)(3).

The preparer of the report must be made available for cross-examination on a timely request of any party; being made available includes being on telephone standby if the person can be present in court within a reasonable time. Welf & I C §355(b)(2); Cal Rules of Ct 5.684(c)(2).

If DSS complies with those requirements, the report is admissible and sufficient to support a finding that the child is described in Welf & I C §300. Cal Rules of Ct 5.684(c). However, if any party raises a timely objection to the admission of specific hearsay in the report, that evidence alone will not be sufficient to support a jurisdictional finding or any

ultimate fact on which a jurisdictional finding is based *unless* DSS establishes one or more of the following exceptions:

- The hearsay evidence would be admissible in any criminal or civil proceeding as a statutory or case law hearsay exception. Welf & I C §355(c)(1)(A); Cal Rules of Ct 5.684(d)(1).
- The hearsay declarant is the child who is the subject of the proceeding and is under 12 years of age. This exception may be defeated if the objecting party establishes that the statement is unreliable in that it is the product of fraud, deceit, or undue influence. Welf & I C §355(c)(1)(B); Cal Rules of Ct 5.684(d)(2).
- The hearsay declarant holds a certain position such as peace officer, social worker, or teacher and the statement would be admissible if the declarant were testifying. See Welf & I C §355(c)(1)(C); Cal Rules of Ct 5.684(d)(3).
- The hearsay declarant is available for cross-examination. Welf & I C §355(c)(1)(D); Cal Rules of Ct 5.684(d)(4).

The hearsay evidence contained in the social worker's report is not to be stricken, however, just because the exception is not met. It simply may not be used as the sole basis for a finding of jurisdiction or any ultimate fact on which jurisdiction is based.

A court must permit cross-examination of the social worker on the parent's attorney's request, even in the parent's absence. *In re Dolly D.* (1995) 41 CA4th 440, 444–446, 48 CR2d 691 (determination of jurisdiction based on the social worker's report in this situation is a denial of due process). Because there is no "default procedure" in dependency proceedings, even if the parent fails to appear for the hearing, counsel for the parent has the right to cross-examine witnesses. *In re Stacy T.* (1997) 52 CA4th 1415, 1426, 61 CR2d 319.

☛ JUDICIAL TIP: Except as provided in Welf & I C §355(c)(1) concerning timely objections to specific hearsay contained in the social study, any objections to the contents of a social study or its attachments go to the weight that the court should give to that evidence and not to the admissibility.

c. [§101.41] Privileges

In addition to the admissibility of the social worker's report, the other exceptions to the rule that evidence may be admitted in accordance with the Evidence Code as it applies to civil cases are:

- The privilege not to testify and not to be called as a witness against the spouse under Evid C §972 is not available to the parent or guardian. Cal Rules of Ct 5.684(e).

- The confidential marital privilege under Evid C §980 is not available to the parent or guardian. Cal Rules of Ct 5.684(e); see Evid C §986.

Under Welf & I C §317(f), either the child or his or her counsel may invoke a privilege such as the psychotherapist-patient privilege; if the child invokes it, counsel may not waive it, but if counsel invokes it, the child may waive it. Counsel is the holder of the privilege if the child is neither old nor mature enough to consent to the invocation of the privilege. Welf & I C §317(f). Maturity is presumed if the child is over 12 years of age unless the contrary is shown by clear and convincing evidence. Welf & I C §317(f). A child is not required to take the stand to personally advise the court that he or she wishes to invoke the psychotherapist-patient privilege. *In re S.A.* (2010) 182 CA4th 1128, 1137, 106 CR3d 382.

Although the child may invoke the privilege, the court may order the child's therapist to disclose limited information that would help the court to evaluate whether further orders are needed while still preserving the confidentiality of the details of therapy. *In re Kristine W.* (2001) 94 CA4th 521, 528, 114 CR2d 369. The privilege does not preclude the court from ordering circumscribed information to accomplish the information-gathering purpose of therapy. *In re Mark L.* (2001) 94 CA4th 573, 584, 114 CR2d 499.

A child's attorney may assert the psychotherapist-patient privilege on behalf of the child even if the communications with the therapist occurred before the dependency was instituted and before the attorney was appointed. *In re Cole C.* (2009) 174 CA4th 900, 911−913, 95 CR3d 62.

Psychiatric records are protected by the psychotherapist-patient privilege. See Evid C §1014. Disclosure of portions of the records does not constitute a waiver of privilege regarding all the records; nor does the denial of allegations in a dependency petition constitute a tender of a psychiatric condition. See Evid C §§912(a), 1016. The court should conduct an *in camera* review of the records and make an independent determination of whether all or portions of the documents are protected by the privilege. *In re M.L.* (2012) 210 CA4th 1457, 1471, 148 CR3d 911.

Similarly, information, records, and services provided pursuant to involuntary psychiatric holds (see Welf & I C §§5150 et seq) are confidential. Nonetheless, information and records may be disclosed, among other grounds, to the courts as necessary to the administration of justice. Welf & I C §5328(f). The information and records sought to be disclosed must be relevant to providing child welfare services or the investigation, prevention, identification, management, or treatment of child abuse or neglect. Welf & I C §5328(*l*)(1). *In re M.L.,* supra, 210 CA4th at 1469–1471.

d. [§101.42] Child's Testimony

There are certain recurrent issues that arise with children and certain ways of accommodating a child witness's needs that judicial officers have available to them. For example, a court may refuse to permit a child to testify if it determines that such testimony would cause psychological stress and injury and the potential benefit derived from testifying would not outweigh the injury it would cause. *In re Jennifer J.* (1992) 8 CA4th 1080, 1086, 10 CR2d 813, distinguishing *In re Amy M.* (1991) 232 CA3d 849, 283 CR 788, in which the child's testimony could have assisted in resolving a disputed issue. Although nothing in the statutes or case law specifically authorizes a court to exclude a child's testimony in order to avoid psychological harm, the court nevertheless has such power based on the overriding objective of the dependency hearing—to preserve and promote the best interests of the child. *In re Jennifer J., supra,* 8 CA4th at 1089 (judge must weigh whether testimony would materially affect the issues to be resolved against potential psychological injury to child). Moreover, the court has the inherent authority to take steps necessary to facilitate the child's testimony. *In re Amber S.* (1993) 15 CA4th 1260, 1266–1267, 19 CR2d 404 (court had inherent authority to utilize both in-chambers and closed-circuit television testimony to ensure truthfulness of child's testimony).

Because children may not have made complete disclosure of the extent of abuse initially because of shyness and understandable reticence, the doctrine of collateral estoppel may not be used to preclude them from telling their stories at the jurisdiction hearing. See *In re Jessica C.* (2001) 93 CA4th 1027, 1039–1040, 113 CR2d 597.

For a discussion of handling child witnesses in court generally, including an accepted method for examining a young child's testimonial competence, see THE CHILD VICTIM WITNESS BENCH HANDBOOK (CJER 2009).

(1) [§101.43] Hearsay Statements of Children

Hearsay statements of a child who is under the age of 12 and who is the subject of the jurisdiction hearing may be included within the social study report and may be sufficient to sustain a jurisdictional finding unless the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence. Welf & I C §355(c)(1)(B); Cal Rules of Ct 5.684(d)(2). See discussion in §101.40.

Hearsay statements of a child may also be admissible under a judicially-created hearsay exception called the "child dependency hearsay exception" first articulated in the case of *In re Carmen O.* (1994) 28 CA4th 908, 33 CR2d 848, and subsequently adopted, with modification, by the California Supreme Court in the case of *In re Cindy L.* (1997) 17

C4th 15, 69 CR2d 803. The foundational requirement for admission under this hearsay exception is a finding that the hearsay statements are reliable. The *Cindy L.* decision makes clear that regardless of whether the child would be competent to testify as a witness, the child's reliable hearsay statement is admissible; however, if the child is not available for cross-examination, his or her hearsay statements must be corroborated. 17 C4th at 29. The term "corroboration" means evidence that "would support a logical and reasonable inference that the act of abuse described in the hearsay statement occurred." 17 C4th at 35. Corroboration of children's statements of abuse, particularly regarding molestation, is frequently circumstantial. Direct corroboration, such as diagnostic medical evidence, is often not available. For a discussion of the factors courts have considered in finding the hearsay statements of children reliable and corroborated, see 2 Myers, Myers on Evidence in Child, Domestic and Elder Abuse Cases §7.16 (4th ed 2005).

The Supreme Court has further held that a child's out-of-court statements contained in a social study are admissible even if they do not meet the requirements of the child dependency hearsay exception and even if the child is incompetent to testify. *In re Lucero L.* (2000) 22 C4th 1227, 1242–1243, 96 CR2d 56. A petition may be sustained based solely on the social worker's report containing statements of a child who is incompetent to testify if these statements bear indicia of reliability; corroboration of the child's statements is not required under the social study exception. *In re Lucero L., supra*, 22 C4th at 1247–1249. If the court does not find such indicia, there needs to be additional evidence to support the finding of jurisdiction. *In re Lucero L., supra.*

This hearsay exception at first might appear to be affected by the U.S. Supreme Court's decision in *Crawford v Washington* (2004) 541 US 36, 50–52, 59, 124 S Ct 1354, 158 L Ed 2d 177, in which it held that if an out-of-court statement is testimonial, *e.g.*, made under circumstances that would lead an objective witness to believe that the statement would be available for use at a later trial, it would not be admissible unless the declarant was unavailable to testify and the defendant had had a previous opportunity to cross-examine the declarant. But a California appellate court has held that *Crawford* does not apply to juvenile dependency proceedings (see *In re April C.* (2005) 131 CA4th 599, 611, 31 CR3d 804) because the Sixth Amendment right of criminal defendants to confront witnesses against them does not apply to parents in dependency proceedings. *Cindy L.* and *Lucero L.* are still good law. *In re April C., supra.*

Moreover, a statement made by a child victim of abuse or neglect when that child was under 12 years of age may be admissible despite the hearsay rule if the statement was made for medical diagnosis or treatment. Evid C §1253. Statements of an unavailable witness who is the victim of

physical abuse or the threat of abuse may also be admissible under Evid C §1370. In addition, although hearsay statements made by a child witness who was held to be incompetent are inadmissible for the truth of the matters asserted, they may be admissible for other purposes, such as the mother's understanding of what she needed to do to protect the child. See *In re Clara B.* (1993) 20 CA4th 988, 998, 25 CR2d 56.

(2) [§101.44] Competency

Generally, any person is qualified to be a witness, regardless of age. Evid C §700. However, a person who is incapable of expressing himself or herself so that he or she will be understood, or is incapable of understanding the duty to tell the truth must be disqualified as a witness. Evid C §701(a).

Even a child who makes some bizarre statements might be competent to testify if he or she is otherwise well-oriented, lucid, and not easily led. *In re Amy M.* (1991) 232 CA3d 849, 858, 283 CR 788 (11-year-old child was competent to testify at jurisdiction hearing when she had testified for almost eight hours in great detail about the years of molestation by her father, despite the fact that she testified that her guinea pig had told her things, that she had imagined seeing blood in the bathtub, and that she said she would lie about her father because he had lied about her). A child with Down's syndrome and an IQ of 44 may be competent to testify if he or she has some reasoning ability, is generally responsive to questions, and can tell the difference between the truth and a lie. *In re S.C.* (2006) 138 CA4th 396, 421, 41 CR3d 453.

Inconsistencies in a child's testimony generally go to credibility, not competency. *In re Katrina L.* (1988) 200 CA3d 1288, 1299, 247 CR 754. Indeed, credibility is determined by more than just words transcribed by a court reporter; a judge may disbelieve even an uncontradicted witness if there is a rational ground for doing so. *In re Jessica C.* (2001) 93 CA4th 1027, 1043, 113 CR2d 597. The court may defer its determination of the child's competency until the completion of the child's direct testimony. Evid C §701(b).

Even if a child is found incompetent to testify, the prior statements of the child may be admissible as discussed in §101.43.

☛ JUDICIAL TIPS:

- A traditional voir dire of a witness is not required when determining whether or not a child is competent to testify.
- A person who is conducting a voir dire of a child to determine competency should ask short, open-ended questions that are appropriate to the child's age, using words the child will understand (see script in §101.53 and suggestions in THE CHILD

VICTIM WITNESS BENCH HANDBOOK (CJER 2009)). The court may wish to have the person with the greatest rapport with the child conduct the initial voir dire on competency.

(3) [§101.45] Testifying in Chambers

The child may testify in chambers outside the presence of the parents if the parents' counsel is present and any one of the following conditions exists:

- The court determines that testimony in chambers is necessary to ensure truthful testimony. Welf & I C §350(b)(1); Cal Rules of Ct 5.534(c)(1).
- The child is likely to be intimidated in the more formal courtroom setting. Welf & I C §350(b)(2); Cal Rules of Ct 5.534(c)(2).
- The child is frightened to testify in front of the parent or parents. Welf & I C §350(b)(3); Cal Rules of Ct 5.534(c)(3).

In determining whether to permit in-chambers testimony, the court may rely on the social studies report or other offers of proof. Cal Rules of Ct 5.534(c); *In re Katrina L.* (1988) 200 CA3d 1288, 1297, 247 CR 754 (court properly relied on statements in social worker's report that child would probably be intimidated in the courtroom setting; social worker was available for cross-examination).

Counsel for the parent or guardian must be present during in-chambers testimony. It may be prejudicial error for the court to question the child in chambers with only a reporter present even when the parent appears to have acquiesced to the procedure. See *In re Laura H.* (1992) 8 CA4th 1689, 1697, 11 CR2d 285. Disagreeing with *In re Laura H., supra*, is *In re Jamie R.* (2001) 90 CA4th 766, 771, 109 CR2d 123, which held that a parent who keeps silent and otherwise acquiesces to the questioning of the child in chambers without counsel waives the statutory right to have counsel at the in-chambers proceeding (.26 hearing). See also *In re Amber S.* (1993) 15 CA4th 1260, 1266–1267, 19 CR2d 404, in which the procedure by which even the judge viewed the in-chambers testimony via closed-circuit television was upheld.

When the child testifies in chambers, the testimony must be recorded and the parent or guardian may request the reporter to read back the testimony. See Cal Rules of Ct 5.534(c). The parent may also elect to have counsel summarize testimony. A parent's due process rights are not violated when the child has testified in chambers as long as the parent's counsel is present and the parent had testimony read back. *In re Mary S.* (1986) 186 CA3d 414, 422, 230 CR 726.

When a child testifies in chambers, the court must first administer an oath to the child or obtain a satisfactory promise from the child to tell the

truth. See *In re Heather H.* (1988) 200 CA3d 91, 95–97, 246 CR 38 (failure to administer oath rendered testimony inadmissible). See also Evid C §710 (witnesses who are under ten years of age need only promise to tell the truth). The requirement is deemed waived if an objection is not raised at trial. *In re Katrina L., supra*, 200 CA3d at 1299. The court may permit the child to testify in chambers even when the child does not expressly state a fear of testifying in open court. *In re Katrina L., supra,* 200 CA3d at 1297–1298 (requirements of Welf & I C §350 were otherwise met).

☛ JUDICIAL TIP: Some judges conduct "in-chambers" proceedings in the courtroom without the parents because some chambers become too crowded and therefore too overwhelming for the child with so many people in attendance. The judge may come down from the bench to listen to the child's testimony, and to remove his or her robe, which may be a frightening symbol of formality for the child. Before doing so, however, it may be advisable to check with the case worker, child's attorney and/or CASA representative. The child may have been previously introduced to the standard courtroom setting and may feel uncomfortable or threatened with the less formal approach. Different approaches may work in different situations.

(4) [§101.46] Additional Ways To Accommodate Child Witness

There are a number of additional ways in which the court may accommodate the needs of the child witness who testifies in a jurisdiction hearing. See generally THE CHILD VICTIM WITNESS BENCH HANDBOOK (CJER 2009).

The court should consider the scheduling of the child's testimony to accommodate the need for frequent breaks. The court might also permit a child to bring a favorite object or toy to the stand. The use of a support person with whom the child is comfortable, such as a foster parent, social worker, relative, or court-appointed special advocate should also be considered.

Moreover, when a child is unwilling to testify even at an in-chambers hearing because of the presence of so many adults (the judge, many attorneys, social worker, and court reporter), a court is entitled to use its inherent powers to carry out its duties and ensure the orderly administration of justice (derived from Cal Const art VI, §1) and may permit the testimony of the child by closed-circuit television, even in the absence of any express statutory authority for this procedure. *In re Amber S.* (1993) 15 CA4th 1260, 1266, 19 CR2d 404 (court may use new

procedure to protect best interests of child because parents' rights are at least as protected as they would have been under Welf & I C §350(b)).

e. [§101.47] Testimony of Parents and Others

The privilege not to testify and not to be called as a witness against the spouse under Evid C §972 and the confidential marital privilege under Evid C §980 is not available to the parent or guardian. Cal Rules of Ct 5.684(e); see Evid C §986. See also discussion in §101.41.

A parent may be called to testify under Evid C §776 as an adverse witness. In such cases the use immunity granted by Welf & I C §355.1(f) protects the parent regarding any incriminating statements. See discussion in §§101.32, 101.39.

Although a parent may present evidence at the jurisdiction hearing on the question of whether the child is described by Welf & I C §300 and on the parent's mental state (see, *e.g.*, Welf & I C §300(j)), testimony regarding future risk to children may be more valuable at the disposition rather than at the jurisdiction hearing stage. *In re Mark C.* (1992) 7 CA4th 433, 445–446, 8 CR2d 856.

☛ JUDICIAL TIP: There are times when evidence of future risk is relevant and should be received at the jurisdictional stage.

The court is required to advise any person called as a witness of the privilege against self-incrimination if it appears that the testimony or other evidence may tend to incriminate that witness. Cal Rules of Ct 5.548(a). If a witness refuses to answer a question, the judge may grant immunity. Cal Rules of Ct 5.548(b); see Cal Rules of Ct 5.548(d) for procedure.

☛ JUDICIAL TIP If the court is considering granting immunity, it may want to give that witness time to consult with counsel and may also wish to communicate with the prosecutor about possible consequences of granting immunity.

A court may prohibit telephonic presentation of evidence as long as there are other means of receiving testimony. See *In re Nada R.* (2001) 89 CA4th 1166, 1176, 108 CR2d 493.

☛ JUDICIAL TIP: A court may also permit telephonic testimony. See, *e.g.,* Fam C §3411(b) (authorizing telephonic testimony in custody proceedings to receive the testimony of witnesses in other states). A court may also wish to use it when all parties agree or when the court determines that the use of telephonic testimony for a particular witness does not offend due process.

One parent's statement concerning the other parent's drug abuse is admissible hearsay in a jurisdiction hearing under Welf & I C §355, and hospital records concerning this abuse may serve as sufficient

corroboration under Welf & I C §355(c)(1). *In re R.R.* (2010) 187 CA4th 1264, 1279–1280, 114 CR3d 765.

A court must hold a foundational hearing to determine the admissibility of polygraph examination results at a jurisdictional hearing, if the results are relevant to the primary issue before the court. The trial court in this case may safely conclude from the literature that there is no generally accepted scientific consensus about the reliability of the new technique at that time. *In re Jordan R.* (2012) 205 CA4th 111, 127–130, 140 CR3d 222.

K. Findings and Orders

1. [§101.48] After Contested Hearing

After hearing the evidence, the court must make a finding in the court minutes whether the child is described by Welf & I C §300 and note each specific subsection of Welf & I C §300 under which the petition is sustained. Welf & I C §356. If the court finds the allegations to be true, it must make the following findings in the minutes (Welf & I C §356; Cal Rules of Ct 5.684(f)):

- Notice has been given as required by law;
- The child's birthdate and county of residence are included;
- The allegations of the petition are true; and
- Specific subsections of Welf & I C §300 that describe the child are included.

To support a finding that the child is described by Welf & I C §300, the court must find that there is proof by a preponderance of the evidence that the allegations in the petition are true. Welf & I C §355(a). However, the court need not make specific findings; general findings that the allegations of the petition are true will be sufficient as long as the petition states ultimate facts that set forth the specific allegations on which adjudication is sought. *In re J.T.* (1974) 40 CA3d 633, 640, 115 CR 553. If the court believes that the child has suffered criminal abuse or neglect, it may direct a representative of the child protective agency to take action under Pen C §11166(i). Welf & I C §355.1(e). See Judicial Council form JV–412, Findings and Orders After Jurisdictional Hearing.

Despite the fact that jurisdictional findings are often made under extreme time pressures, it is important to have accurate and reliable findings of fact. See, *e.g., Blanca P. v Superior Court* (1996) 45 CA4th 1738, 1754, 1757–1759, 53 CR2d 687 (because the judge was under a misunderstanding about allegations of molestation, the court of appeal ordered the juvenile court to fully explore and resolve the issue at a new 18-month hearing).

If the court determines that the allegations of the petition have not been proved by a preponderance of the evidence, it must dismiss the petition, order that any previously ordered detention be terminated, and make the following findings (Welf & I C §356; Cal Rules of Ct 5.684(h)):

- Notice has been given as required by law,
- The child's birthdate and county of residence are included, and
- Allegations of the petition are not proved.

If the child had been removed from the physical custody of the parent or guardian, he or she must immediately be returned home (and in no case should the return take more than two working days unless DSS and the parent or guardian have agreed otherwise) following the finding that the child does not come within the jurisdiction of the juvenile court. Welf & I C §361.1(a); Cal Rules of Ct 5.684(h).

At the conclusion of the case for DSS and presentation of evidence by the child, the court may on its own motion or on the motion of any party, order whatever action the law requires if it concludes that DSS has not met its burden of proof. See Welf & I C §350(c); Cal Rules of Ct 5.534(d)(1)(A). If the motion is denied, the child or parent or guardian may offer evidence. Cal Rules of Ct 5.534(d)(2). However, a parent or guardian may not present evidence if a motion to dismiss has been granted. See *In re Eric H.* (1997) 54 CA4th 955, 965, 63 CR2d 230.

Among the actions the court may take is termination of proceeding (Welf & I C §350(c)), although the juvenile court has no discretion to dismiss a dependency petition if it concludes that DSS has met its burden. *In re Sheila B.* (1993) 19 CA4th 187, 198, 23 CR2d 482. Nor may the court dismiss the petition without an evidentiary hearing (as requested by the child's counsel) just because the parents have voluntarily relinquished the child to an out-of-state adoption agency. *Taylor M. v Superior Court* (2003) 106 CA4th 97, 109, 130 CR2d 502.

2. [§101.49] After Uncontested Hearing

Even when there has been an uncontested hearing, a finding that a child is described by Welf & I C §300 requires proof by a preponderance of the evidence. See Welf & I C §355(a); Cal Rules of Ct 5.682(f). When the parents have admitted the allegations, the court should look to evidence in the social worker's reports to determine if there is a factual basis for the admission. See Cal Rules of Ct 5.682(f). When the parents have pleaded "no contest" or submitted the case, the court should make its jurisdictional findings based on the reports it has received.

If the court finds that the petition should be sustained, then under Cal Rules of Ct 5.682(f), on admission, plea of no contest, or submission, the

court must make the following findings, which must be noted in the court's order:

- Notice has been given as required by law;
- The child's birthdate and county of residence are included;
- The parent or guardian has knowingly waived the rights to
  - — Trial on the issues,
  - — Assert any privilege against self-incrimination,
  - — Confront and cross-examine adverse witnesses, and
  - — Use the court's process to compel attendance of witnesses;
- The parents or guardians understand the nature of the conduct alleged in the petition and the potential consequences of their admission, plea of no contest, or submission;
- The admission, plea of no contest, or submission has been made voluntarily and freely;
- There is a factual basis for the admission or plea of no contest;
- The admitted allegations of the petition are true as alleged; and
- The child is described by one or more subsections of Welf & I C §300.

See §101.48 for actions the court may take if it believes that the child has suffered criminal abuse or neglect.

After accepting admission, submission, or plea of no contest, the court must proceed according to Cal Rules of Ct 5.686 and 5.690 and hold a disposition hearing. Cal Rules of Ct 5.682(g).

L. [§101.50] Setting Case for Disposition

Once the juvenile court finds that the child is within its jurisdiction, it must hold a disposition hearing at which it must consider several dispositional alternatives, including orders for services to the family if the child is declared a dependent and removed from the home. *In re Cicely L.* (1994) 28 CA4th 1697, 1701–1702, 34 CR2d 345. Often the disposition hearing will immediately follow the jurisdiction hearing if the parties wish to proceed at that time and stipulate that the report submitted for the jurisdiction hearing may be received as the dispositional report. See Welf & I C §§358 (court may hear evidence on disposition after finding that child is described by Welf & I C §300), 358.1 (requirements for dispositional report). However, the disposition hearing may be continued for a period not to exceed ten court days if the child is detained or a period not to exceed 30 calendar days from the time the jurisdictional findings and orders were made if the child is not detained. Welf & I C §358(a)(1)–(2); Cal Rules of Ct 5.686(a). If the child is not detained, the hearing may

be further continued for an additional 15 calendar days for good cause. Welf & I C §358(a)(2); Cal Rules of Ct 5.686(b).

The court may make orders for continuing detention or for the child's release during the continuance. Welf & I C §358(a)(1); Cal Rules of Ct 5.686(c).

If the social worker alleges that Welf & I C §361.5(b) (no reunification services) is applicable, the court must continue the proceedings for not more than 30 days. Welf & I C §358(a)(3); Cal Rules of Ct 5.686(b). The court must direct the social worker to notify each parent of the application of Welf & I C §361.5(b) and must inform each parent that unless reunification is ordered at the disposition hearing, an implementation hearing under Welf & I C §366.26 will be held and parental rights may be terminated. Welf & I C §358(a)(3); Cal Rules of Ct 5.686(b).

☛ JUDICIAL TIP: If the case involves a child who was under three years of age at the time of initial removal, it is a good idea for the court to advise the parent and remind the social worker to let the parent know about the more rigorous time frames.

M. [§101.51] Appeals and Reviews

There is no appeal from a jurisdictional finding that a child is described by Welf & I C §300 (*In re Candida S.* (1992) 7 CA4th 1240, 1249, 9 CR2d 521) although jurisdictional findings can be appealed as part of the appeal from the disposition hearing (see *In re Jennifer V.* (1988) 197 CA3d 1206, 1209–1210, 243 CR 441). However, an order dismissing a petition after a contested hearing is a final judgment on the merits and is thus appealable. *In re Sheila B.* (1993) 19 CA4th 187, 197, 23 CR2d 482. By stipulating that "conditions still exist which would justify initial assumption of jurisdiction under Welf & I C §300," a parent has waived the right to complain on appeal. *In re Eric A.* (1999) 73 CA4th 1390, 1394–1395, 87 CR2d 401.

There is a split of opinion whether a parent has standing to challenge a court's decision to dismiss a dependency petition. Compare *In re Lauren P.* (1996) 44 CA4th 763, 770, 52 CR2d 170 (parent may appeal from dismissal on the merits) with *In re Carissa G.* (1999) 76 CA4th 731, 736, 90 CR2d 561 (parent has no standing). One court has held that if a parent is dissatisfied with the court's dismissal of jurisdiction and consequent custody orders, he or she must seek recourse in family law court. *In re Alexis W.* (1999) 71 CA4th 28, 37, 83 CR2d 488.

Courts are also divided as to whether CCP §430.80 is applicable to juvenile court proceedings (if so, challenges to sufficiency of the pleadings are not forfeited when not raised at the jurisdiction hearing). Holding that CCP §430.80 is not applicable is *In re David H.* (2008) 165

CA4th 1626, 1639, 82 CR3d 81, and taking the contrary position is *In re Alysha S.* (1996) 51 CA4th 393, 397, 58 CR2d 494. See also discussion in §101.37 on the need to raise the issue of the sufficiency of the pleadings at the jurisdiction hearing when the parties have submitted jurisdictional determination based on the social worker's report.

Procedures to follow regarding the appointment of counsel for children on appeal are set out in Welf & I C §395(b)(1) and Cal Rules of Ct 5.661.

IV. [§101.52] ADDITIONAL REFERENCES

Seiser & Kumli, California Juvenile Courts: Practice and Procedure (LexisNexis 2013).

California Juvenile Dependency Practice (Cal CEB 2012).

V. SCRIPTS

A. [§101.53] Script: Conduct of Jurisdiction Hearing

(1) *Introduction*

[*Mr./Ms.*] [*name of clerk*], please swear all persons who may wish to speak during the proceedings.

(2) *Appointment of attorney for parent(s) or guardian(s)*

[*If parent(s) or guardian(s) is/are unrepresented by counsel*]

You have a right to be represented by an attorney during this jurisdiction hearing, and during all other hearings in the juvenile court. [*If you want to employ a private attorney, the court will give you an opportunity to do so./The court has reviewed the financial declaration of* [*parent(s)/guardian(s)*] *and finds that* [*he/she/they*] [*is/are*] *entitled to appointment of counsel. At this time, the court appoints* [*name of attorney*] *to represent* [*him/her/them*].]

☛ JUDICIAL TIP: When the attorney is on the staff of a government agency, it is the office, not the individual attorney, who is being appointed.

[*If parent(s) or guardian(s) waive(s) counsel*]

This is a serious matter. If the court finds that the allegations in the petition are true, there is a possibility that [*name of child*] may be placed outside your home and that, eventually, your parental rights may be terminated. Do you have any questions about your right to have an attorney represent you at this hearing? Understanding this right and the possible consequences of this hearing, do you want to proceed at this time without an attorney?

[*When applicable, add*]

The court now finds that the [*parent(s)/guardian(s)*] [*has/have*] intelligently waived [*his/her/their*] right to counsel at this hearing.

(3) *Attorney for child*

The court has read and considered the documentary material submitted by the Department of Social Services for the limited purpose of assessing whether to appoint counsel for the child. Would anyone like to be heard on this issue?

[*After hearing evidence, if any, on issue of child's need for attorney*]

The court finds, based on the facts of this case, that [*there is no identifiable benefit to the child that would require appointment of counsel at this time because* [*give explanation from Cal Rules of Ct 5.660(b)*]*./there is a need to appoint counsel for the child at this time. The court appoints* [*name of attorney*] *to represent the child*].

(4) *Explanation of procedure*

I am going to explain to you what happens at these juvenile court proceedings. These proceedings are divided into several separate hearings. You have already participated in an initial or detention hearing. Today's hearing is a jurisdiction hearing. This hearing will determine whether there will need to be a third hearing, called a disposition hearing. If [*name of child*] is not able to be returned home at the disposition hearing, there may be later hearings that may result in the termination of parental rights.

You are in court today for a jurisdiction hearing. The purpose of this hearing is to decide whether the facts contained in the petition, which [*has been/will be*] read to you, are true. If the court finds that the facts are not true, the court will dismiss the case. If the court finds them to be true, the court will then conduct a disposition hearing. The purpose of a disposition hearing is to decide what action, if any, the court should take in view of what has been found to have happened.

If the petition is sustained today (that is, if the court finds that the facts are true) and if [*name of child*] is declared a dependent of the court and removed from the custody of his or her parent or guardian, court-ordered reunification services may not be provided for more than 12 months for a child who is over three years of age at the time of removal or six months for a child who was under three years of age at the time of removal if the parent or guardian does not participate regularly in a court-ordered treatment program.

Because your child is ___ years old, reunification services are limited to [*six/12*] months.

Note: See Cal Rules of Ct 5.668(a) (applicable to detention hearings). Often the attorney for the parent(s) or guardian(s) will state that he or she has explained these matters to the parent(s) or guardian(s) and will go on to explain the position of the parent(s) or guardian(s). Many judges train attorneys who appear in their courts to take this responsibility.

(5) *Notice*

[*One parent or guardian not present; make sure that the absent parent or guardian received notice of the hearing. If so, state*]

The court finds that notice has been given as required by law. The [*mother/father/guardian*] has failed to appear.

[*Both parents or guardian(s) present*]

The court finds that the [*mother/father/guardian(s)*], the child, and all counsel were notified of this hearing and served with the petition as required by law.

[*Notice attempted*]

The court finds that the following attempts were made to locate the [*mother/father/guardian(s)*]*:* [*List attempts.*]. The court has reviewed the declaration of search and finds that the efforts made to locate and serve the [*parent(s)/guardian(s)*] were reasonable.

[*Insufficient attempts at notice*]

The court finds that the Department has not used due diligence in attempting to locate the [*parent(s)/guardian(s)*]*.* The case is therefore continued for one day*.* [*The Department must take the following steps to locate the* [*parent(s)/guardian(s)*]*:* [*List them, e.g., check with Department of Corrections or with child's school.*].]

Note: Only rarely should a judge dictate to DSS specific search efforts that must be undertaken.

(6) *Waiver of reading of petition and advisement of rights*

[*To each counsel*]

Does your client waive reading of the petition and advisement of rights?

(7) *Reading the petition*

[*If not waived, read the petition.*]

Does each of you understand the petition just read, or do you have any question about it that you would like to have answered by the court?

Are there any changes to names, addresses, or ages in the petition that should be corrected?

(8) *Advisement re addresses under Welf & I C §316.1*

The address that [*is in the petition/you gave the court* [*at the detention hearing/today*]] will be used by the court and the social worker for all further notices unless you advise the court and the social worker of any changes in address.

(9) *Advisement of rights*

You have certain rights at this hearing. These are the right to (1) see and hear all witnesses who may be examined by the court at this hearing; (2) cross-examine, which means ask questions of, any witness who may testify at this hearing; (3) present to the court any witnesses or other evidence you may desire; and (4) have a hearing on the issues raised in the petition. You have the right to assert the privilege against self-incrimination [*but anything you say in this or in any other dependency proceeding may not be admissible as evidence in any other action or proceeding*].

(10) *Parent's or guardian's plea*

Do you intend to admit or deny the statements contained in the petition?

☛ JUDICIAL TIP: Many judges consciously refrain from using language that might frighten the parents. They therefore use the phrase "statements contained in the petition," rather than "allegations."

(11) *Parent or guardian admits or pleads "no contest"*

If you admit or do not contest the facts stated in the petition, the court must make its findings on the basis of the petition and any evidence presented by the Department whether those facts are true or not. Do you understand this situation?

Would you like any further explanation concerning the petition or any of the facts stated in it?

Do you understand that by [*admitting/not contesting*] the facts contained in the petition, the court has only the petition and any evidence presented by the Department on which to base its decision?

Do you have any questions about your right to contest the petition?

Do you understand that if the court takes jurisdiction, it may declare your child a dependent of the court and may then remove [*him/her*] from your home? Do you also understand that if this happens and you are not successful in reunifying within the time limits we discussed previously that your parental rights may be terminated? Do you have any questions about this process?

☛ JUDICIAL TIP: Some judges add here that "termination of parental rights means that some other parents may adopt your child and that you will no longer be the mom or dad. Therefore, it is important to participate fully in the case plan that you have been given."

Understanding this right and the possible consequences, do you want to proceed at this time to [*admit the allegations/plead no contest*]? Do you admit the truth of the statements contained in the petition?

The court now finds that the parents understand the allegations, have intelligently waived their right to contest the petition, and understand the consequences of their decision.

(12) *Parent or guardian denies the allegations or neither admits nor denies them*

The [*parent/guardian*], [*name of parent or guardian*], does not admit the allegations.

(13) *The parent or guardian submits the jurisdictional determination based on information provided in the social worker's report*

[*To parent or guardian*]

If the court makes findings solely on the basis of the evidence in the social worker's report, do you understand that you will have given up your right to cross-examine those who prepared the report and to deny the statements found in the report?

The court now finds that the parents understand the allegations, have intelligently waived their right to contest the petition, and understand the consequences of their decision.

[*To parent, guardian, and the attorneys*]

May the court base its findings solely on the social worker's report and other documents that it has received?

The court receives into evidence the report dated [*date*].

Note: The term for the social worker's report varies from county to county. Whatever the local usage, the court must indicate which documents it is relying on.

[*Court reads any written reports and attachments and states for the record all material read.*]

(14) *Parent or guardian denies the allegations or neither admits nor denies them*

Now is the time for you to present any evidence or make any statement you may wish to make before the court decides whether allegations in the petition are true.

Note: The judge should orally examine the child, if present, and the parents or other persons with relevant knowledge bearing on the allegations in the petition. The judge should allow cross-examination of any witness who may testify.

(15) *Introduction of court process to child witness*

Hello. I am Judge [*name*]. I am in charge of this courtroom, My job is to make sure that everything is fair and that everyone else here does his or her job correctly. This is Bailiff [*name*]. [*He/She*] is here to make sure that no one gets hurt. [*Mr./Ms.*] [*name*] is the court reporter. [*He/She*] will write down everything that people say so that if anyone later forgets what was said, we can look it up. It is important to speak loudly and clearly so that [*Mr./Ms.*] [*name*] can hear you.

[*Mr./Ms.*] [*names*] are the lawyers. They will be asking you some questions. Their job is to help you tell what you saw and heard so that we can find out the truth.

It is very important to tell the truth, because if I do not understand the whole truth, I may not be able to make the plan that is best for everyone.

You will be answering questions this afternoon. We will stop often so that everyone may have a rest. If you have any problems before the next break, let [*name of support person/name of attorney/me*] know.

Also, you may not understand all the questions. We are used to talking to other adults and not to children. When you don't understand a question, raise your hand and let me know that you don't understand. If you don't know the answer to a question, just say "I don't know" or "I don't remember."

(16) *Assessing child's competency*

Judges and child development experts suggest assessing a child's communication skills and other aspects of competency by determining whether the child's speech is intelligible and whether the child can stay on

a topic. See THE CHILD VICTIM WITNESS BENCH HANDBOOK APPENDIX A (CJER 2009). Following are some suggested conversational openers designed to permit this determination:

Here we are in the courtroom. What do you see here?

What did you do this morning?

[*For school-age children*]

Tell me about your school.

What do you do when you first get to school?

What do you do after lunch?

— Tell me more about [*specify activities*].

What is your favorite part of the day?

— Tell me more about it.

What is your favorite television program?

— Tell me about it.

— Who is in it?

— What happens in the program?

(17) *Right to seek modification*

[*Once a child has been adjudged a dependent, to the child if at least 12 years old*]

You have a right to ask for changes in any of these juvenile court orders by filing a petition for modification under Welfare and Institutions Code section 388. The forms for filing such a petition are available here in the courtroom (see Welf & I C §353.1). Once you file this petition, you will need to come to court for a hearing.

B. [§101.54] Script: Findings and Orders

(1) *Introduction*

The court has read and considered [*name the documents, which might be the petition, the social worker's report (specify date), and attached documents or whatever the local nomenclature is*]. The court has also considered the testimony of the witnesses and their demeanor on the stand, as well as the arguments of counsel.

(2) *Parties*

The court finds that the legal status of [*name*] is [*status of man who claims or is claimed to be the father*].

Note: As to each man who claims to be (or is alleged by others to be) the father, the court may make a finding as to whether he is a biological or presumed father after holding a hearing on the issue. If the evidence does not establish that he is the biological or presumed father, the court may find that he is not the father of the child or that he remains only an alleged father. See Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §§100.32–100.33 (Cal CJER).

(3) *After uncontested hearing*

[*If allegations are not sustained*]

a. Notice has been given as required by law.

b. The birthdate of the child is [*date*], and the child's county of residence is [*state name of county*].

c. The parents or guardian(s) have knowingly waived the rights to

- Trial on the issues,
- Assert any privilege against self-incrimination,
- Confront and cross-examine adverse witnesses, and
- Use the court's process to compel attendance of witnesses.

d. The parents or guardian(s) understand the nature of the conduct alleged in the petition and the potential consequences of their admission, plea of no contest, or submission.

e. The admission, plea of no contest, or submission has been made voluntarily and freely.

The court finds that the allegations in the petition have not been sustained. The case is dismissed [*and any previously ordered detention is terminated*].

[*If allegations are found to be true*]

The court finds that the allegations in the petition are sustained by a preponderance of the evidence and that [*name of child*] is a child described by Welfare and Institutions Code section 300, subsections ____.

☛ JUDICIAL TIP: Some judges make these findings by clear and convincing evidence whenever warranted.

The court also finds that:

a. Notice has been given as required by law.

b. The birthdate of the child is [*date*], and the child's county of residence is [*state name of county*],

c. The parents or guardian(s) have knowingly waived the rights to

- Trial on the issues,
- Assert the privilege against self-incrimination,
- Confront and cross-examine adverse witnesses, and
- Use the court's process to compel attendance of witnesses.

d. The parents or guardian(s) understand the nature of the conduct alleged in the petition and the potential consequences of their admission, plea of no contest, or submission.

e. The admission, plea of no contest, or submission has been made voluntarily and freely.

f. There is a factual basis for the admission.

g. The admitted allegations of the petition are true as alleged.

(4) *After contested hearing*

The court finds that the allegations in the petition have not been proved by a preponderance of the evidence. The court also finds that notice has been given as required by law and that the birthdate of the child is [*date*], and the child's county of residence is [*state name of county*]. The case is dismissed [*and any previously ordered detention is terminated*].

[*Or*]

The court finds that the allegations in the petition have been proved by a preponderance of the evidence and that [*name of child*] is a child described by Welfare and Institutions Code section 300, subsections _____.

The court also finds that:

a. Notice has been given as required by law.

b. The birthdate of the child is [*date*], and the child's county of residence is [*state name of county*].

(5) *Disposition hearing*

The disposition hearing is scheduled for [*date*], at ____ ___.m. in Department _____. [*Name of parent(s), guardian(s), etc.*] [*is/are*] ordered to attend.

Note: The court may order the disposition hearing to be continued. Under Welf & I C §352(c), waiver is implied if a party is represented by counsel and no objection is made to a continuance.

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David H., In re (2008) 165 CA4th 1626, 82 CR3d 81: §§101.9, 101.51
David M., In re (2005) 134 CA4th 822, 36 CR3d 411: §§101.10, 101.18
Desiree B., In re (1992) 8 CA4th 286, 10 CR2d 254: §101.8
Destiny S., In re (2012) 210 CA4th 999, 148 CR3d 800: §101.10
Diamond H., In re (2000) 82 CA4th 1127, 98 CR2d 715: §101.10
Dolly D., In re (1995) 41 CA4th 440, 48 CR2d 691: §101.40
Drake M., In re (2012) 211 CA4th 754, 149 CR3d 875: §101.10
In addition, children may be
E.B., In re (2010) 184 CA4th 568, 109 CR3d 1: §101.19
E.H., In re (2003) 108 CA4th 659, 133 CR2d 740: §101.13
Ebony W., In re (1996) 47 CA4th 1643, 55 CR2d 337: §101.31
Edward H., In re (2002) 100 CA4th 1, 122 CR2d 242: §101.21
Eric A., In re (1999) 73 CA4th 1390, 87 CR2d 401: §101.51
Eric H., In re (1997) 54 CA4th 955, 63 CR2d 230: §101.48
Esmeralda B., In re (1992) 11 CA4th 1036, 14 CR2d 179: §§101.10, 101.19
Ethan C., In re (2012) 54 C4th 610, 143 CR3d 565: §101.14
Frank L., In re (2000) 81 CA4th 700, 97 CR2d 88: §101.31
G.S.R., In re (2008) 159 CA4th 1202, 72 CR3d 398: §101.10

Hadley B., In re (2007) 148 CA4th 1041, 56 CR3d 234: §101.29
Heather A., In re (1996) 52 CA4th 183, 60 CR2d 315: §101.10
Heather B., In re (1992) 9 CA4th 535, 11 CR2d 891: §101.4
Heather H., In re (1988) 200 CA3d 91, 246 CR 38: §101.45
In re _____. *See* name of party.
I.J., In re (2013) 56 C4th 766, 156 CR3d 297: §§101.12, 101.18
Iris R., In re (2005) 131 CA4th 337, 32 CR3d 146: §101.23
J.H., In re (2007) 158 CA4th 174, 70 CR3d 1: §101.22
J.K., In re (2009) 174 CA4th 1426, 95 CR3d 235: §101.10
J.N., In re (2010) 181 CA4th 1010, 104 CR3d 478: §101.10
J.T., In re (1974) 40 CA3d 633, 115 CR 553: §101.48
James C., In re (2002) 104 CA4th 470, 128 CR2d 270: §101.10
James R., Jr., In re (2009) 176 CA4th 129, 97 CR3d 310: §101.10
James S., In re (1991) 227 CA3d 930, 278 CR 295: §101.31
Jamie R., In re (2001) 90 CA4th 766, 109 CR2d 123: §101.45
Janet O. v Superior Court (1996) 42 CA4th 1058, 50 CR2d 57: §101.31
Janet T., In re (2001) 93 CA4th 377, 113 CR2d 163: §§101.10, 101.15
Jason E., In re (1997) 53 CA4th 1540, 62 CR2d 416: §101.26
Jeanette H., In re (1990) 225 CA3d 25, 275 CR 9: §101.27
Jeff M. v Superior Court (1997) 56 CA4th 1238, 66 CR2d 343: §101.25
Jeffrey P., In re (1990) 218 CA3d 1548, 267 CR 764: §101.6
Jennifer J., In re (1992) 8 CA4th 1080, 10 CR2d 813: §101.42
Jennifer P., In re (1985) 174 CA3d 322, 219 CR 909: §101.6
Jennifer V., In re (1988) 197 CA3d 1206, 243 CR 441: §101.51
Jessica C., In re (2001) 93 CA4th 1027, 113 CR2d 597: §§101.20, 101.42, 101.44
Jessica F., In re (1991) 229 CA3d 769, 282 CR 303: §101.14
John S., In re (2001) 88 CA4th 1140, 106 CR2d 476: §101.19
John W., In re (1996) 41 CA4th 961, 48 CR2d 899: §§101.8, 101.11
Jordan R. In re (2012) 205 CA4th 111, 140 CR3d 222: §101.47
Joshua G., In re (2005) 129 CA4th 189, 28 CR3d 213: §101.4
Joshua H., In re (1993) 13 CA4th 1718, 17 CR2d 282: §101.13
Joshua J., In re (1995) 39 CA4th 984, 46 CR2d 491: §101.18
Karen R., In re (2001) 95 CA4th 84, 115 CR2d 18: §§101.12, 101.18
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La Shonda B., In re (1979) 95 CA3d 593, 157 CR 280: §§101.4–101.5
Laura H., In re (1992) 8 CA4th 1689, 11 CR2d 285: §101.45
Lauren P., In re (1996) 44 CA4th 763, 52 CR2d 170: §101.51
Laurie S. v Superior Court (1994) 26 CA4th 195, 31 CR2d 506: §101.28
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Mark C., In re (1992) 7 CA4th 433, 8 CR2d 856: §101.47
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Matthew S., In re (1996) 41 CA4th 1311, 49 CR2d 139: §§101.5, 101.11, 101.15
Melissa H., In re (1974) 38 CA3d 173, 113 CR 139: §101.5
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Monique T., In re (1992) 2 CA4th 1372, 4 CR2d 198: §§101.32, 101.35–101.36
Nada R., In re (2001) 89 CA4th 1166, 108 CR2d 493: §101.47
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R.C., In re (2011) 210 CA4th 930, 148 CR3d 835: §101.10
R.M., In re (2009) 175 CA4th 986, 96 CR3d 655: §101.10
R.R., In re (2010) 187 CA4th 1264, 114 CR3d 765: §101.47
Raymond R., In re (1994) 26 CA4th 436, 31 CR2d 551: §101.22

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