

CALIFORNIA JUDGES BENCHGUIDES

Benchguide 102

**JUVENILE DEPENDENCY
DISPOSITION HEARING**

[REVISED 2013]



ADMINISTRATIVE OFFICE
OF THE COURTS

JUDICIAL AND COURT OPERATIONS
SERVICES DIVISION

CENTER FOR JUDICIARY EDUCATION AND RESEARCH

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JUVENILE DEPENDENCY DISPOSITION HEARING

I. [§102.1] SCOPE OF BENCHGUIDE

II. [§102.2] PROCEDURAL CHECKLIST

III. APPLICABLE LAW

- A. [§102.3] Purpose of Disposition Hearing
- B. Calendaring the Hearing
 - 1. [§102.4] Time Limitations
 - 2. Continuances
 - a. [§102.5] Grounds for Continuance
 - b. [§102.6] No Good Cause
 - c. [§102.7] Procedure
- C. Appearances
 - 1. [§102.8] Generally
 - 2. [§102.9] Exclusion From Courtroom
 - 3. [§102.10] De Facto Parents
 - a. [§102.11] Determination of De Facto Status
 - (1) [§102.12] Factors To Consider
 - (2) [§102.13] Grandparents
 - b. Procedure
 - (1) [§102.14] Establishing De Facto Status
 - (2) [§102.15] Consequences of De Facto Status
 - 4. Attorneys
 - a. [§102.16] Appointment
 - b. [§102.17] Competency
 - c. [§102.18] Responsibilities
 - d. [§102.19] Withdrawal
- D. [§102.20] Prehearing Disclosure
- E. Conducting the Disposition Hearing
 - 1. [§102.21] In General
 - 2. [§102.22] Recording the Hearing
 - 3. [§102.23] Judicial Officers Who May Conduct Hearing
 - a. [§102.24] Obtaining Stipulations
 - b. [§102.25] Commissioners

-
4. [§102.26] Determination of Notice; Notification re Welf & I C §361.5
 5. [§102.27] Advisement of Rights
 6. Presentation of Evidence
 - a. [§102.28] Social Worker's Report
 - (1) [§102.29] Contents
 - (2) [§102.30] Right To Cross Examine Preparers
 - b. [§102.31] Other Evidence
 - (1) [§102.32] Expert Testimony and Character Evidence
 - (2) [§102.33] Additional Grounds for Removal
 - c. [§102.34] Evidentiary Privileges
 - d. [§102.35] Immunity
 - F. [§102.36] Disposition Orders Generally
 - G. [§102.37] Decision Process—Declaring Dependency
 - H. [§102.38] Decision Process—Removing the Child
 1. [§102.39] Findings
 2. [§102.40] Standard of Proof
 3. [§102.41] Removal Not Warranted
 4. [§102.42] Removal Warranted
 5. [§102.43] Sibling Considerations
 - I. Parental Custody
 1. [§102.44] Child Remains With Custodial Parent
 2. [§102.45] Placement With Noncustodial Parent
 - a. [§102.46] Possible Orders
 - b. [§102.47] Requirements for Custody Order
 - c. [§102.48] Placement With Biological Father
 - d. [§102.49] Reunification Services
 - e. [§102.50] Out-of-State Placements
 - J. [§102.51] Placement With Nonparent
 1. Placement Options
 - a. [§102.52] Social Worker's Nonparental Options
 - b. [§102.53] Placement Outside United States
 2. [§102.54] Indian Child
 3. Placement With Relative
 - a. [§102.55] Factors To Consider
 - b. [§102.56] Who Qualifies as Relative
 - c. [§102.57] Procedure/Investigations
 4. [§102.58] Foster Care Placement
 - K. Guardianship
 1. [§102.59] In General
 2. [§102.60] Assessment
 3. [§102.61] Procedure
 - L. Reunification Services
 1. [§102.62] In General
 2. Length of Services
 - a. [§102.63] Calculating Length; Terminating or Extending Services
 - b. [§102.64] Continuing or Terminating Family Services

3. [§102.65] Advisements
 4. [§102.66] Formulating Reunification Plans
 - a. [§102.67] Case-Limited and Case-Specific Plans
 - b. [§102.68] Family Dynamics and Issues
 5. Who Is Entitled to Services
 - a. [§102.69] Generally
 - b. [§102.70] Stepparents, Foster Parents, and De Facto Parents
 - c. [§102.71] Services for Biological Fathers
 - d. [§102.72] Noncustodial Parents and Grandparents
 - e. Incarcerated, Institutionalized, or Detained Parents
 - (1) [§102.73] In General
 - (2) [§102.74] Incarcerated or Detained Parents
 - (a) [§102.75] Facilitation of Court Appearances
 - (b) [§102.76] Visitation
 6. Denial of Reunification Services
 - a. [§102.77] Generally
 - b. [§102.78] Exceptions
 - c. [§102.79] Denial of Services to One Parent Only
 - d. [§102.80] Severe Sexual or Physical Abuse
 - e. [§102.81] Whereabouts of Parent or Guardian Unknown
 - f. [§102.82] When Parent Has Mental or Developmental Disability
 - h. [§102.83] Parents Resistant to Drug Treatment
 - i. [§102.84] Causing Death of Another Child
 - j. [§102.85] Waiver of Services
- M. [§102.86] Visitation
1. Crafting Visitation Orders
 - a. [§102.87] In General
 - b. [§102.88] Impermissible Delegation
 - c. [§102.89] Permissible Delegation
 2. Incarcerated Parents
 - a. [§102.90] In General
 - b. [§102.91] When Incarceration Is for Sexual Abuse
 3. [§102.92] Denying Visitation
 4. [§102.93] Grandparents
 5. [§102.94] De Facto Parents
 6. [§102.95] Siblings
- N. Other Findings and Orders
1. [§102.96] Reasonable Efforts To Prevent Need for Removal of Child From Home
 2. [§102.97] Treatment of Child for Mental Disorders
 3. [§102.98] Treatment of Child or Parent for Addiction
 4. [§102.99] Siblings
 5. [§102.100] Psychological Evaluations and Therapy
 6. [§102.101] Orders Relating to Education or Developmental Services
 7. [§102.102] Restraining Orders
 8. [§102.103] Periodic Reports by Social Worker

9. [§102.104] Orders Regarding Life-Sustaining Medical Treatment
10. [§102.105] Additional Findings
- O. Relationship of Juvenile Court to Other Courts
 1. [§102.106] Family Law Court
 2. [§102.107] Criminal Court
 3. [§102.108] Filing Juvenile Court Orders in Family Law Court
- P. [§102.109] Confidentiality of or Access to Juvenile Court Records
- Q. Setting Further Hearings
 1. [§102.110] Detention Pending Execution of Disposition Order
 2. [§102.111] Selection and Implementation (.26) Hearings
 3. [§102.112] Review Hearings
- R. [§102.113] Appeals and Reviews
 1. [§102.114] From an Order Setting a .26 Hearing
 2. [§102.115] Advice Concerning Appeal

IV. SAMPLE FORMS

- A. [§102.116] Script: Conduct of Disposition Hearing
- B. [§102.117] Script: Findings and Orders
- C. [§102.118] Written Form: Standing Order—Disclosure of Testimony and Psychological Evaluations
- D. [§102.119] Written Form: Order Approving Child’s Application for Authorization of Inpatient Mental Health Services
- E. [§102.120] Written Form: Declaration of Reasonable Efforts

V. [§102.121] REFERENCES

APPENDIX: SUMMARY OF STATUTORY EXCEPTIONS TO REUNIFICATION SERVICES ORDERS

TABLE OF STATUTES

TABLE OF CASES

I. [§102.1] SCOPE OF BENCHGUIDE

This benchguide provides a procedural overview of dependency disposition hearings, held generally under Welf & I C §§358–364 and Cal Rules of Ct 5.690–5.705. The benchguide covers the conduct of the hearing and possible findings and orders; it contains a procedural checklist, a brief summary of the applicable law, and spoken and written forms.

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

II. [§102.2] PROCEDURAL CHECKLIST

(1) *Attorneys serving as temporary judges should obtain a stipulation from the parties 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 §§102.23–102.25.

(2) *Call the case.* In many counties, the social worker serving as court officer or the deputy county counsel calls the case and announces the appearances. Some judicial officers 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), (d)–(e).

- *If requested, determine whether anyone requesting de facto parent status, any relative, or any other member of the public should be present.* Welf & I C §346; Cal Rules of Ct 5.502(10), 5.530(b), (e), 5.534(e)–(f).
- *If requested, and local procedures and protocols exist for appearance by telephone or electronic means, it must be determined whether a party may appear by telephone or electronic means.* Cal Rules of Ct 5.531; see Pen C §2625 (appearance by prisoner in proceeding to terminate parental rights).
- *If not handled at an earlier hearing, inquire about the identity and address of a presumed or alleged father or mother.* See Welf & I C §316.2; Cal Rules of Ct 5.635.
- *Exclude all persons from the court except the parties, persons declared to be de facto parents, counsel, and 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.
- *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).
- *If the child is 10 years of age or older and is present, permit his or her participation if he or she desires it.* Welf & I C §349(a), (c); Cal Rules of Ct 5.534(p)(1). *If the child is not present, determine whether he or she was properly notified of his or her right to attend the hearing and inquire whether he or she was given an opportunity to attend.* See Welf & I C §349(d); Cal Rules of Ct 5.534(p)(2). *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 but only for that period of time necessary to provide notice and secure the child's presence, unless it finds that a continuance would not be in the child's best interest.* Welf & I C §349(d); Cal Rules of Ct 5.534(p)(2).

Note: The steps above concerning notice and determination of paternity and some of those that follow (including appointment of counsel) will usually have been taken at the detention or jurisdiction hearing and therefore will not have to be repeated at the disposition hearing unless the parent is appearing for the first time.

- **JUDICIAL TIP:** Judges should ensure that the clerk places the addresses and the advisement into the minute order and that DSS gets the order.

(4) *If no parent or guardian is present:*

- *Determine whether the parent or guardian received actual notice of the hearing.* In addition to the notice to appear made under Welf & I C §§297 (supplemental and subsequent petitions) and 332, the juvenile court may issue a citation directing any

parent, guardian, or foster parent to appear and bring the child to the hearing. Welf & I C §362.3.

- *If not, determine whether due diligence efforts to serve them were made.*
- *If due diligence efforts are not found, continue the hearing for a reasonable time to permit proper service.*
- *Make a finding that notice has or has not been given or attempted as required by law. See Cal Rules of Ct 5.534(l).*

➤ **JUDICIAL TIP:** If the disposition hearing followed immediately after the jurisdiction hearing, it is not necessary at the disposition hearing to check that notice was properly given. However, it may still be good practice for judges to do so. If there is a finding of notice at this hearing, the judge should ensure that the clerk enters it, and all findings, in the minute order.

(5) *If a parent is present for the first time, inquire whether the child has American Indian heritage and, if so, the nature of that heritage, including whether the parent or child is a member of a recognized tribe and the name of the tribe if known. The court must take steps to ensure that proper notice is given. See Welf & I C §224–224.2; Cal Rules of Ct 5.534(i), 5.481; discussion in California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §§100.48–100.51 (Cal CJER).*

(6) *Advise any unrepresented parent or guardian of the right to retain counsel and the right to appointed counsel if he or she desires counsel and cannot afford to retain one. If counsel has been retained or appointed to represent more than one parent or guardian, the court must examine the parties to determine if a present or potential conflict exists. If there has been no prior resolution of this issue and therefore no conflict of interest statement is on file, the court should obtain a personal waiver of conflict of interest from each of the affected parties or take steps to ensure that the rights of all parties are protected. The court must appoint counsel for an unrepresented parent or guardian as warranted, including any incarcerated parents. Welf & I C §317(a)(1); Cal Rules of Ct 5.534(g)–(h). If the child is an Indian child, the court must appoint counsel for the parent, Indian custodian, or Indian guardian. Welf & I C §317(a)(2); 25 USC §1912(b).*

Note: Counsel will usually have been appointed for the parents and the child at the earlier detention or jurisdiction hearings

➤ **JUDICIAL TIP:** If the parents had waived their right to counsel earlier, the judge may check to see if a valid waiver is in the file. If the parent is in custody, the social worker or other appropriate person should be directed to contact the parent to ask whether he or she desires counsel.

(7) *If the child, nonminor, or nonminor dependent is not represented by counsel, appoint one unless the child, nonminor, or nonminor dependent would not benefit from the appointment. The court must state on the record the reasons for any finding that the child, nonminor, or nonminor dependent would not benefit from counsel. Welf & I C §317(c); Cal Rules of Ct 5.534(g)–(h). See also Cal Rules of Ct 5.660 (standards for appointment, required findings when child would not benefit from counsel, and use of CASA (court-appointed special advocate) as guardian ad litem, alternative to counsel). For a definition and general provisions governing a*

“nonminor dependent,” see Welf & I C §11400(v) and Cal Rules of Ct 5.900. See also California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §100.18 (Cal CJER).

➡ JUDICIAL TIPS:

- If there are siblings, the court should consider appointing separate attorneys for each sibling when they have different interests. See *In re Clifton B.* (2000) 81 CA4th 415, 428, 96 CR2d 778; Cal Rules of Ct 5.660(c). When there is a reasonable likelihood that a conflict of interest among siblings will arise, the court must appoint separate counsel. *Carroll v Superior Court* (2002) 101 CA4th 1423, 1429–1430, 124 CR2d 891.
- Some judges will also appoint a CASA to advocate for the child’s interests. See Welf & I C §356.5; Cal Rules of Ct 5.655.

(8) *Unless the inquiry was conducted and resolved at the initial or detention hearing or the jurisdiction 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 ask about the progress made to resolve the issue (e.g., whether there are results of paternity tests). Welf & I C §316.2. See discussion in California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §§100.32–100.33 (Cal CJER).

(9) *Advise the parties of their hearing rights or obtain a waiver.* Cal Rules of Ct 5.534(k). The judicial officer should ask the attorneys whether they have explained these rights to their respective clients and then should ask the parties to confirm that they have had the rights explained to them, that they understand them, and that they waive formal reading of them. If the disposition hearing followed immediately after the jurisdiction hearing, the court need not re-advise the parties of their rights or obtain a new waiver at this time. See discussion in §102.27

(10) *Review the documentary evidence and read and consider any reports prepared by DSS, including recommendations contained in the reports and attachments; state on the record that the reports have been read, considered, and received into evidence.* See Welf & I C §§358(b), 358.1; Cal Rules of Ct 5.690. The social study (see §§102.28–102.30) must be submitted to the clerk at least 48 hours before the disposition hearing is scheduled to begin. Cal Rules of Ct 5.690(a)(2).

(11) *Read and consider the reports or testimony of any court-appointed special advocate (CASA).* Welf & I C §358(b).

(12) *Consider the testimony provided and other items offered.* See Welf & I C §358(a); Cal Rules of Ct 5.690(b).

(13) *Plan for facilitating child’s testimony if one or more parties request that the child testify.* See Welf & I C §350(b); Cal Rules of Ct 5.534(c). Usually the child has testified at the jurisdiction hearing and will not testify further at the disposition hearing.

(14) *Dismiss the petition or declare dependency if appropriate* (see §102.37). If the court does not declare dependency, it must dismiss the petition or place the child under informal DSS supervision. See Welf & I C §§360(b), 390; Cal Rules of Ct 5.695(a)(1)–(2).

(15) *Order the child, who has been declared a dependent, to remain in or be returned to the home, or make an out-of-home placement order if the court makes required findings.*

- *Child to remain in custody of parent or guardian* (see §§102.44–102.50)—with appropriate services such as:
 - Case management

- Counseling
- Emergency in-home caretakers
- Respite care
- Homemaking classes
- Parenting classes
- Any other services authorized by Welf & I C §§16500–16521.5
- *Need for removal* (see Welf & I C §361(c))—*findings by clear and convincing evidence that*
 - Leaving the child in or returning the child to the home would cause a substantial danger to the child’s physical health, safety, protection, or physical or emotional well-being and there are no reasonable means by which the child’s health can be protected without removal. The court must also consider whether to remove from the home the parent who has caused the harm or to permit the other parent to retain physical custody on the condition that the parent explain to the court how he or she will protect the child from further harm.
 - The parent or guardian is unwilling to assume physical custody of the child and has been notified that the child might be declared permanently free from parental custody and control if he or she remains outside the home.
 - The child is suffering severe emotional damage and there are no reasonable means to protect the child’s emotional health without removal.
 - The child or a sibling has been sexually abused, or is at substantial risk of abuse, by the parent, guardian, or member of the household, and removal is the only means of protecting the child.
 - The child has been left without provision for support, an incarcerated parent cannot arrange for the child’s care, or an adult custodian with whom the child was left is unable or unwilling to care for the child and the parent cannot be located.
 - ICWA Proceeding: Continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child as shown by a “qualified expert witness” under Welf & I C §224.6, unless that requirement is waived.
- *Order of placement preference if child must be removed* (see Welf & I C §361.2(e)). See §§102.45–102.58.
- *Whether reasonable efforts to prevent or eliminate the need for removal (or active efforts in the case of an Indian child) were made* (see Welf & I C §361(d); §102.54).
- *Whether or not DSS has used due diligence in identifying, finding, and notifying relatives.* Cal Rules of Ct 5.695(f), (g). See §102.55.
- *Placement with relative* (see §§102.55–102.57)—*considerations:*
 - Safety of the child if placed with the relative
 - Best interests of the child
 - Parent’s wishes

- Provisions of Fam C §7950 (preferential consideration) with respect to placement with relative
- Placement of siblings and half siblings in the same home
- Good moral character of the relative
- Whether the relative can:
 - provide a secure, stable environment
 - exercise care and control
 - provide a home and necessities of life
 - protect the child from the parents
 - facilitate court-ordered reunification efforts
 - facilitate visitation with other relatives
 - facilitate implementation of the case plan
 - provide legal permanence for the child if reunification fails
- *Placement with nonrelative* (see §§102.58–102.61).
- *Placement with extended family member* (see §§102.52–102.53).
- *Placement with noncustodial parent* (see §§102.45–102.50).
- *Placement and visitation with siblings, including suspension of sibling interaction* (see §§102.43, 102.56, 102.99).
- *Guardianship* (see §§102.59–102.61).

(16) *Order reunification services and visitation as appropriate.*

- *Provision of reunification services* (see §§102.62–102.65). The court must advise the parent about time limitations on reunification services. Welf & I C §361.5(a); see Cal Rules of Ct 5.695(h)(1), (2).
- *Determination of when provision of reunification services would be in best interests of child in a Welf & I C §361.5(b) situation* (see §102.82).
- *Visitation with incarcerated parent* (see §§102.90–102.95).
- *Reunification services for incarcerated, institutionalized, or detained parents* (see §§102.73–102.76)

(17) *If appropriate, find by clear and convincing evidence one or more of the circumstances by which the court may deny reunification services.* See §102.77. A judge should require DSS to designate the code sections under which it is requesting denial of services. See Welf & I C §361.5(a)–(b), (e)(1); Cal Rules of Ct 5.695(h)(6); §§102.78–102.85).

(18) *On making appropriate findings, order services in a situation in which services might otherwise be denied.*

- *The court may order reunification services in situations described by Welf & I C §361.5(b)(3)–(4), and (6)–(16) if it finds by clear and convincing evidence that reunification is in the child’s best interest.* Welf & I C §361.5(c).
- *The court may also determine that reunification services would benefit the child who would otherwise be denied services under Welf & I C §361.5(b)(6) or §361.5(b)(7)*

(relating to severe sexual abuse of child or to not receiving services for siblings or half-siblings) on consideration of relevant information, such as that set out in Welf & I C §361.5(i) and Cal Rules of Ct 5.695(h)(11).

- *The court may order services in a situation governed by Welf & I C §361.5(b)(5) (severe physical abuse under the age of five) if it finds by competent evidence that services are needed to prevent further abuse or continued neglect of the child or that failure to attempt reunification is likely to be detrimental to the child because of a close attachment to the parent. Welf & I C §361.5(c); Cal Rules of Ct 5.695(h)(12).*

(19) *Make orders regarding child's needs and treatment.*

- *Mental health counseling or therapy (see §102.97).*
- *Treatment for abuse of alcohol and other drugs (see §102.98).*
- *Visitation with parents and others (see §§102.87–102.94).*
- *Sibling visitation and interaction (see §§102.95, 102.99).*
- *Mental health evaluation of child and parents (see §102.100).*
- *Child's educational and developmental services needs (see §102.101).*
- *Restraining orders (see §102.102).*
- *Subsequent periodic reports (see §102.103).*
- *Custody and visitation orders enforceable in family court when juvenile court jurisdiction is terminated (see §102.108).*
- *Requests for disclosure (see §102.109).*
- *Paternity testing.*

(20) *Rule on any additional requests.*

- *Notice (see §102.26).*
- *Paternity (see §102.105).*
- *Joinder of private service providers (see §102.36).*
- *Continuation of prior out-of-home placement (see §102.36).*

(21) *Set further hearings as necessary.*

- *Continuation of disposition hearing for receipt of new case plan.*
- *Review hearing within the earlier of six months from the date of the disposition hearing but no later than 12 months after the child entered foster care as determined by Welf & I C §361.49. See Welf & I C §366.21(e); Cal Rules of Ct 5.710(a).*
- *.26 hearing under Welf & I C §361.5(f) if reunification services are not ordered.*

🔑 JUDICIAL TIPS:

- Some judges set the 12-month permanency hearing and any interim hearings deemed necessary at the disposition hearing. The 12-month hearing must be held within 12 months from the date the child entered foster care as determined by Welf & I C §361.49. Welf & I C §366.21(f). This date is defined as the earlier of the date of the jurisdictional hearing or the date that is 60 days after the initial removal by a social worker or police

officer from the custody of the parent or guardian. Welf & I C §§361.49, 361.5(a)(1); Cal Rules of Ct 5.502(9)(A).

- The case file should be prominently marked with the last date for the 18-month permanency review hearing, which is 18 months from the date the child was initially removed from the custody of the parent or guardian, unless the child is under the age of three and the 12-month time frame applies. The file should also be marked with the presumptive maximum duration of services, which is six months for a child under three years of age and 12 months for a child three years of age. See Welf & I C §361.5(a)(1)–(4).
- The Juvenile Law Advisory Committee of the Judicial Council strongly recommends that for cases involving children who are under three years of age at the time they are initially removed, a progress review appearance hearing be set within 90 days of disposition. The purpose of this hearing would be to confirm that services as ordered are being offered or provided and that the parent or guardian is participating in those services. The hearing would provide an opportunity for the court to remind the parties of the short time period available to achieve reunification and the risk of the termination of reunification services at the six-month review if the parent has failed to participate in those services.
- Any change in the disposition orders would be considered only if a properly noticed petition under Welf & I C §388 is presented and granted or set for hearing. Dispositional orders are subject to modification under Welf & I C §388. *In re Karen G.* (2004) 121 CA4th 1384, 1390, 18 CR3d 301.

III. APPLICABLE LAW

A. [§102.3] Purpose of Disposition Hearing

Once the allegations in the petition are sustained at a jurisdiction hearing, a disposition hearing is held to determine whether the child should be declared a dependent child. *In re Heather B.* (1992) 9 CA4th 535, 543–544, 11 CR2d 891; Welf & I C §360(d); Cal Rules of Ct 5.695(a). A child may be declared a dependent when no parent is available to protect or care for the child even if there is no evidence that either of the parents ever caused the child harm. *In re Alexis H.* (2005) 132 CA4th 11, 16, 33 CR3d 242.

If dependency is declared, the court must determine the proper home for the child and appropriate orders for the child and family. Welf & I C §358(a). An important goal is to permit the child to remain with his or her family, preferably with a parent, if that can be done safely. See discussion in §§102.33, 102.38–102.41. However, if the child must be removed from the home to ensure the child’s safety, the purpose of the disposition hearing is to make orders facilitating the reunification plan and to ensure that the child’s physical and psychological needs are met during the period of reunification. See *In re Baby Girl D.* (1989) 208 CA3d 1489, 1493, 257 CR 1. During this period of reunification, the court must be engaged in concurrent planning for a permanent placement should reunification efforts fail. See Welf & I C §§358.1(b), (i), 16501.1(f)(10).

B. Calendaring the Hearing

1. [§102.4] Time Limitations

The disposition hearing will generally be held immediately after the jurisdiction hearing. Often the social study prepared for use at the jurisdiction hearing will contain dispositional recommendations. In this situation, the disposition hearing can go forward immediately after the finding of jurisdiction. See Welf & I C §358(a) (court must hear evidence on disposition after finding that child is described by Welf & I C §300).

If the disposition hearing is not held immediately following the jurisdiction hearing (often the case when the disposition hearing is contested), it must be held within ten court days of the jurisdiction hearing if the child is detained (Welf & I C §358(a)(1); Cal Rules of Ct 5.686(a)) or within 30 days of the jurisdiction hearing if the child is not detained (Welf & I C §358(a)(2)).

If the child has been removed from the parents' or guardians' custody, the court may not grant a continuance that would cause the disposition hearing to be completed more than six months after the detention hearing, nor should the disposition hearing be continued to a date more than 60 days after the detention hearing unless there are exceptional circumstances. Welf & I C §352(b); Cal Rules of Ct 5.550(a)(3). The court must hold a disposition hearing within the time limits of Welf & I C §352(b) (no later than six months from the detention hearing) even when an incarcerated parent's statutory right to be present at the hearing under Pen C §2625(d) is violated through no fault of the parent. *D.E. v Superior Court* (2003) 111 CA4th 502, 505–506, 4 CR3d 10. See §§102.5–102.7 generally for a discussion of continuances. Even though failure to comply with these time limits does not deprive the court of jurisdiction (*In re Richard H.* (1991) 234 CA3d 1351, 1362, 285 CR 917) or necessarily require reversal of the disposition order (*In re Angelique C.* (2003) 113 CA4th 509, 523, 6 CR3d 395), the court should do everything in its power to ensure that the matter is heard as quickly as possible.

➤ **JUDICIAL TIP:** Although there are many ways to manage a juvenile dependency calendar, several effective general rules appear to be somewhat universal:

- Ongoing trials have priority over trials that have not yet started.
- Once begun, trials should be heard on consecutive days until completed.
- Cases in which children have been placed outside the home have priority over cases in which the children have been placed with a parent, unless there are concerns about the safety of the children in the parent's home.
- Cases that are in the prepermanency planning stage generally have priority over cases that are in postpermanency planning.

Statutory time frames serve a purpose and should be adhered to as much as possible. Adherence to these rules may help ensure that disposition hearings are heard in a timely fashion.

In many counties, services are provided as soon as a child is detained (see Welf & I C §319(e)), so that parents are working towards return at the earliest possible opportunity. Sometimes this allows the child to be returned home at the disposition hearing.

2. Continuances

a. [§102.5] Grounds for Continuance

The disposition hearing may be continued for the preparation of a report, a contested hearing, or for other good cause on either the court's own motion or on motion of the parent, guardian, or child, as follows:

- Up to ten judicial days if the child is detained and Welf & I C §361.5(b) (conduct or situation of the parent warrants no reunification services) is not alleged. Welf & I C §358(a)(1); Cal Rules of Ct 5.686(a), (b).
- Up to 30 days if the child is not detained, with an additional 15-day period for good cause. Welf & I C §358(a)(2); Cal Rules of Ct 5.686(a).
- Up to 30 days if the social worker has alleged that Welf & I C §361.5(b) is applicable. Welf & I C §358(a)(3); Cal Rules of Ct 5.686(b). This continuance is mandatory. See Welf & I C §358(a)(3).

Also, the mandatory stay requirements of the Servicemembers Civil Relief Act (SCRA) (50 USC App §502) prevail over the California time requirements for holding the disposition hearing (Welf & I C §352(b)). *In re A. R.* (2009) 170 CA4th 733, 744, 88 CR3d 448.

In addition to the rules governing continuances in disposition hearings, the general rules governing continuances in juvenile dependency proceedings apply. Under these rules, 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 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). As with all other hearings in dependency cases, requests to continue disposition hearings should be scrutinized closely, granted only when necessary, and granted for the shortest time possible. The court in *In re Emily L.* (1989) 212 CA3d 734, 743, 260 CR 810, stated: "Throughout the dependency and parental termination statutes, we find the admonition to accelerate proceedings so that the child is not kept 'in limbo' any longer than necessary. Continuances are expressly discouraged." See also §102.4 for a discussion of time limits in scheduling or continuing a disposition hearing.

Failure of a party in a dependency proceeding to receive a social study at least 48 hours before the disposition hearing is a ground for a continuance, but the continuance must be within statutory limits. Cal Rules of Ct 5.690(a)(2).

- **JUDICIAL TIP:** Even if the parents receive the social study within the 48-hour statutory time limit, it may sometimes be advisable to grant the parents a short continuance to prepare for the hearing. A continuance might be justified when there is a particularly complex case or when the report reveals the need for witnesses not previously contemplated.

If the child was not properly notified of the right to be present at the disposition 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).

b. [§102.6] No Good Cause

Chronic court congestion in the juvenile court is not good cause for continuing the hearing; dependency cases demand priority. See, e.g., *Jeff M. v Superior Court* (1997) 56 CA4th 1238, 1242–1243, 66 CR2d 343 (after more than a year from the filing of the petition, jurisdiction hearing had still not been completed). Because the juvenile court had continued the case many times, placing it far beyond statutory guidelines, the court of appeal directed it to conduct trial all day every day until the conclusion unless good cause for a continuance was actually shown. *Jeff M. v Superior Court, supra*, 56 CA4th at 1243. In addition, the court of appeal found that continuing a jurisdiction hearing to a date almost four months from removal and conducting trial only two days per week was an abuse of discretion because, under a Welf & I C §352(b) analysis, there were no extraordinary circumstances to justify holding the disposition hearing more than 60 days from the detention hearing. *Renee S. v Superior Court* (1999) 76 CA4th 187, 193–198, 90 CR2d 134.

A stipulation between counsel, the convenience of parties, or pending criminal or family law cases involving the same family do not constitute good cause for a continuance. Cal Rules of Ct 5.550(a)(2). An alleged father's failure to return a certified receipt of notice is also not good cause to continue a hearing. See Welf & I C §316.2(c); Cal Rules of Ct 5.550(a)(6).

- **JUDICIAL TIP:** Some judges advise attorneys that they are reluctant to find good cause for a continuance when an attorney has a conflict. Dependency cases should have priority over other kinds of cases.

Moreover, although sudden illness or unforeseen circumstances that prevent a party from appearing may amount to good cause, the party who has adequate notice of the proceedings and fails to adjust personal plans to permit attendance at trial is not justified in requesting a continuance. See, e.g., *Young v Redman* (1976) 55 CA3d 827, 831, 128 CR 86 (civil case); see also *Marriage of Teegarden* (1986) 181 CA3d 401, 405–406, 226 CR 417 (no continuance should be granted for a situation that could have been anticipated or avoided).

- **JUDICIAL TIPS:**

- Requests are frequently made by attorneys or DSS to continue disposition hearings for extended periods of time to complete psychological evaluations or paternity testing. Unless the psychological evaluations are necessary to establish the risk posed to the child by the parent (Welf & I C §361(c)) or to deny reunification services (Welf & I C §361.5(b)(2)), these evaluations can usually be completed after the disposition hearing. If reunification services are ordered and later psychological evaluations show that the parent suffers a mental disability that renders the parent incapable of utilizing services, a petition under Welf & I C §388 can be used for the modification of the disposition order and denial of services. *Sheila S. v Superior Court* (2000) 84 CA4th 872, 877–879, 101 CR2d 187.
- If an alleged father has not previously sought to establish his paternity, the child's disposition hearing should not have to wait for him to do so. The disposition hearing should normally go forward and, if a change of orders is necessary after disposition as a result of the psychological evaluation or paternity testing, the case can be brought back for the court's consideration. See Welf & I C §388.

- Motions for continuances are sometimes based on the fact that a parent is awaiting trial or sentencing on a related criminal matter. This is not good cause and is expressly prohibited by Welf & I C § 352(a).
- If there is reason to believe that the child may be an Indian child under the Indian Child Welfare Act (ICWA) and there has not been a response from the designated tribe or tribes, or from the Bureau of Indian Affairs, rather than continue the matter, the best course of action is to proceed under the provisions of the Act.
- Because court-ordered reunification services will presumptively end at the six-month review hearing for a child who was under the age of three years at the time of initial removal, or a member of a sibling group in which one sibling is under three (see Welf & I C §§361.5(a), 366.21(e); discussion in §102.62), courts should be alert for requests to set the disposition hearing beyond the 60-day time limit and should strictly adhere to the requirements of Welf & I C §§352 and 358(a), in considering requests for a continuance.
- A parent's request for a continuance to retain new counsel should be denied when there is no suggestion that appointed counsel's performance is inadequate. *In re Giovanni F.* (2010) 184 CA4th 594, 604–605, 108 CR3d 885.

c. [§102.7] Procedure

Written notice requesting a continuance 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). 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); 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 a consent to the continuance. Welf & I C §352(c).

C. Appearances

1. [§102.8] Generally

In addition to notices to appear made under Welf & I C §§297 (supplemental and subsequent petitions) and 332, the juvenile court may issue a citation directing any parent, guardian, or foster parent to appear and bring the child to the hearing. Welf & I C §362.3. The notice must state that the parent, guardian, or foster parent may be required to participate in a counseling or educational program with the child. Welf & I C §362.3.

At the disposition hearing, as with any juvenile court hearing, the child, who is the subject of the proceeding, is a party (Welf & I C §317.5(b)) and is therefore entitled to be present, address the court, and participate in the hearing. Welf & I C §349(a), (c). In addition to the child, Welf & I C §§349(a), 290.1, 290.2, and Cal Rules of Ct 5.530(b) permit the following persons to be present:

- Counsel for child, counsel for parent or guardian, de facto parent, and Indian custodian.
- Parents or guardians.
- A sibling in certain circumstances and/or his or her caregiver and attorney.

- De facto parents (see §§102.10–102.15).
- Adult relatives residing in the county or nearest to the court (if no parent or guardian can be found or none reside within the state).
- Social worker.
- Court clerk.
- Court reporter.
- Bailiff, at the court’s discretion.
- Representative of an Indian child’s tribe in a proceeding described by Cal Rules of Ct 5.480 (see Welf & I C §224.2).
- Interpreters, as required.
- Any court-appointed special advocate (see also Cal Rules of Ct 5.655 for program guidelines for recruiting, selecting, and training these advocates).

If the hearing is a disposition hearing that is also serving as a permanency hearing under Welf & I C §361.5(f), the child’s current caregiver is also entitled to attend. Welf & I C §291(a)(8). In addition, at the request of a parent, guardian, child, or social worker, or on the court’s own motion, the court may issue a subpoena to compel the attendance and testimony of a witness. Welf & I C §341; Cal Rules of Ct 5.526(d).

The court may also permit any of the child’s relatives to be present in court on a sufficient showing. See Cal Rules of Ct 5.534(f). Relatives may submit information about the child to the court at any time. Cal Rules of Ct 5.534(f)(2). Relatives who are not accorded de facto parent status may be present at the hearing and address the court but do not have a right to counsel, to participate as a party, or to present evidence. *In re Patricia L.* (1992) 9 CA4th 61, 68, 11 CR2d 631; see Cal Rules of Ct 5.534(f). For a discussion of de facto parents, see §§102.10–102.15. The court may also admit anyone who it determines has a direct and legitimate interest in the case or in the work of the court. Welf & I C §346.

Although parents are permitted to attend, it is not necessarily a denial of due process for the hearing to proceed without them, as long as they are represented by counsel. See *In re Axsana S.* (2000) 78 CA4th 262, 268–270, 92 CR2d 70 (parent was incarcerated but had received all notices). Moreover, a court need not appoint a guardian ad litem for an alleged father who was himself a minor and who has not appeared. *In re Emily R.* (2000) 80 CA4th 1344, 1358, 96 CR2d 285. Before appointing a guardian ad litem for a parent, the court must explain the purpose of the appointment and, if the parent does not consent, conduct an informal hearing to determine the need for an appointment. *In re Sara D.* (2001) 87 CA4th 661, 671–672, 104 CR2d 909.

Although the ICWA inquiry will normally have been concluded before the disposition hearing, if the court learns of a possible Indian connection during the disposition hearing, the case may be reopened to conduct this investigation so that the required Indian representative may attend. See *D.B. v Superior Court* (2009) 171 CA4th 197, 206–208, 89 CR3d 566.

2. [§102.9] Exclusion From Courtroom

All others must be excluded from the courtroom, unless a parent or guardian requests that the public be admitted and this request is consented to by the child or the child requests an open hearing. Welf & I C §346. In any event, 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. Welf & I C §345; Cal Rules of Ct 5.530(a). A stepparent is not entitled to be present, and one who is accused of a crime must generally be excluded from the proceedings; however, some judges permit stepparents whose crime is unrelated to the dependency to attend if the child has been living with that stepparent.

3. [§102.10] De Facto Parents

Courts have long recognized the need for special status for those who have a significant, but unofficial, relationship with the child. See, *e.g.*, the decision in *In re B.G.* (1974) 11 C3d 679, 692, 693, 114 CR 444, holding that a person, who is not a parent but who raises the child, need not have applied for guardianship or have any other formal association with the child in order to assert and protect his or her own interest in the child’s “companionship, care, custody, and management.” A de facto parent is a person who the court determines has assumed the role of parent by fulfilling the child’s physical and psychological needs for care for a lengthy period on a day-to-day basis. Cal Rules of Ct 5.502(10). The doctrine of de facto parent status is judicially created and set out in Cal Rules of Ct 5.534, which permits participation of a recognized de facto parent at the disposition hearing and any subsequent hearing where the custody of the child is in issue. *In re Brandon M.* (1997) 54 CA4th 1387, 1398–1400, 63 CR2d 671. It is consistent with the Indian Child Welfare Act (ICWA). *In re Brandon M., supra.*

Courts also need to be prepared to terminate de facto status when the psychological bond between the child and the de facto parent no longer exists and when the de facto parent no longer possesses reliable or unique information that might be useful to the court. See *In re Brittany K.* (2005) 127 CA4th 1497, 1513–1515, 26 CR3d 487; Judicial Council form, Order Ending De Facto Parent Status (JV-298).

a. [§102.11] Determination of De Facto Status

Generally, there have been two approaches to the granting of de facto parent status. The traditional approach has been to limit such status to cases in which it is established that there is a current, positive psychological parent-child relationship and the person seeking the status has cared for the child in a wholesome and stable environment. See, *e.g.*, *Guardianship of Phillip B.* (1983) 139 CA3d 407, 416–422, 188 CR 781. Other courts have looked to the information that the individual seeking the status might have that would aid the court in making a decision in the child’s best interest, in addition to the relationship with the child. See, *e.g.*, *In re Rachael C.* (1991) 235 CA3d 1445, 1452, 1 CR2d 473 (juvenile court can only benefit from having all the information available including the information that a de facto parent might present), disapproved on other grounds in 6 C4th at 80. See also *In re Patricia L.* (1992) 9 CA4th 61, 67, 11 CR2d 631, holding that “because a court can only benefit by having all relevant information, it should liberally grant de facto parent status.”

- **JUDICIAL TIP:** Although some judges grant de facto status liberally, other judges do not agree that de facto parent status should be freely granted because the existing rules allow relatives and foster parents to have their views and information heard without the need for de facto parent status (see Cal Rules of Ct 5.534(f); Welf & I C §346) and because every added party means additional hearings and hearing time.

(1) [§102.12] Factors To Consider

Some of the factors that courts have considered in deciding whether to grant de facto parent status are whether (*In re Patricia L.* (1992) 9 CA4th 61, 66–67, 11 CR2d 631):

- The child is psychologically bonded to the person;
- The person has assumed a parental role on a day-to-day basis for a substantial period;
- The person has information about the child that may not be obtained from other participants in the juvenile court process;
- The person regularly attends juvenile court proceedings; and
- Without this status, this person’s relationship with the child might be permanently foreclosed at a future hearing.

A person who has substantial and regular contact with the child even when the child lives with someone else may be considered a de facto parent. *In re Hirenia C.* (1993) 18 CA4th 504, 514, 22 CR2d 443 (person seeking de facto parent status, former partner of a foster parent, had been primary caregiver for first five months of child’s life and had thereafter cared for child on part-time basis). The focus of the de facto parent’s interest should be the relationship of that person with the child, not that person’s relationship to, or advocacy of, the parent. *In re Daniel D.* (1994) 24 CA4th 1823, 1835–1836, 30 CR2d 245.

Not every caretaker who meets the criteria listed above deserves de facto parent status. A nonparental caretaker may forfeit the privilege of participation as a de facto parent if “there is an adjudication that a child is within the jurisdiction of the juvenile court because [the person seeking de facto parent status] committed a substantial harm [to that child], such as sexual or other serious physical abuse.” *In re Kieshia E.* (1993) 6 CA4th 68, 78, 23 CR2d 775. Under *Kieshia E.*, the court has no discretion to balance all the factors and grant de facto status to a person who is the cause of the dependency even if the child was bonded to that person and that person caused no direct harm to the child. *In re Leticia S.* (2001) 92 CA4th 378, 381, 383, 111 CR2d 810. Thus, a mother’s boyfriend was denied de facto parent status when the drugs left out by the mother and boyfriend were the primary reason for the underlying dependency. 92 CA4th at 382–384. Moreover, de facto parent status may be denied to a caretaker with whom the child has bonded but who has indirectly caused harm to the child by placing him or her in the care of a person who was irresponsible, used drugs, and had an unstable lifestyle. *In re Merrick V.* (2004) 122 CA4th 235, 257, 19 CR3d 490.

But de facto status given to the child’s abuser’s partner is appropriate when that partner had actively served in a parenting role, attended court hearings, was knowledgeable concerning the child’s medications, and had not condoned his partner’s physical abuse. *In re D.R.* (2010) 185 CA4th 852, 864–865, 110 CR3d 839.

See also discussion of *In re Michael R.* (1998) 67 CA4th 150, 78 CR2d 842, in §102.14.

Nomination as a guardian by a deceased parent has been held by one court of appeal to automatically entitle a person to de facto parent status, unless the child is abandoned by the nominee or the court has denied the appointment after a hearing. *In re Vanessa P.* (1995) 38 CA4th 1763, 1770, 45 CR2d 760. This holding has not been followed by other courts, however, and most juvenile court judicial officers require more than just a nomination as a guardian by a deceased parent before granting de facto parent status.

- **JUDICIAL TIP:** In according de facto status to a person who has been nominated as a guardian, judges should look to the factors listed in *In re Patricia L.*, *supra*, in addition to the person’s position as nominee.

(2) [§102.13] Grandparents

Grandparents who have previously cared for the child are often granted de facto parent status, even though they are not able to provide permanent care for the child. This may be appropriate even if DSS or the parents have taken issue with the care the grandparent provided the child. See, e.g., *In re Ashley P.* (1998) 62 CA4th 23, 27–30, 72 CR2d 383 (grandmother may be accorded de facto status when she provided an appropriate and loving home for the children, had strong psychological bonds with them, and supported court-ordered therapy for them, although she did not get along with their father), and *In re Giovanni F.* (2010) 184 CA4th 594, 602, 108 CR3d 885 (grandmother took care of child regularly, was responsible for day-to-day care for long periods, and was calming influence outside domestic violence environment in which parents lived). Indeed, when a grandparent or other close relative has conscientiously cared for the children and the children are bonded to that person, the court must have a good reason for denying de facto status. *In re Vincent C.* (1997) 53 CA4th 1347, 1358, 62 CR2d 224.

De facto status may, however, properly be denied to a grandmother who, despite significant involvement with the grandchildren, causes substantial potential harm to them by refusing to recognize the physical abuse that her son perpetrated and by allowing him unlimited access. *In re Michael R.* (1998) 67 CA4th 150, 157–158, 78 CR2d 842. It is also appropriate to deny de facto status to a grandmother who has cared for the child for five years but has not enrolled the child in school or seen to it that the child has routine dental and medical examinations. *In re Jacob E.* (2004) 121 CA4th 909, 920–921, 18 CR3d 430. Similarly, de facto status is properly denied to a grandmother who, although having a positive, nurturing, and loving relationship with the child, has not lived with the child; the court need not grant de facto status on the basis of frequent visits and outings. *In re R.J.* (2008) 164 CA4th 219, 224–225, 79 CR3d 184.

b. Procedure

(1) [§102.14] Establishing De Facto Status

The person who seeks de facto parent status has the burden of proving by a preponderance of the evidence that he or she is entitled to that status. See *In re Joshua S.* (1988) 205 CA3d 119, 125, 252 CR 106. The court may not declare a person to be a de facto parent unless that person requests the status or indicates a willingness to be identified as such. *In re Jody R.* (1990) 218 CA3d 1615, 1627, 267 CR 746 (involuntary conferral of such status is improper).

A child does not have standing to appeal a denial of de facto status because the denial of the motion has no effect on the child’s rights. *In re Crystal J.* (2001) 92 CA4th 186, 191–192, 111 CR2d 646.

Generally, a court should not grant the request ex parte. See *Christina K. v Superior Court* (1986) 184 CA3d 1463, 1469 n9, 229 CR 564. Some courts require the person seeking de facto status to make the request in writing. See, e.g., San Diego Super Ct, 6.1.3(C). Once the court receives the request, it should give notice to all the parties. The following forms must be used: De Facto Parent Request (JV-295), De Facto Parent Statement (JV-296), and De Facto Parent Order (JV-297). If all parties agree to the request, the request may be granted without a hearing, but if not, the court must hold a hearing.

Someone who has been granted de facto status may participate as a party in the disposition and subsequent hearings. See Cal Rules of Ct 5.534(e).

- JUDICIAL TIP: Because there is often not enough time for the parties to request and establish de facto status if the disposition hearing immediately follows the jurisdiction hearing, courts may schedule the disposition hearing so that there is sufficient time to hear these requests.

There may be different standards for granting de facto status than for denying termination of such status. For example, in *In re D.R.* (2010) 185 CA4th 852, 861–863, 110 CR3d 839, the court held that although an incident of physical abuse may have been sufficient to deny de facto status to the abuser, it will not necessarily require termination of de facto status when the court has determined that it is in the best interests of the child to continue that status.

(2) [§102.15] Consequences of De Facto Status

Once de facto status is established, the de facto parent may appear and present evidence at the disposition hearing. Cal Rules of Ct 5.534(e)(1), (3). The de facto parent is entitled to be represented by retained counsel or, at the court's discretion, by appointed counsel. Cal Rules of Ct 5.534(e)(2). An indigent de facto parent, however, is not entitled to court-appointed counsel on appeal. *In re Joel H.* (1993) 19 CA4th 1185, 1196, 1199, 23 CR2d 878.

- JUDICIAL TIP: The court's authority to exercise its discretion to appoint counsel for de facto parents is found solely in the California Rules of Court. See Cal Rules of Ct 5.534(e)(2). There is no statutory authority for the court to compensate such an attorney. Thus, appointments of counsel for de facto parents must be pro bono appointments, unless other arrangements for compensation are made. See *J.W. v Superior Court* (1993) 17 CA4th 958, 970, 22 CR2d 527, citing *Payne v Superior Court* (1976) 17 C3d 908, 920, 924, 132 CR 405 (court not required to pay for counsel in paternity proceeding). The juvenile court judicial officer may wish to develop a list of qualified attorneys who are willing to be appointed for de facto parents on a pro bono basis.

The role of de facto parent is a limited one, and the court should not consider the relationship between the child and the de facto parent in determining whether reunification services should be ordered or terminated at a later hearing. *Rita L. v. Superior Court* (2005) 128 CA4th 495, 507–508, 27 CR3d 157.

Once de facto standing is established, it may continue even after the biological parent regains custody. See, e.g., *In re Robin N.* (1992) 7 CA4th 1140, 9 CR2d 512. It generally continues until the dependency itself is terminated. *In re Patricia L.* (1992) 9 CA4th 61, 67, 11 CR2d 631. To terminate this status, the court must hold an evidentiary hearing in which the proponent of the termination has the burden of showing a change of circumstances that no longer support the status. 9 CA4th at 67. A hiatus in the child's relationship with the de facto parent will not automatically constitute a change of circumstances sufficient to terminate de facto parent status if the person continues to have a strong psychological bond with the child. 9 CA4th at 68.

To remove a child from a de facto parent's home through a Welf & I C §388 petition, a county agency must prove by a preponderance of the evidence that circumstances have changed and that the removal is in the child's best interests. *In re M.V.* (2006) 146 CA4th 1048, 1056–1062, 53 CR3d 324.

☛ **JUDICIAL TIP:** When the court grants a de facto parent access to information under Welf & I C §827 (see §§102.20, 102.109), it should only grant access to information that is relevant to issues in which the de facto parents are involved. For example, they should not be entitled to parents' psychological evaluations, but may receive reports regarding the abuse they allegedly committed. In fact, de facto parents are not entitled to view a parent's psychological records under Welf & I C §827 during the reunification phase of a dependency proceeding when there would be no benefit from the disclosure and the de facto parents had no legitimate interest in the records. *In re B.F.* (2010) 190 CA4th 811, 820–821, 118 CR3d 561.

4. Attorneys

a. [§102.16] Appointment

At the disposition hearing stage in juvenile court proceedings, most parents and guardians will already be represented by retained or appointed counsel. Generally, the court will have already appointed counsel for the child. If the child, nonminor, or a nonminor dependent is not represented by counsel, the court must appoint an attorney for him or her unless it finds on the record that the child, nonminor, or nonminor dependent would not benefit from this appointment. Welf & I C §317(c). See also Cal Rules of Ct 5.660 (standards for appointment, required findings when child would not benefit from counsel, and use of CASA as guardian ad litem, alternative to counsel).

Once appointed, counsel must represent the child, nonminor, nonminor dependent, parent, or guardian at all juvenile court proceedings (Welf & I C §317(d)), including writ proceedings in the appellate court (*Rayna R. v Superior Court* (1993) 20 CA4th 1398, 1402, 25 CR2d 259) and proceedings following the first review of a permanent placement plan (*In re Tanya H.* (1993) 17 CA4th 825, 827, 21 CR2d 503). But see *Janet O. v Superior Court* (1996) 42 CA4th 1058, 1065–1066, 50 CR2d 57 (parents' counsel may be relieved at a later stage if the parents have failed to keep both counsel and the court apprised of their whereabouts or to maintain an interest in the proceedings).

At the disposition hearing, the court may be requested to appoint counsel for a de facto parent once that status has been established. Cal Rules of Ct 5.534(e)(2). See discussion in §§102.10–102.15.

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* §§100.16–100.22 (Cal CJER), and Seiser & Kumli, *California Juvenile Courts: Practice and Procedure* §§2.61–2.66 (LexisNexis 2013).

b. [§102.17] Competency

All parties represented by an attorney are statutorily entitled to competent counsel. Welf & I C §317.5(a); see Cal Rules of Ct 5.660(d) (defining competence and discussing standards of representation, experience, and education). Under Cal Rules of Ct 5.660(e), the court must establish a complaint process, inform parties of the procedure, and require evidence of competency; it must take appropriate action when it has determined that an attorney acted improperly. If a nonminor dependent is not competent to direct counsel, the court must appoint a guardian ad litem for the nonminor dependent. Welf & I C §317(e)(1).

There may also be a constitutional right to effective assistance of counsel at any hearing at which reunification services may be terminated, such as a hearing based on Welf & I C §361.5(b). *In re Arturo A.* (1992) 8 CA4th 229, 239, 10 CR2d 131. If DSS is seeking to deny the parent reunification services under Welf & I C §361.5(b) at the disposition hearing, it is possible that a constitutional right to effective assistance of counsel would arise at this hearing if the issues are complex and the assistance of counsel is likely to sway the outcome.

c. [§102.18] Responsibilities

Because a primary responsibility of counsel is to advocate for the child's, nonminor's, or nonminor dependent's safety and protection (Welf & I C §317(c)), counsel must not advocate for the return of the child to the home if the return is antithetical to the child's safety (Welf & I C §317(e)(2)). Attorneys must have sufficient contact with the child to establish and maintain an attorney-client relationship. Cal Rules of Ct 5.660(d)(4).

Moreover, the court must be continually aware of the possibility of conflicts of interest arising. For example, if a child's attorney is unable to argue for reunification services without disputing the accuracy of siblings' statements, the attorney would have a conflict of interest if he or she represented both the child and the siblings. *In re Zamer G.* (2007) 153 CA4th 1253, 1272–1273, 63 CR3d 769. An attorney representing a nonminor dependent is charged with representing the wishes of that dependent, except when advocating for those wishes conflicts with the protection or safety of the nonminor dependent. Welf & I C §317(e)(1).

d. [§102.19] Withdrawal

When counsel seeks to withdraw, the court must require an explanation for the record why he or she cannot proceed; if the attorney has been unable to contact the parent, counsel must inform the court how this lack of contact has an adverse impact on the client's representation. *In re Malcolm D* (1996) 42 CA4th 904, 915, 50 CR2d 148. Before counsel may be relieved under Welf & I C §317, 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.

- ☛ JUDICIAL TIP: If the court relieves counsel when it is not clear that parents are receiving notice at their designated address, some judges ask DSS to file a statement of efforts to provide notice so that there is a record of the process.

D. [§102.20] Prehearing Disclosure

The social study prepared by DSS (see discussion in §102.28) must be submitted to the clerk at least 48 hours before the disposition hearing is scheduled to begin. Cal Rules of Ct 5.690(a). The clerk must make copies available to the parties and attorneys. Cal Rules of Ct 5.690(a)(2). In addition, DSS 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), 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.
- Felony conviction records of witnesses.

California Rules of Court 5.546 authorizes disclosure of the records, reports, and evidence listed above only to parents, guardians, or the child and not to de facto parents. Presumably Welf & I C §827 would permit disclosure of certain reports and evidence to de facto parents at the judge's discretion. See discussion in §§102.10–102.15.

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.

The court may be requested to compel or limit discovery. 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).

E. Conducting the Disposition Hearing

1. [§102.21] In General

As with any juvenile court hearing, a disposition 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). The court must control the proceedings with a view to expeditious and effective determination of the facts, as well as 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). The disposition hearing must be closed to the public and heard at a special or separate session of court; if the child is detained, the hearing must be granted precedence on the calendar for the day set. See Welf & I C §§345–346.

A waiver of the right to a contested disposition hearing is valid when the waiver form specifies that the court may assume custody of the child and that reunification services may not be offered or provided, even though the court does not specifically advise the parent that he or she may lose custody of the child. *In re Patricia T.* (2001) 91 CA4th 400, 407, 109 CR2d 904.

The DSS has the burden of proof on aspects of disposition recommendations. See generally Welf & I C §§361, 361.5. If the court orders the child to be removed from the physical custody of the parent or guardian, it must make the required findings by clear and convincing evidence. Welf & I C §361(c). If, after presentation of evidence by DSS and the child, the court finds that the required burden has not been met, it may nevertheless order "whatever action the law requires," based on the motion of any party or on its own motion; if the motion is denied, additional evidence may be introduced. Welf & I C §350(c); Cal Rules of Ct 5.534(d).

Courts may also develop local procedures and protocols for appearances by telephone, videoconference, or other digital or electronic means. Cal Rules of Ct 5.531.

2. [§102.22] Recording the Hearing

The hearing must be recorded by a court reporter or by any other authorized means if the hearing is conducted by a judge or by a referee, commissioner, 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).

3. [§102.23] Judicial Officers Who May Conduct Hearing

Disposition 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 of a referee's orders must be approved by a juvenile court judge before becoming effective (Welf & I C §251).

No order of a referee removing a child from his or her home becomes effective until expressly approved by a judge of the juvenile court within two days. Welf & I C §249; Cal Rules of Ct 5.540(b). A referee's order continuing a child's removal from a home at the disposition hearing did not require further judicial approval of that referee's order when the child had first been removed by the referee at the detention hearing and *that* order had been approved by a juvenile court judge. *In re I.S.* (2002) 103 CA4th 1193, 1197, 127 CR2d 398.

A referee or commissioner assigned as a referee who is not acting as a temporary judge 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, DSS, or the parent or guardian 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); *Southard v Superior Court* (2000) 82 CA4th 729, 733, 98 CR2d 733 (DSS, as well as the child and parents, may seek a rehearing under Welf & I C §252). 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 harmonizing Welf & I C §§250, 253).

a. [§102.24] Obtaining Stipulations

To avoid the necessity of approval by a judge, a referee may obtain a stipulation to act as a temporary judge. Cal Rules of Ct 5.536(b). A referee who has received such a stipulation is empowered to act fully as a juvenile court judge. Cal Const art VI, §21; Cal Rules of Ct 5.536(b). 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. A stipulation is necessary to give the court's acts finality in a dependency hearing, but the absence of a stipulation does not deprive the court of jurisdiction. *In re Roderick U.* (1993) 14 CA4th 1543, 1551, 18 CR2d 555.

A stipulation to a temporary judge for the "within action . . . until the final determination thereof" entered into before the jurisdiction hearing is sufficiently ambiguous to permit a parent to withdraw the stipulation after the disposition hearing, although the parent may not withdraw the stipulation in the intervening time between the jurisdiction and the disposition hearing. *In re Steven A.* (1993) 15 CA4th 754, 772, 19 CR2d 576.

b. [§102.25] Commissioners

The superior court is not required to designate commissioners as juvenile court referees and, in many jurisdictions, commissioners are appointed as temporary judges and not as referees. As such, their decisions and orders are not subject to rehearing. A stipulation to a commissioner acting as a temporary judge need not be in writing or express; a “tantamount stipulation” may be implied from the conduct of the parties and attorneys. *In re Horton* (1991) 54 C3d 82, 98, 284 CR 305; *In re Courtney H.* (1995) 38 CA4th 1221, 1227–1228, 45 CR2d 560.

4. [§102.26] Determination of Notice; Notification re Welf & I C §361.5

At the disposition hearing, as with other dependency hearings, the court must determine whether notice was given or attempted as required by law, and must make an appropriate finding in the minutes. Cal Rules of Ct 5.534(I). If the hearing is a disposition hearing that also serves as a permanency hearing under Welf & I C §361.5(f), the child’s current caregiver is also entitled to notice. Welf & I C §291(a)(8).

The court must also determine whether the social worker has given appropriate notice of the consequences if DSS has alleged that Welf & I C §361.5(b) (circumstances under which reunification services should not be offered) is applicable. If there is such an allegation, the social worker must have notified each parent of the content of the allegation and have informed each parent that, unless the court orders reunification, the next hearing will be a permanency planning hearing and that parental rights may be terminated. Welf & I C §358(a)(3). The court must ensure that the social worker has made this notification. Cal Rules of Ct 5.686(b). Notice in the social worker’s report is sufficient; separate notification is not necessary. *In re Jessica F.* (1991) 229 CA3d 769, 782, 282 CR 303.

Finally, the court must notify the parent in cases in which reunification services are ordered, that if the child is not returned within 6 or 12 months of the date he or she entered foster care (depending on whether or not the child was under three years of age at the time of removal or was a member of a sibling group in which one member was under three years of age), parental rights may be terminated under Welf & I C §366.26. See Welf & I C §§361, 361.5(a)(3); Cal Rules of Ct 5.695(i)(2). A written statement may satisfy the warning required by Welf & I C §361.5(a)(4) as long as the parent stated in court that he or she had read and understood the advice. *Arlena M. v Superior Court* (2004) 121 CA4th 566, 571, 17 CR3d 321.

- **JUDICIAL TIP:** Because parental rights of both custodial and noncustodial parents may be terminated if a permanent plan of adoption is later selected, the court should ensure that all parents are given this notification. This notification could be accomplished by (1) the judge giving notification in court, or (2) the social worker’s verbal notice to the parent, with proof filed in the court file.

A court may not turn a settlement conference, in which the parent has not appeared, into a disposition hearing if the parent is not informed of the consequence of the failure to appear. *In re Stacy T.* (1997) 52 CA4th 1415, 1424–1425, 61 CR2d 319 (violation of due process). It is also a violation not to permit the parent’s attorney to cross-examine the social worker who prepared the report. *In re Stacy T., supra.*

5. [§102.27] Advisement of Rights

At each hearing, the court must advise an unrepresented parent or guardian 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). See also Cal Rules of Ct 5.548(a) (court must advise witnesses of right to counsel when it appears to the court that testimony or other evidence is sought that might incriminate them). The court must also inform the parties of their hearing rights, unless the advisement is waived. See Cal Rules of Ct 5.534(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 former Welf & I C §355.1(d) (now 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 advise parents of this immunity when parents are represented by counsel. See *In re Candida S.* (1992) 7 CA4th 1240, 1250, 9 CR2d 521. For a discussion of immunity, see §102.35.

The court must also advise parties of the right to (Cal Rules of Ct 5.534(k))

- Confront and cross-examine the preparers of reports and any witnesses called against them;
- Use the court’s process to bring witnesses to court, including the witnesses whose hearsay statements are contained in the social worker’s reports (see Welf & I C §§341, 355(b)); and
- Present evidence to the court.

If the disposition hearing takes place at a separate session from the jurisdiction hearing, the court must either re-advise the parties of their rights at this hearing or take a personal waiver. See Cal Rules of Ct 5.534(k); *In re Monique T.* (1992) 2 CA4th 1372, 1377, 4 CR2d 198 (personal waiver by the parent of any of these rights is required).

6. Presentation of Evidence

a. [§102.28] Social Worker’s Report

The DSS must prepare a social study of the child, including all factors relevant to disposition, a recommendation for disposition, and the child’s case plan developed under Welf & I C §16501.1. Welf & I C §358(b); Cal Rules of Ct 5.690(b), (c). See also Welf & I C §280 (social worker must furnish the court with information and assistance and must prepare recommendations for disposition hearings). These reports are admissible as competent evidence in hearings held subsequent to the jurisdiction hearing in dependency court. *In re Jeanette V.* (1998) 68 CA4th 811, 816, 80 CR2d 534 (.26 hearing).

The court must consider the case plan and find that either the social worker solicited and used input from the child’s family, tribe (including consultation with the child’s tribe on whether tribal customary adoption, as defined in Welf & I C §366.24, is an appropriate permanent plan for the child if reunification is unsuccessful), or other interested people or that he or she did not do so. Cal Rules of Ct 5.690(c)(2)(A). If the court finds that there was no solicitation and use of input, it must order DSS to include such input unless the participants are unable, unwilling, or unavailable to participate. Cal Rules of Ct 5.690(c)(2)(B). The report must contain information that may be relevant to the child’s education, including (Cal Rules of Ct 5.651(b)):

- Educational and developmental achievements;
- Educational, physical, mental health, and developmental needs;
- What type of school the child is attending; and
- Whether the child may be eligible for special education.

See Judicial Council form JV-226, Authorization to Release Health and Mental Health Information, and form JV-227, Consent to Release Education Information.

If the child is 12 years of age or older and in a permanent placement, the court must consider the case plan and find either that the child was given the opportunity to review, sign, and receive a copy or was not given the opportunity; if the court found that the child did not have this opportunity, it must order DSS to provide the child with such an opportunity. Cal Rules of Ct 5.690(c)(3).

(1) [§102.29] Contents

If DSS recommends removal of the child from the home, the social study must contain all the requirements listed in Welf & I C §§358 and 358.1 (see Cal Rules of Ct 5.690(a)(1)(E)), including the following:

- Discussion of reasonable efforts to prevent or eliminate removal of the child from the home and plans for visitation and reunification. Cal Rules of Ct 5.690(a)(1)(B)(i).
- Whether reunification services are to be provided. See Welf & I C §361.5(c); Cal Rules of Ct 5.695(h)(7)–(8); 42 USC §§671–672 (federal legislation requiring certain findings if federal funds for foster care are to be made available).
- Whether the county DSS has considered child protective services and has offered these services to qualified parents. Welf & I C §358.1(a).
- What plan is to be considered for return of the child and for achieving legal permanence should reunification efforts fail. Welf & I C §358.1(b); Cal Rules of Ct 5.690(a)(1)(B)(ii) (concurrent planning). See discussion in Seiser & Kumli, *California Juvenile Courts: Practice and Procedure* §2.12[9], 2.129[3] (LexisNexis 2013).

➤ **JUDICIAL TIP:** Sometimes, parents will be motivated to work on reunification when they know there are efforts being made concurrently to achieve a stable permanent placement for the child. However, the concurrent planning requirement should be explained carefully so as to reduce a parent's likely suspicion that efforts to reunify will be reduced or token when an alternative plan is being considered.

- A statement that each parent has been advised that he or she may participate in adoption planning and may voluntarily relinquish the child if an adoption agency is willing to accept this relinquishment. Cal Rules of Ct 5.690(a)(1)(B)(iii). Also to be included is the parent's response to this advisement. Cal Rules of Ct 5.690(a)(1)(B)(iii).
- A statement as to why reunification services should not be provided if DSS alleges that Welf & I C §361.5(b) applies. Cal Rules of Ct 5.690(a)(1)(D).
- Whether visitation with grandparents is in the child's best interests. Welf & I C §358.1(c); see Cal Rules of Ct 5.695(a)(7)(C), 5.620(c).

- Whether the child has siblings and, if so, the nature of the sibling relationship, whether it is appropriate to develop and maintain the relationship, and the impact of the relationship on placement and permanency planning. Welf & I C §358.1(d).
- Whether the right of the parent or guardian to make educational or developmental services decisions for the child should be limited and, if so, which responsible adult, if any, is available to make these decisions under Welf & I C §361(a). Welf & I C §358.1(e); Cal Rules of Ct 5.695(c)(3). See discussion in §102.102.
- Whether the child appears to be eligible for further court action to free the child from parental custody and control. Welf & I C §358.1(f).
- Whether the parent has been advised of the option to participate in adoption planning, including the option to enter into a postadoption agreement under Fam C §8616.5. Welf & I C §358.1(g).
- The appropriateness of placement with a relative under Welf & I C §361.3. Welf & I C §358.1(h).
- Whether the caregiver is willing to provide legal permanency for the child if reunification fails. Welf & I C §§358(b), 358.1(i).
- For an Indian child, whether tribal customary adoption under Welf & I C §366.24 is appropriate if reunification is unsuccessful. Welf & I C §358.1(j).
- Discussion of DSS efforts to comply with Cal Rules of Ct 5.637, requiring due diligence in identifying, locating, and notifying the child’s adult relatives within 30 days of removal, except when a history of family violence would preclude notification. Cal Rules of Ct 5.690(a)(1)(C); see §102.55.

If DSS recommends guardianship, it must include an assessment under Welf & I C §360(a) (covering the qualifications of the proposed guardian among other factors). Cal Rules of Ct 5.690(a)(1)(A). See discussion in §102.60. A report by the caregiver about the noncustodial parent must also be included. See Welf & I C §366.23.

(2) [§102.30] Right To Cross Examine Preparers

The statutory right to cross-examine the preparer of the report applies only to the jurisdiction hearing. *In re Jeanette V.* (1998) 68 CA4th 811, 816, 80 CR2d 534. At the *disposition* hearing, the parent’s due process rights to confront the social worker who prepared the report are satisfied as long as the social worker is available on request or by service of process; the social worker need not actually be present. *In re Corey A.* (1991) 227 CA3d 339, 347–348, 227 CR 782. 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.

The parent must be afforded the opportunity to subpoena and cross-examine the persons whose statements are contained in the social study and attachments (Welf & I C §341) and must be afforded the opportunity to present rebuttal evidence (see Cal Rules of Ct 5.534(k)). A parent’s submission on the social worker’s *recommendation* (and not just the report) waives that parent’s right to contest the disposition. *In re Richard K.* (1994) 25 CA4th 580, 590, 30 CR2d 575.

For a discussion of the admissibility of a child's statements contained in the report when the child has been found to be incompetent to testify, see California Judges Benchguide 101: *Juvenile Dependency Jurisdiction Hearing* §101.41 (Cal CJER).

b. [§102.31] Other Evidence

In addition to the social study, the court may appoint experts (see Evid C §730) and may require production of other evidence on its own motion (Cal Rules of Ct 5.690(b)). The child, parents, guardians, or other witnesses may also testify. Under Welf & I C §350(b) and Cal Rules of Ct 5.534(c), the court may permit a child's testimony in chambers if this arrangement is necessary to ensure truthful testimony, if the child is frightened to testify in front of the parent or guardian, or if the child is frightened by the courtroom setting. In addition to chambers testimony, the court may make other arrangements to accommodate the child witness. See, e.g., *In re Amber S.* (1993) 15 CA4th 1260, 1266–1267, 19 CR2d 404, which held that the court had inherent power to use both in-chambers testimony and closed circuit television to ensure truthfulness. In addition, under Evid C §1293, a child's preliminary hearing transcript may be used in a proceeding to declare a minor a dependent child (i.e., in a jurisdiction or disposition hearing), even without a showing of unavailability, if the issues are similar. *In re Elizabeth T.* (1992) 9 CA4th 636, 642, 12 CR2d 10.

For a discussion of handling child witnesses in court generally, including use of child's out-of-court statements, see BENCH HANDBOOK: THE CHILD VICTIM WITNESS (CJER 2009), and California Judges Benchguide 101: *Juvenile Dependency Jurisdiction Hearing* §§101.40–101.44 (Cal CJER).

A parent's or guardian's failure to cooperate, except for good cause, in the provision of services may be used as evidence in any jurisdiction, disposition, or review hearing, or hearing on a request for modification. Evid C §1228.1(b).

(1) [§102.32] Expert Testimony and Character Evidence

Expert testimony and character evidence may also be offered at a disposition hearing. Character evidence regarding sibling abuse is admissible at the disposition hearing phase on the question of the future risk to the child from a particular placement. *In re Mark C.* (1992) 7 CA4th 433, 446, 8 CR2d 856. Despite Evid C §1101 (making character evidence inadmissible to prove misconduct), an expert may testify to a parent's mistreatment of a sibling under former Welf & I C §355.5 (now Welf & I C §355.1(b)) to support the removal of the child from the parent's home. *In re Dorothy I.* (1984) 162 CA3d 1154, 1158–1159, 209 CR 5. In addition, the court must receive in evidence any evaluation made by a court-appointed special advocate and consider this evidence in making its disposition orders. Welf & I C §358(b); Cal Rules of Ct 5.690(b).

At, or prior to, the disposition hearing, a court may order a parent to undergo a psychological evaluation under Evid C §730 because an expert opinion on the cause and extent of mental illness may be needed to further the goal of reunification. An evaluation may also be needed to establish and ameliorate the conditions that caused the dependency. *Laurie S. v Superior Court* (1994) 26 CA4th 195, 202–203, 31 CR2d 506.

ICWA does not require that an Indian expert be involved in a case involving sexual abuse when there has been no evidence offered that there is any difference between the cultural context of sexual abuse in Indian culture and non-Indian culture. *In re M.B.* (2010) 182 CA4th 1496, 1505, 107 CR3d 107.

For a discussion of the use of qualified expert witnesses in Indian child custody proceedings, see BENCH HANDBOOK: THE INDIAN CHILD WELFARE ACT §3.23 (CJER 2008).

(2) [§102.33] Additional Grounds for Removal

If evidence is presented regarding problems to be addressed or providing grounds for removal that go beyond facts alleged in the petition, a new petition need not be filed if the new facts merely tend to explain the conduct alleged in the petition. When the sustained petition apprises the parents of the declaration of dependency and, if recommended, of the grounds for the removal, it provides adequate notice to the parents even though some of the facts proving the parent's inability to care for the child (without intervention) are not contained in the petition. *In re Rodger H.* (1991) 228 CA3d 1174, 1183–1184, 279 CR 406 (petition alleged that parents were unable to care for child's medical needs, but did not allege that they had inadequate housing and transportation, all of which provided grounds for removal).

c. [§102.34] Evidentiary Privileges

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 the privilege, counsel may not waive it, but if counsel invokes it, the child may waive it.
- Counsel is the holder of the privilege if the court finds that the child is neither old nor mature enough to consent to the invocation of the privilege.
- Consent is presumed if the child is over 12 years of age, subject to rebuttal by clear and convincing evidence.

The court may order the therapist to disclose limited information, despite the child's invocation of the privilege, if the information would help the court to evaluate whether further orders are needed. *In re Kristine W.* (2001) 94 CA4th 521, 528, 114 CR2d 369. Once the child has begun therapy, the privilege does not preclude the court from ordering this circumscribed information so it can make reasoned decisions regarding the child's welfare. *In re Mark L.* (2001) 94 CA4th 573, 584, 114 CR2d 499.

d. [§102.35] Immunity

A parent or guardian has immunity for any testimony given in a dependency hearing. See Welf & I C §355.1(f); *In re Jessica B.* (1989) 207 CA3d 504, 517–521, 254 CR 883 (requirement that parents admit abuse as part of the reunification plan does not impair the privilege against self-incrimination). The court may also order a witness who is not a parent or guardian to testify over a claim of self-incrimination by granting immunity. Cal Rules of Ct 5.548(b), (d). When a witness refuses to answer a question or produce evidence, DSS, alone or with the district attorney, may make a written or oral request on the record to require a response. Cal Rules of Ct 5.548(d). If the request is jointly made, the judge must comply with the request by granting immunity unless such a grant would clearly be contrary to the public interest. Cal Rules of Ct 5.548(d)(2). If the request is not jointly made, the judge must permit argument as to why immunity should not be granted before ruling. Cal Rules of Ct 5.548(d)(1).

The scope of the immunity must be stated in the record. Cal Rules of Ct 5.548(d)(2). Once immunity has been granted, information obtained from the immunized witness may not be used against him or her in any juvenile or criminal proceeding (Cal Rules of Ct 5.548(d)(3)), except that the immunized witness will still be subject to liability for contempt or perjury (Cal Rules of Ct 5.548(e)).

Welfare and Institutions Code §355.1(f) does not provide derivative use immunity for compelled testimony, and therefore, a parent cannot be forced to testify over a Fifth Amendment objection unless there has been a grant of immunity coextensive with Fifth Amendment privilege against self-incrimination. *In re Mark A.* (2007) 156 CA4th 1124, 1136, 68 CR3d 106.

- **JUDICIAL TIP:** Although the rules of court for dependency proceedings do not require notice to the district attorney before immunity is granted, such notice would appear to be appropriate in any case in which criminal prosecution is pending or might result but for the grant of immunity. See Pen C §§1324, 1324.1.

F. [§102.36] Disposition Orders Generally

Under Welf & I C §245.5, the juvenile court may make any orders it considers necessary for the best interests of the child. When a child is adjudged a dependent child, these orders might concern the child's care, custody, conduct, supervision, maintenance, and support, and may relate to education and medical care. Welf & I C §§362(a), (e), 245.5. To facilitate coordination among agencies, the court may, at any time after a petition is filed and after giving notice and an opportunity to be heard, join any agency that the court determines has failed to meet a legal obligation to provide services to a child for whom a petition has been filed under Welf & I C §300, to a nonminor (see Welf & I C §303), or to a nonminor dependent (see Welf & I C §11400(v)), regardless of the status of the adjudication. Welf & I C §362(b)(1); Cal Rules of Ct 5.575(a); see Welf & I C §362(b)(3) (defines "agency"). On request by a party or a CASA or on the court's own motion, the court may set a hearing on joinder and notify the agency or provider. Cal Rules of Ct 5.575(b). Notice must be on form JV-540 and the hearing must take place within 30 days of the signing of the notice by the court. Cal Rules of Ct 5.575(b)(1)–(2). The hearing must be conducted like a hearing for modification. Cal Rules of Ct 5.570(f), 5.575(c).

A party may only join an agency under this section, however, if the agency has failed to meet a legal obligation; it may not join an agency preemptively in order to ensure that funding is available and that the agency performs its obligations. *Southard v Superior Court* (2000) 82 CA4th 729, 734, 98 CR2d 733. Moreover, the court may not impose duties on an agency or provider that are beyond those required by statute. Cal Rules of Ct 5.575(c).

The court may decline to declare dependency. See Cal Rules of Ct 5.695(a)(1)–(2). For an analysis of whether to declare dependency, see §102.38.

If the court chooses to declare dependency, it may, under Welf & I C §§360, 361, 361.2, and Cal Rules of Ct 5.695(a)(5)–(7), (c)(1):

- Permit the child to remain at home and order that services be provided;
- Permit the child to remain at home, order that services be provided, and limit the parents' control; or
- Remove the child from the home, and
 - Order custody to the noncustodial parent and terminate jurisdiction as part of the custody order;

- Order custody to the noncustodial parent together with services to one or both parents and not terminate jurisdiction; or
- Make a general placement order, with orders regarding visitation with parents, guardians, grandparents, and others as appropriate.

See also Cal Rules of Ct 5.620(c); Judicial Council form JV-415, Findings and Order After Dispositional Hearing.

In addition, the court may appoint a legal guardian for the child whether or not dependency is declared. Welf & I C §360(a); Cal Rules of Ct 5.695(a)(3)–(4), (b).

For a discussion of custody and placement options, see §§102.44–102.58.

G. [§102.37] Decision Process—Declaring Dependency

At the disposition hearing, the court has a number of options under Welf & I C §360; Cal Rules of Ct 5.695(a)). It may:

- Dismiss the petition despite the fact that it has jurisdiction; if the court dismisses the petition, it must state specific reasons for the dismissal in the minutes. Cal Rules of Ct 5.695(a)(1); Welf & I C §390; or
- Without declaring dependency, place the child in informal supervision under terms consistent with Welf & I C §301 and order that services be provided. Cal Rules of Ct 5.695(a)(2); Welf & I C §360(b); Judicial Council form JV-416, Dispositional Attachment: Dismissal of Petition With or Without Informal Supervision;
- Declare the child a dependent child; or
- Establish a guardianship. For discussion of guardianships, see §§102.59–102.61.

Only rarely will the court dismiss the case at disposition. A court may make such an order when it determines that, although it has jurisdiction, the welfare and best interest of the child do not require protection or orders of the court. See Welf & I C §390. See, e.g., *In re Jennifer P.* (1985) 174 CA3d 322, 327, 219 CR 909 (court of appeal ordered dismissal although jurisdictional allegations had been found to be true because custodial parent who became aware of abuse took steps to render juvenile court supervision unnecessary). The facts on which such a determination is based must be stated on the record. Cal Rules of Ct 5.695(a)(1).

As a second option, the court may determine that, although it has jurisdiction, the family is willing and able to cooperate with DSS in a program of informal services (without court supervision) that can be successfully completed within 6 to 12 months and that such a program does not place the child at an unacceptable level of risk if the parent or guardian participates in the informal services. In this situation, the court may order this type of program without declaring the child a dependent. See Welf & I C §360(b). However, once it does so, it has no authority to take any further role in overseeing the services or the family unless the matter is brought back before the court under Welf & I C §360(c).

An example of an instance in which informal supervision may be appropriate is when a baby's failure to gain weight and develop normally is due to ignorance rather than neglect on part of the parents. *In re Adam D.* (2010) 183 CA4th 1250, 1262, 108 CR3d 611.

A declaration of dependency under Welf & I C §360(d) is the most common disposition. The declaration of dependency takes place at the disposition hearing, not at the earlier jurisdiction hearing in which the court finds that conditions exist that meet the statutory

conditions set out in Welf & I C §300. See *In re Candida S.* (1992) 7 CA4th 1240, 1249, 9 CR2d 521.

The court should adjudge the child a dependent of the court if it determines that court supervision is necessary, because court supervision is not authorized under the other dispositions. Occasionally, the court may declare dependency with appropriate orders even if the parents appear to be conscientious and loving. See, e.g., *In re Petra B.* (1989) 216 CA3d 1163, 1168, 265 CR 342 (when parents inappropriately treated child's wound with herbal medicine and did not recognize the seriousness of her condition, the court was justified in taking jurisdiction under prior law). See also *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). Indeed, when necessary, “[s]tate officials may interfere in family matters to safeguard the child’s health, educational development, and emotional well-being.” *In re Phillip B.* (1979) 92 CA3d 796, 801, 156 CR 48 (decided under prior law).

- **JUDICIAL TIP:** Although the court may be requested by counsel for the parents or other professionals to give special deference to parents who do not fit a stereotype of abusive or neglectful parents, the court must always consider the needs of, and risks to, the child. In making this consideration, the court should also consider cultural backgrounds and customs, particularly in weighing the likelihood of further abuse and assessing the safety of the child.

One court has declined to declare dependency because it was able to place the child with a man who came forward claiming the child as his and stating that he was able and willing to care for the child. See *In re Phoenix B.* (1990) 218 CA3d 787, 267 CR 269. The court held that when a man offers to care for a child he claims as his and actually takes the child into his home, he becomes a presumed father, although there was no legal inquiry or proof as to the nature of the parent-child relationship. 218 CA3d at 790 n3. This is not best practice, however. Juvenile courts should take steps to determine parentage before turning a child over to someone who merely claims to be the parent.

- **JUDICIAL TIP:** A court may not by itself *create* presumed parent status by ordering a child into the custody of an alleged parent.

H. [§102.38] Decision Process—Removing the Child

If the court declares the child to be a dependent child of the juvenile court, it must then consider whether the child can safely remain in the home of the custodial parent or guardian. Before removing a child from the home, a court must make findings supporting that decision. Welf & I C §361(d); Cal Rules of Ct 5.695(i)(1); *In re Jason L.* (1990) 222 CA3d 1206, 1218, 272 CR 316. Failure to state the factual basis for removing a child is reversible error (*In re Basilio T.* (1992) 4 CA4th 155, 171, 5 CR2d 450), although such findings may be implied by a reviewing court when a factual basis exists in the record (*In re Corienna G.* (1989) 213 CA3d 73, 83, 261 CR 462; *Marriage of Arceneaux* (1990) 51 C3d 1130, 1138, 275 CR 797 (litigant waives errors by not objecting)). Under the juvenile dependency system, a child’s removal from the parent’s home has serious consequences because termination of parental rights becomes a real possibility. *In re Paul E.* (1995) 39 CA4th 996, 1001, 46 CR2d 289.

A finding at the disposition hearing that return to parental custody would be detrimental does not need to relate to an earlier jurisdictional finding relating to that parent. *In re P.A.* (2007) 155 CA4th 1197, 1212, 66 CR3d 783.

If the child is being removed for the first time, see California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §100.36 (Cal CJER), on the Title IV-E findings that judges must make on removal.

1. [§102.39] Findings

In order to remove the child from the custody of the parent or guardian, the court must find one or more of the following by clear and convincing evidence:

- Leaving (or returning) the child home would cause a substantial danger to the child’s physical health and there are no reasonable means by which the child’s health can be protected without removal. Welf & I C §361(c)(1); Cal Rules of Ct 5.695(d)(1). As an alternative to the child’s removal, the court must consider the option of removing the offending parent or guardian from the home, or permitting the nonoffending parent or guardian to retain custody as long as that person presents the court with an acceptable plan demonstrating that he or she will be able to protect the child from further harm. Welf & I C §361(c)(1).
- The parent or guardian is unwilling to assume physical custody of the child and has been notified that the child might be declared permanently free of parental custody and control if he or she remains outside the home for the time specified in Welf & I C §366.26. Welf & I C §361(c)(2); Cal Rules of Ct 5.695(d)(2).
- The child is suffering severe emotional damage (anxiety, depression, aggressive behavior, withdrawal), and the child’s emotional health requires removal from the home. Welf & I C §361(c)(3); Cal Rules of Ct 5.695(d)(3).
- The child or a sibling has been sexually abused, or is at substantial risk of abuse, by the parent, guardian, or member of the household, and removal is the only means of protecting the child. Welf & I C §361(c)(4); Cal Rules of Ct 5.695(d)(4).
- The child has been left without provision for support, an incarcerated parent cannot arrange for the child’s care, or an adult custodian with whom the child was left is unable or unwilling to care for the child and the parent cannot be located. Welf & I C §361(c)(5); Cal Rules of Ct 5.695(d)(5).
- In an ICWA proceeding, continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. Welf & I C §361(c)(6). Unless there is a failure to object or a stipulation, the damage must be shown by a “qualified expert witness.” Welf & I C §§361(c)(6), 224.6. This finding of serious damage must be made for removal; other conditions specified in this section or failure to meet non-Indian community standards will not be sufficient. Welf & I C §361(c)(6)(B).

2. [§102.40] Standard of Proof

The standard of proof required to remove physical custody from a parent or guardian at the disposition phase is clear and convincing evidence. Welf & I C §361(c); Cal Rules of Ct 5.695(d)). This standard is substantially greater than that required either at the jurisdiction phase when finding the child is described by Welf & I C §300 (preponderance of the evidence—*In re Basilio T.* (1992) 4 CA4th 155, 169, 5 CR2d 450) or when declaring dependency at the disposition phase when the child remains with the custodial parent or guardian (also

preponderance—*In re Cheryl H.* (1984) 153 CA3d 1098, 1114, 200 CR 789, disapproved on other grounds in 2 C4th at 893). The clear and convincing standard applies even when custody of the child is taken from a custodial parent and awarded to a noncustodial parent. *In re Katrina C.* (1988) 201 CA3d 540, 549, 247 CR 784.

3. [§102.41] Removal Not Warranted

The burden of proof for removal is not met simply by a showing of violence between the parents that was not directed at the children when the children were not harmed. *In re Basilio T.* (1992) 4 CA4th 155, 171, 5 CR2d 450. Similarly, when a child's unhappiness reflects the doubts, dissatisfaction, and confusion that is a hallmark of adolescence, it does not rise to the level of extreme anxiety, depression, withdrawal, or aggression contemplated by Welf & I C §361(c)(3) that would justify removal. *In re James T.* (1987) 190 CA3d 58, 65, 235 CR 127. Nor is removal from the parents appropriate when:

- The father had molested the child, but the parents were separated and the mother sought medical treatment for the child's symptoms (*In re Tasman B.* (1989) 210 CA3d 927, 935, 258 CR 716);
- The home is unkempt and unsanitary, but the child has suffered no ill effects (*In re Paul E.* (1995) 39 CA4th 996, 1005, 46 CR2d 289);
- There was a single instance of physical abuse that was not considered to be an obstacle to reunification (*In re Henry V.* (2004) 119 CA4th 522, 529, 14 CR3d 496);
- The parents are narcissistic or self-centered but no showing is made of a tendency to harm children (*In re Kimberly F.* (1997) 56 CA4th 519, 527, 65 CR2d 495—consideration of best interest and detriment in context of Welf & I C §388 petition); or
- The parents are extremely strict, unable to understand teenage issues, and have values that greatly differ from those prevailing in society, but there is no showing of detriment (*In re Jasmine G.* (2000) 82 CA4th 282, 288–290, 98 CR2d 93).

➤ **JUDICIAL TIP:** In making the decision to remove a child from a parent's custody, it is not sufficient to look solely to the risk posed to the child by the parent. The emotional harm to the child that may occur as a result of the removal if the child is strongly bonded to the parent must also be considered, and the court should take steps to ensure that any harm caused by removal is not greater than the harm from which the child is to be protected. The court should also pay attention to the possible alternatives to removal, recognizing that in order to remove the child, the court must find, in addition to detriment, that there are no reasonable means to have the child remain safely with the parent.

4. [§102.42] Removal Warranted

A child's adjudication as a dependent under Welf & I C §300(e) (severe physical abuse), is prima facie evidence that removal is necessary. Welf & I C §361(c)(1).

When a court finds that the only services that could have been offered that would have obviated the need for removal, while avoiding danger to the child, is 24-hour in-home supervision, the court is justified in ordering removal. *In re Stephen W.* (1990) 221 CA3d 629, 646, 271 CR 319. However, if intensive family preservation services are available within the county, the court may be able to keep the child in the home.

A court may remove a child from the custody of a developmentally disabled parent under Welf & I C §361(c)(1) if the parent has received many services and still cannot safely parent the child on a full-time basis. *In re Diamond H.* (2000) 82 CA4th 1127, 1136–1137, 98 CR2d 715, disapproved on other grounds in 26 C4th 735, 739. And the court may remove a younger biological child when it has found that the father physically and sexually abused his stepdaughters and refused voluntary service referrals or structured visitation. *In re Cole C.* (2009) 174 CA4th 900, 918, 95 CR3d 62. Moreover, the court should have removed a child from an abusing adoptive father who was a stay-at-home parent when the court considered the father to be an ongoing risk. *Los Angeles County Dep’t of Children & Family Servs. v Superior Court* (2006) 145 CA4th 692, 698–699, 51 CR3d 816.

When a parent inappropriately and incessantly charges that the other parent has sexually abused the children, and these charges are made in front of the children, this conduct may result in serious emotional damage, requiring removal of children from the accusing parent’s custody under Welf & I C §361(c)(1). *In re H.E.* (2008) 169 CA4th 710, 724, 86 CR3d 820.

5. [§102.43] Sibling Considerations

If the court has ordered the child removed from the parents’ custody under Welf & I C §361, it must consider whether the child has siblings under the jurisdiction of the court and, if so, the nature of the sibling relationship, whether it is appropriate to develop and maintain the relationship, and the impact of the sibling relationships on placement and permanency planning. Welf & I C §361.2(j). The court should make orders regarding sibling placement, visitation, and interaction as appropriate. See Welf & I C §16002(b).

I. Parental Custody

1. [§102.44] Child Remains With Custodial Parent

If the court does not remove the dependent child from the custodial parent, it must leave the child in that parent’s home under a family maintenance plan. The court may order services to help ensure the success of the continued custody arrangement. Possible services are:

- Case management,
- Counseling,
- Emergency in-home caretakers,
- Respite care,
- Homemakers for teaching and demonstrating,
- Parenting classes, and
- Any other services authorized by Welf & I C §§16500–16521.5.

If the child has been declared a dependent and remains in the custodial home under the supervision of DSS, the parent or guardian must be required to participate in child welfare services or programs provided by the social worker or an agency designated by the court. Welf & I C §362(c); Cal Rules of Ct 5.695(c)(2). The parent or guardian may also be required to ensure the child’s regular school attendance and to make reasonable efforts to obtain educational services tailored to the specific needs of the child. Welf & I C §361.2(d). The parent may choose a surrogate parent to advocate for the child’s educational needs. See Govt C §7579.5. See also

Judicial Council form JV-417, Dispositional Attachment: In-Home Placement With Formal Supervision.

In order to protect the child, the court must consider the option of keeping the child in the home and excluding the parent or guardian who caused the harm from the home. Welf & I C §361(c)(1). The court may condition this continuing custody on the other parent's presentation of an acceptable plan, demonstrating that that parent will be able to protect the child from future injury. Welf & I C §361(c)(1). Thus, a court has the authority under Welf & I C §361(c)(1) to order a parent not to reside with the perpetrators of sex abuse as part of a reunification plan. *In re Silvia R.* (2008) 159 CA4th 337, 345, 71 CR3d 496.

In addition to services, the court may also order limitations on the parents' exercise of control of the child. Welf & I C §361(a); Cal Rules of Ct 5.695(a)(6), (c)(1). Limitations may relate to medical, educational, or developmental services decisions, visitation with other adults including the noncustodial parent, disciplinary policies, or any other limitation that is necessary to protect the child, as long as the limitations do not exceed those necessary for the child's protection. See Welf & I C §361(a). See discussion in §102.101. However, there are no limitations on the parents' ability to relinquish the child to the State DSS or licensed adoption agency while the child is a dependent, if the agency is willing to accept the relinquishment. Welf & I C §361(b).

If a child is "placed" with (*i.e.*, remains with) a parent at the original disposition hearing and then later removed under a supplemental petition, reunification services must be ordered, no matter how many months of family maintenance services had been previously received unless a §361.5(b) situation prevails. *In re Joel T.* (1999) 70 CA4th 263, 268, 82 CR2d 538.

The court may not order the child removed from the custody of the parents and then physically detain or place the child back in the home under a "detention with parent" order. *In re Andres G.* (1998) 64 CA4th 476, 481, 75 CR2d 285 (placement occurred after disposition hearing). A "trial placement" with a parent following removal order is not authorized. *In re Damonte A.* (1997) 57 CA4th 894, 899–900, 67 CR2d 369. The juvenile court should comply with the governing statutes and rules by ordering physical removal of dependent children who would not be safe if left unsupervised in their parents' custody. *Savannah B. v Superior Court* (2000) 81 CA4th 158, 162, 96 CR2d 428.

2. [§102.45] Placement With Noncustodial Parent

When the child is removed from a custodial parent and placed with the other parent, Welf & I C §361.2, rather than Welf & I C §364, applies. *In re Janee W.* (2006) 140 CA4th 1444, 1451, 45 CR3d 445. Moreover, when a child has been removed from the custody of a guardian appointed by the probate court, a noncustodial parent has standing under Welf & I C §361.2(a) to request a contested dispositional hearing and, when the hearing is held, to appear, to be heard, and to present evidence. *In re Catherine H.* (2002) 102 CA4th 1284, 1292, 126 CR2d 342. If the noncustodial parent is seeking custody, DSS must inform the caregiver that he or she has the right to provide the court with input regarding the child's placement. Welf & I C § 366.23.

When a child has been placed with a noncustodial parent under Welf & I C §361.2, this placement may be treated as a placement with a custodial parent under Welf & I C §362 in that the Welf & I C §361.5 time limits on reunification services would not apply. *In re A.C.* (2008) 169 CA4th 636, 649, 88 CR3d 1. The situation may be different, however, when the noncustodial parent has requested and been denied custody; in that situation, the court has the

option of bypassing services to the noncustodial parent under Welf & I C §361.5(b), (e)(1). *In re Adrianna P.* (2008) 166 CA4th 44, 54, 81 CR3d 918.

The court must follow these steps when a noncustodial parent requests sole legal and physical custody under Welf & I C §361.2(a) (*In re Austin P.* (2004) 118 CA4th 1124, 1134–1135, 13 CR3d 616):

(1) Determine whether temporary placement with that parent would be detrimental to the child.

(2) If there is no showing of detriment, order DSS to temporarily place the child with that parent.

(3) Determine whether there is a need for ongoing supervision.

(4) If there is no such need, terminate jurisdiction and grant the previously noncustodial parent sole legal and physical custody.

(5) If there is a need for ongoing supervision, continue jurisdiction.

If the child is removed from the custodial parent as a dependent of the court and a previously noncustodial parent desires custody, the court must place the child with the noncustodial parent, regardless of the parent's immigration status, unless to do so would be detrimental to the child's safety, protection, or physical or emotional well-being. Welf & I C §361.2(a), (e)(1). The standard of proof for a finding of detriment that would result in not placing the child with the noncustodial parent is clear and convincing evidence. *In re Marquis D.* (1995) 38 CA4th 1813, 1829, 46 CR2d 198. In *In re Marquis D.*, the court of appeal implied its disapproval of the custom of "detaining" the child with the noncustodial parent, rather than following the requirements of Welf & I C §361.2 and actually placing the child with that parent, noting that this procedure creates a potential for termination of the noncustodial parent's rights without complying with the statutory requirements for placement and removal provided by the Legislature. 38 CA4th at 1823–1824.

When placing an Indian child with a noncustodial parent, a court is not required to find that it would cause serious emotional or physical damage to the child to remain with the custodial parent. *In re J.B.* (2009) 178 CA4th 751, 755, 100 CR3d 679. And in any case, the court must make findings when placing or denying placement with a noncustodial parent. Welf & I C §361.2(c); *In re Isayah C.* (2004) 118 CA4th 684, 701, 13 CR3d 198.

Sibling relationships may make the placement of the child with an out-of-state parent less desirable. *In re Luke M.* (2003) 107 CA4th 1412, 1422–1423, 132 CR2d 907.

The presumption of former CC §4600.5(a) (now Fam C §3080), that joint custody is in the best interest of the child when parents agree to it, does not apply in juvenile court. *In re Jennifer R.* (1993) 14 CA4th 704, 712, 17 CR2d 759.

a. [§102.46] Possible Orders

When there is a noncustodial parent, the court must first determine whether or not that parent wants to assume custody of the child under Welf & I C §361.2, and then whether placement and reunification services should be granted. *R.S. v Superior Court* (2007) 154 CA4th 1262, 1271, 65 CR3d 444. When a noncustodial parent is incarcerated, the court must also determine if that parent wishes to take custody of the child under Welf & I C §361.2 and, if so, whether such custody would be detrimental. *In re V.F.* (2007) 157 CA4th 962, 965–966, 69 CR3d 159. In determining detriment, among the factors that the court must consider is the length of the incarceration and whether the parent can make arrangement for the child's care. 157

CA4th at 966. See discussion in §102.63 on possible extension of services when the parent has been incarcerated.

If the court places the child with the noncustodial parent, it may

- Award physical and legal custody of the child to that parent and terminate dependency after stating on the record the factual basis for the order (Welf & I C §361.2(b)(1); Cal Rules of Ct 5.695(a)(7)(A), 5.620(c)); or
- Order the noncustodial parent to assume custody subject to juvenile court jurisdiction and require a home visit within three months. Welf & I C §361.2(b)(2). After the home visit, the court may (1) award full legal and physical custody to the noncustodial parent (Welf & I C §361.2(b)(1)), (2) continue custody with juvenile court jurisdiction and a new home visit (see Welf & I C §361.2(b)(2)), or (3) award custody to the noncustodial parent but continue dependency and order services for that parent or both parents (see Welf & I C §361.2(b)(3)). Welf & I C §361.2(b)(2).
- Award custody to that parent but continue dependency and order services for the parent assuming custody, the parent from whom custody was removed, or both after stating on the record the factual basis for the order (Welf & I C §361.2(b)(3); Cal Rules of Ct 5.695(a)(7)(B), 5.620(c)).
- Provide visitation for the parent from whose home the child was removed. See Welf & I C §§361.2(b)(1), 362.1; Cal Rules of Ct 5.700(a).

See Judicial Council form JV-420, Dispositional Attachment: Removal From Custodial Parent—Placement With Previously Noncustodial Parent.

If the court continues to supervise the child as a dependent child, any visitation order for the parent from whose home the child was removed may be part of a reunification plan. See Welf & I C §361.2(b)(3).

The court may terminate jurisdiction when the child is in the home of the former noncustodial parent and the court determines that supervision is no longer required, even if the former custodial parent did not receive adequate reunification services. *In re Janee W.* (2006) 140 CA4th 1444, 1451–1455, 45 CR3d 445.

b. [§102.47] Requirements for Custody Order

California Rules of Ct 5.700 sets out the requirements for preparation and transmission of a custody order. If the court terminates jurisdiction, the custody order will be in effect until modified by the family law court and must be filed in any existing domestic relations proceeding between the parents. Welf & I C §361.2(b)(1); see §§102.106, 102.108 for a discussion of the transmission of orders to the family law court.

The court may also order services solely for the parent to whom physical custody was given. Welf & I C §361.2(b)(3). If the court orders services for both parents, it may determine at later review hearings which (if either) should ultimately have custody. Welf & I C §361.2(b)(3).

c. [§102.48] Placement With Biological Father

Welfare and Institutions Code §361.2 (placement with noncustodial parent) is not applicable to a biological father who is not the *presumed father*. *In re Zacharia D.* (1993) 6 C4th 435, 453–454, 24 CR2d 751 (biological father waited until the 18-month hearing to establish paternity and assert his status as a father). Nor is Welf & I C §362.1 applicable to an alleged father. Only a

presumed father (Fam C §7611) has a right to custody of his child. 6 C4th at 454. However, a biological father may request and receive custody if it is in the child's best interest. See 6 C4th at 449, 450.

If the child is placed with the biological father, the father may subsequently become a presumed father by virtue of that placement. 6 C4th at 449, 454. See also *Adoption of Kelsey S.* (1992) 1 C4th 816, 842, 4 CR2d 615 (court may grant custody to biological father, who may later be able to qualify as presumed father, even over mother's objection). Indeed, one court has held that *Kelsey S.* status may apply to men who have demonstrated commitment to parental responsibility but who are not biological parents. *In re Jerry P.* (2002) 95 CA4th 793, 816, 116 CR2d 123. This case is an anomaly, however, since the man was neither a presumed nor a biological parent.

- JUDICIAL TIP: Before placing a child with a noncustodial father, the court should determine whether he is a presumed father. If he is not, then the court must not place the child with him unless there has been a previous judgment of paternity, or the court makes such a judgment at the hearing and determines that placement with the biological father is best for the child. Otherwise he remains an alleged father only and is not entitled to custody of the child and has no statutory right to reunification services.

If there is more than one presumed father under Fam C §§7541–7644, the court must weigh the considerations of “policy and logic,” and identify only one as the presumed father. See *Brian C. v Ginger K.* (2000) 77 CA4th 1198, 1220, 92 CR2d 294.

d. [§102.49] Reunification Services

Although the court may order services for the noncustodial parent with the goal of strengthening contact with the child with no contemplation of reunification, it may also decline to order services altogether. See *In re Sarah M.* (1991) 233 CA3d 1486, 1501, 285 CR 374, disapproved on other grounds in 13 C4th at 196. There is a requirement that a noncustodial parent receive reunification services when a child is placed with a former custodial parent. *In re Pedro Z., Jr.* (2010) 190 CA4th 12, 20, 117 CR3d 605.

- JUDICIAL TIP: When the court orders services for the parent from whom custody was removed, it should clearly state the nature of those services and whether they are designed to help reunify the child with that parent or merely to help develop, maintain, or improve the parent-child relationship despite the intention to leave the child with the parent with whom he or she has been placed. The court should not imply that it is working toward reunification when it is actually working only toward a stabilization of the overall family in separate homes.

A court may deny reunification services to a former custodial parent when placing the child with a noncustodial parent under Welf & I C §361.2, even though the court may not have been able to deny services to the former custodial parent under Welf & I C §361.5 if there had not been another parent to assume custody; in the limited situation in which custody is transferred to a noncustodial parent, Welf & I C §361.2, rather than Welf & I C §361.5, applies. *In re Erika W.* (1994) 28 CA4th 470, 475, 33 CR2d 548. When a court places the child with a noncustodial parent without ordering reunification services with the former custodial parent, it should make it clear that it has discretion in the matter and make findings supporting the denial of services. *In re Katrina C.* (1988) 201 CA3d 540, 550, 247 CR 784.

e. [§102.50] Out-of-State Placements

If the court places the child with an out-of-state noncustodial parent and retains jurisdiction or maintains dependency in order to provide services to or to impose conditions on the noncustodial out-of-state parent, the Interstate Compact on Placement of Children (ICPC) must be applied, except when the “placement” is for a short period such as a school vacation or a period that is less than 30 days. See Cal Rules of Ct 5.616(b)(1). See Fam C §§7900–7912 and Cal Rules of Ct 5.616 generally for procedures to apply when placing the child out of state under the ICPC. An ICPC evaluation that found an out-of-state parent’s home unsuitable for placement does not preclude the court from permitting the child to visit that home. *In re Emmanuel R.* (2001) 94 CA4th 452, 463, 114 CR2d 320.

A number of cases hold that the ICPC applies only to interstate foster care placements or to placements preliminary to adoption, not to placements with a noncustodial parent. *Tara S. v Superior Court* (1993) 13 CA4th 1834, 1837–1838, 17 CR2d 315; *In re Johnny S.* (1995) 40 CA4th 969, 977, 47 CR2d 94; *In re C.B.* (2010) 188 CA4th 1024, 1032, 116 CR3d 294 (discussing the lack of uniformity within California and among states on this issue).

California Rules of Ct 5.616, which requires that the ICPC must be applied if the child is placed with a parent and if dependency is not terminated, provides countervailing authority. This rule was adopted as a model for other ICPC states and was designed to clarify any confusion about when the compact applies.

- **JUDICIAL TIP:** If a child is with a parent in another state, and dependency in California is continued, some judges believe that the compact provisions must be observed and that the court must maintain supervision over the dependent child who resides in another state. At least one court has disagreed, however, continuing to hold that the ICPC does not apply to a placement with an out-of-state parent even if dependency jurisdiction is to be maintained. See *In re John M.* (2006) 141 CA4th 1564, 1573–1575, 47 CR3d 281. This area of the law should be watched for further development.

On the issue of applicability of the ICPC to placement with an out-of-state, noncustodial parent, a joint committee, with representation from the National Council of Juvenile and Family Court Judges, the National Association of Public Child Welfare Administrators, and the ICPC Administrators noted (ICPC Administrators’ Memorandum, *Joint Committee’s Recommendations to Improve the Placement of ICPC Children*, p 8 (May 8, 1996)):

Obviously, the standing of a non-custodial parent to have custody of his/her own child would appear on the surface to be absolute. However, there are circumstances in which a judge may want to have a home study for a non-custodial parent. The need for a home study could include situations where the non-custodial parent has never had contact with the child, or has had such infrequent contact as to be considered a stranger to the child. Other situations could include allegations of a history of alcohol and/or drug abuse, domestic violence or criminal history. The subject of the inviolability of a parent to care for his/her child is highly controversial. This committee believes that the court is ultimately responsible for determining if the child should be placed with the non-custodial parent and the necessity for a home study prior to any such placement.

For further discussion of the ICPC, see Seiser & Kumli, *California Juvenile Courts: Practice and Procedure* §2.128 (LexisNexis 2013).

J. [§102.51] Placement With Nonparent

When the court orders removal of the child from the legal custodians (one or both parents or guardians) under Welf & I C §361, the court must order that the care, custody, control, and conduct of the child to be under the social worker's supervision. Welf & I C §361.2(e). Both physical and legal custody reside with the social worker under the court's supervision, unless the court places the child with the noncustodial parent and orders custody awarded to that parent. See Welf & I C §361.2(a), (b)(2), (e); *In re Robert A.* (1992) 4 CA4th 174, 189, 5 CR2d 438. Unless a parent has both legal and physical custody, the court retains jurisdiction to oversee administration by DSS in its choice among placement alternatives enumerated in Welf & I C §361.2. The authority of DSS is limited by the court's interpretation of the child's best interests under Welf & I C §202(b). 4 CA4th at 189. See Judicial Council form JV-421, Dispositional Attachment: Removal From Custodial Parent—Placement With Nonparent.

1. Placement Options

a. [§102.52] Social Worker's Nonparental Options

The social worker may place the child in

- The approved home of a relative, regardless of the relative's immigration status (Welf & I C §361.2(e)(2); Fam C §7950(a)(1); see also Welf & I C §§281.5 (DSS must recommend placement with relative if it is in child's best interest and is conducive to reunification), 361.3(a) (preferential consideration must be given to a request by relative for placement, regardless of immigration status); *In re Baby Girl D.* (1989) 208 CA3d 1489, 1493, 257 CR 1 (relative more likely to support reunification efforts while providing psychological and physical care)).
 - The social worker must investigate any interested relative. Fam C §7950(a)(1).
 - The social worker must use diligence in finding adult relatives within 30 days of removal. Cal Rules of Ct 5.637.
 - If, after investigation by the social worker and a possible hearing on this issue, the court does not place the child with a relative, it must state reasons on the record why placement with a relative was denied. Welf & I C §361.3(e).
- The approved home of a nonrelative extended family member (NREFM) (see Welf & I C §362.7) (Welf & I C §361.2(e)(3)). An individual with a close connection with the child's family need not have an existing relationship with the child for NREFM status (*In re Michael E., Jr.* (2013) 213 CA4th 670, 675–676, 153 CR3d 234).
- A foster home that had been a previous placement if in the child's best interests (Welf & I C §361.2(e)(4)).
- A suitable licensed community care facility, except that a child under six years of age may not be placed in such a facility except under limited circumstances (Welf & I C §361.2(e)(5), (8)).
- A foster family agency for placement in a foster family home or certified family home (Welf & I C §361.2(e)(6)).
- A home or facility in compliance with the federal Indian Child Welfare Act (ICWA; 25 USC §§1901 et seq) (Welf & I C §361.2(e)(7)).

When reunification services have been in place and have been terminated, but parental rights have not yet been terminated, the relative placement preference of Welf & I C §361.3 still applies if the child needs to be moved. *Cesar V. v Superior Court* (2001) 91 CA4th 1023, 1032, 111 CR2d 243. Also, under Welf & I C §361.3(d) (preference for placement with relative who is not unsuitable), a child may be placed with a relative from whom the child was previously removed if the removal was not ordered because the relative was unsuitable. *In re Antonio G.* (2008) 159 CA4th 369, 377–379, 71 CR3d 79.

There are numerous restrictions on case plans that require out-of-county placement. See Welf & I C §361.2(g). Unless the child is placed with relatives, placement within the parent’s or guardian’s county of residence is greatly preferred so that reunification efforts may be facilitated; however, such a placement should not be made if it would unnecessarily disrupt the child’s life. Welf & I C §361.2(g)–(h).

b. [§102.53] Placement Outside United States

A social worker may not place a dependent child outside the United States with a nonparent except as specified in Welf & I C §361.2(f). Welf & I C §361.2(e)(9). Placement of children in a foreign country was permitted before the enactment of §361.2(f). See, e.g., *In re Sabrina H.* (2007) 149 CA4th 1403, 1412–1414, 57 CR3d 863 (court correctly placed children with grandparent in Mexico).

Before a child under a social worker’s supervision is placed outside the United States, there must be a judicial finding that the placement is in the child’s best interest, except as required by federal law or treaty. Welf & I C §361.2(f)(1); see Welf & I C §361.2(f)(5) (specified tribal lands not “outside” the country). The party or agency requesting placement outside the United States must show, by clear and convincing evidence, that the placement is in the child’s best interest. Welf & I C §361.2(f)(2). The court must consider, but is not limited to, the following factors in deciding the child’s best interest (Welf & I C §361.2(f)(3)):

- Placement with a relative.
- Placement of siblings in the same home.
- Amount and nature of any contact between the child and the potential guardian or caretaker.
- Physical and medical needs of the dependent child.
- Psychological and emotional needs of the dependent child.
- Social, cultural, and educational needs of the dependent child.
- Specific desires of any dependent child who is 12 years of age or older.

If the court finds that requesting party or agency met their burden of proof, the court may issue an order authorizing placement outside the United States. The order must be issued before the child leaves the country. Welf & I C §361.2(f)(4). These requirements for placement outside the country do not apply to the placement of a dependent child with a parent under Welf & I C §361.2(a). Welf & I C §361.2(f)(6); see §102.45.

- **JUDICIAL TIP:** Some counties have agreements with their local consulate offices to help facilitate relative evaluations, service provision, and ongoing monitoring in foreign countries. When placing a child outside the United States, however, the court must consider the issue of recognition and enforcement of California juvenile court orders under the laws of that country and must impose whatever measures are appropriate and

necessary to ensure enforceability of the court's continuing jurisdiction while the child is in that country. *In re Karla C.* (2010) 186 CA4th 1236, 1266-1270, 113 CR3d 163.

When children are placed outside the country, their foster parents are not eligible for federal AFDC payments. *In re Joshua S.* (2007) 41 C4th 261, 277, 59 CR3d 460.

2. [§102.54] Indian Child

There are special considerations for placement of an Indian child. Placement must be in reasonable proximity to the child's home and in the least restrictive setting that may accommodate the child's special needs. Welf & I C §361.31(b). Preference must be given as follows (Welf & I C §361.31(b)):

1. A member of the extended family (see 25 USC §1903).
2. A foster home licensed, approved, or specified by the tribe.
3. An Indian foster home licensed or approved by a non-Indian agency.
4. A children's facility approved by the tribe or operated by an Indian organization.

The tribe may establish a different order of preferences that the court is obligated to follow. Welf & I C §361.31(d).

Before the child may be removed, DSS must provide evidence to the court that active efforts have been made to provide services designed to keep the Indian family together. Welf & I C §361.7(a). In determining whether active efforts were made to avoid the breakup of an Indian family (see Welf & I C §361.7; 25 USC §1912(d)), the court need consider only remedial services and rehabilitative programs and need not take into account the child's placement. *In re A.A.* (2008) 167 CA4th 1292, 1318-1319, 84 CR3d 841.

Moreover, before foster care placement or guardianship may be ordered, DSS must show by clear and convincing evidence that continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child as shown by a "qualified expert witness" under Welf & I C §224.6. Welf & I C §361.7(c).

The court may determine that good cause exists not to follow placement preferences. Welf & I C §361.31(h). An example of good cause to deviate from ICWA's placement preferences is when the Indian relative was not able to protect the child from the parents' domestic or substance abuse and did not seem capable of facilitating reunification with the mother. *In re G.L.* (2009) 177 CA4th 683, 698, 99 CR3d 356. The burden for establishing good cause is on the party requesting that preferences not be followed. Welf & I C §361.31(j).

3. Placement With Relative

a. [§102.55] Factors To Consider

DSS must use due diligence in identifying, locating, and notifying the child's adult relatives within 30 days of removal, except that there is no requirement to notify a relative whose personal history of family violence would render notification inappropriate. Cal Rules of Ct 5.637. The court must determine whether or not DSS has been diligent in its investigation (Cal Rules of Ct 5.695(f)), by noting whether DSS has taken the steps listed in Cal Rules of Ct 5.695(g), such as using Internet search tools. Cal Rules of Ct 5.695(f), (g).

In removing the child from the physical custody of the parents and evaluating placement with a relative, the court and the social worker must consider the following factors:

- The best interests of the child. Welf & I C §361.3(a)(1).
- The parent’s wishes. Welf & I C §361.3(a)(2).
- Provisions of Fam C §§7950–7952 with respect to priority given to relative placement. Welf & I C §361.3(a)(3).
- Placement of siblings and half siblings in the same home. Welf & I C §361.3(a)(4).
- Good moral character of the relative. Welf & I C §361.3(a)(5).
- The nature and duration of the relationship with the relative and the relative’s interest in caring for the child and providing for legal permanency. Welf & I C §361.3(a)(6).
- Whether the relative can (Welf & I C §361.3(a)(7)):
 - Provide a secure, stable environment;
 - Exercise care and control;
 - Provide a home and necessities of life;
 - Protect the child from the parents;
 - Facilitate court-ordered reunification efforts;
 - Facilitate visitation with other relatives;
 - Facilitate implementation of the case plan; and
 - Provide legal permanence if reunification fails (concurrent planning).

➤ **JUDICIAL TIP:** Although it is frequently stated that one reason for relative placement is that relatives are more likely to support reunification with the parents than are foster parents, relatives can also be very hostile to the parents and antagonistic to the goal of reunification. Therefore, the court should look closely at individual relative placements to ensure that the relatives will work with the court and the family toward reunification.

- The safety of the relative’s home which must be approved under Welf & I C §309(d). Welf & I C §361.3(a)(8).
- Likewise, now that planning for an alternative permanency placement must be done concurrently with reunification efforts, the court should also look closely at individual relative placements to determine if the relatives are willing and able to provide the appropriate level of permanent care should reunification efforts prove unsuccessful. Welf & I C §361.3(a)(6), (7)(G)–(H).

When a relative caregiver prefers legal guardianship over adoption for reasons not relating to an unwillingness to assume legal or financial responsibility for the child, this should not be the sole basis for removing the child from the custody of that caregiver. Welf & I C §361.5(g)(2)(A).

Moreover, when a child was a former dependent or had been adopted but the adoption has been set aside or disrupted in some way, DSS may contact a former relative and provide that relative with identifying information about the child if such a course of action might benefit the child. Welf & I C §361.3(f).

The preference for placement with a relative may be outweighed by the child’s best interests even when the relative’s home appears to be a good one. See *In re Stephanie M.* (1994) 7 C4th 295, 321, 27 CR2d 595. Moreover, placement with relatives under Welf & I C §361.3 (preferential consideration) that would result in the child residing at a considerable distance from the parents has to be balanced against the parents’ reasonable opportunity to pursue reunification.

In re Luke L. (1996) 44 CA4th 670, 681, 52 CR2d 53. Preferential consideration for placement with a relative under Welf & I C §361.3 does not create a presumption in favor of placement with that relative but insures that the relative's application will be considered before that of a stranger. *Alicia B. v Superior Court* (2004) 116 CA4th 856, 863, 11 CR3d 1. Despite this policy of family preservation, the child's best interests may require placement with foster parents in California when the child has bonded with them even though out-of-state bureaucracy had delayed the investigation of out-of state relatives and the provision of reunification services to the mother and her relatives. *In re Lauren Z.* (2008) 158 CA4th 1102, 1112-1113, 70 CR3d 583.

The court may not refuse placement with relatives based on a past adversarial relationship between the relatives and the parents when the relatives are loving caretakers and there is no evidence that they will impede reunification efforts. See *In re Robert L.* (1993) 21 CA4th 1057, 1068, 24 CR2d 654.

b. [§102.56] Who Qualifies as Relative

Only aunts, uncles, siblings, or grandparents qualify as relatives who must be given preferential consideration for placement under Welf & I C §361.3; cousins do not qualify. Welf & I C §361.3(c)(2); *In re Luke L.* (1996) 44 CA4th 670, 680, 52 CR2d 53. Preferential consideration means that the relative who has requested custody should be the first to be considered and investigated. Welf & I C §361.3(c)(1).

All adults who are related to the child by blood, adoption, or affinity within the fifth degree of kinship, which include stepparents, stepsiblings, and all relatives whose status is preceded by the words "great," "great-great" or "grand" or the spouse of any of these persons even if the marriage has been terminated by dissolution or death, are "relatives" for purposes of relative placement, even if they are not entitled to preferential consideration. Welf & I C §361.3(c)(2).

☛ JUDICIAL TIPS:

- Many judges will consider all individuals who have been verified as relatives if the statutorily defined persons are not available or suitable.
- Until paternity is determined, the court should not detain or place a child with anyone claiming relative status through the child's alleged father. If there is no presumed father, however, the court may place the child with a relative of the man who is declared to be the biological father under a judgment of paternity. If there is more than one presumed father, the court must weigh policy and logic to recognize only one, whose relatives could then be considered for placement of the child.

c. [§102.57] Procedure/Investigations

A timely request by a parent or other relative made in open court should be sufficient to trigger the investigation and evaluation of relatives required by Welf & I C §361.3. *In re Rodger H.* (1991) 228 CA3d 1174, 1185, 279 CR 406.

Before placing a child with a relative or someone who is not a licensed or certified foster parent, the social worker must visit the home to ensure the appropriateness of the placement and must make certain criminal checks on the occupants of the home. See Welf & I C §361.4. The court has no discretion to ignore the mandatory language of Welf & I C §361.4(d)(2), prohibiting the child from being placed in a home in which the child would have contact with an adult who has been convicted of a crime. *Los Angeles County Dep't of Children & Family Servs. v Superior*

Court (2001) 87 CA4th 1161, 1166, 105 CR.2d 254. Therefore, under Welf & I C §361.4(b), a court may not approve a placement without doing a fingerprint clearance check of all residents even when the child moves into the new residence with a previously approved foster parent. *Los Angeles County Dep't of Children & Family Servs. v Superior Court* (2005) 126 CA4th 144, 152, 24 CR3d 256. Under Welf & I C §361.4, the check must be made and the exemption granted before the placement has been made. 126 CA4th at 152-153.

The only exception occurs when the State DSS has granted a criminal records exemption and has determined that the person being considered for the placement does not present a risk of harm to the child. See Welf & I C §361.4(d)(2)-(6). Although Welf & I C §361.4(d)(2) prohibits initial detention with a person with certain felony convictions, it does not deprive the court of discretion to maintain the placement of dependent children with a foster parent with a felony conviction that occurred after the original placement. *Los Angeles County Dep't of Children & Family Servs. v Superior Court* (2003) 112 CA4th 509, 519, 5 CR3d 182.

When DSS denies a criminal records exemption for a relative seeking placement of the child, the court has jurisdiction to review this denial. *In re Esperanza C.* (2008) 165 CA4th 1042, 1060, 81 CR3d 556.

Although a grandmother may appear to be helpful with DSS and to be devoted to the child, the court has no authority to place the child with her when she had a criminal conviction, and DSS had denied an exemption from her criminal record. *In re S.W.* (2005) 131 CA4th 838, 851-852, 32 CR3d 192.

If, after investigation and a hearing, the court declines to place the child with a relative, it must state its reasons on the record. Welf & I C §361.3(e).

4. [§102.58] Foster Care Placement

The DSS may not delay or deny foster care placement or otherwise discriminate in making a placement decision solely on the basis of race or national origin of the child or foster parent. Fam C §7950(a)(2). This restriction does not apply if the placement is to be for less than 30 days. Fam C §7951. A child who is ten years of age or older may make a statement to the court regarding the placement decision although the court is free to make a decision contrary to the child's preferences. Fam C §7952. See also Welf & I C §361.2(e) and discussion in §102.52 on permissible foster care options.

Placement in a foster home that is located a considerable distance from the parent's residence may not be an insurmountable barrier to the use of reunification services when this is the only foster home available and DSS has provided funds for transportation. See *James B. v Superior Court* (1995) 35 CA4th 1014, 1020, 41 CR2d 762. But see *In re Luke L.* (1996) 44 CA4th 670, 681, 52 CR2d 53 (twice monthly visits over hundreds of miles were held not sufficient to foster reasonable reunification efforts even with DSS paying for bus, meals, and lodging).

K. Guardianship

1. [§102.59] In General

The court may establish a legal guardianship, appoint a guardian, and issue letters of guardianship after receiving evidence on disposition whether or not the child is declared a dependent. Welf & I C §360(a); Cal Rules of Ct 5.695(b)(3), 5.620(d). A guardianship is appropriate when the court has found that the child is described by Welf & I C §300 and the parent has advised the court that he or she is not interested in reunification or family maintenance

services. Welf & I C §360(a); Cal Rules of Ct 5.695(b)(1)(A). The court must also find that the guardianship is in the child's best interests (Cal Rules of Ct 5.695(b)(1)(D)), and the parent and the child must knowingly waive reunification services and agree to the appointment of a guardian unless the child's age or mental condition would prevent a meaningful response. Welf & I C §360(a); Cal Rules of Ct 5.695(b)(1)(C). See Judicial Council form JV-418, Dispositional Attachment: Appointment of Guardian. See also mandatory Judicial Council form JV-195, Waiver of Reunification Services, which must be executed and submitted to the court before establishing the guardianship. Cal Rules of Ct 5.695(b)(1)(B).

Regardless of his or her immigration status, a relative caretaker must be provided with information regarding guardianship or adoption, including the long-term benefits, before the court may establish a guardianship or adoption. If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, the relative caregiver must be informed about the terms and conditions of the negotiated agreement and must agree to its execution before the .26 hearing. A copy of the executed negotiated agreement must be attached to the assessment. Welf & I C §361.5(g)(2)(B).

➤ JUDICIAL TIPS:

- In view of Welf & I C §361.5(b)(14), which permits a parent to waive reunification services and the court to then set a hearing under Welf & I C §366.26, some judicial officers decline to appoint a legal guardian at disposition and instead set a .26 hearing under these circumstances. Moreover, if the court does appoint a legal guardian at disposition, it should proceed with great caution because, in that situation, both adoption and reunification are precluded, and the child may be deprived of both reunification and the kind of permanent placement that would otherwise be available.
- Occasionally, a parent will waive services and agree to a guardianship with a relative on the expressed or tacit understanding that the relative guardian will return the child to the parent. The court needs to proceed with caution on this alternative disposition.

When the custodial parent has waived reunification services and that parent and the children have agreed on a guardianship, the court may order a legal guardianship under Welf & I C §360(a) even if it has not obtained agreement from the absent noncustodial parent; in this situation, the court may establish a guardianship, while granting a continuance pending an assessment report that must include information on attempts to contact the noncustodial parent. *In re L.A.* (2009) 180 CA4th 413, 427-429, 103 CR3d 179.

Although Welf & I C §903 makes a parent liable for costs of out-of-home placement, this liability does not extend to legal guardians. *In re Jason V.* (1991) 229 CA3d 1168, 1172, 280 CR 562.

2. [§102.60] Assessment

Under Welf & I C §360(a) and Cal Rules of Ct 5.690(a)(1)(A), a court may not appoint someone as a guardian until it reads and considers an assessment as specified under Welf & I C §361.5(g)(1), including such factors as:

- (1) Efforts to find and notify noncustodial parent as specified in Welf & I C §291.
- (2) Nature and amount of contacts between parent and child since filing of petition.
- (3) Child's medical, developmental, educational, mental, and emotional status, and the effect of this status on adoptability.

(4) Preliminary assessment of eligibility and commitment of prospective guardian and caretaker, including screening for criminal history.

(5) Child's relationship to any prospective guardian and child's perspective, if appropriate, as well as the prospective guardian's commitment and the child's attachment to that person. A child who is 12 years of age or older must be consulted about the proposed arrangement.

The preparer of the assessment may be called and examined by any party to the guardianship proceeding, and consideration of the assessment must be reflected in the minutes. Welf & I C §360(a).

3. [§102.61] Procedure

Under Cal Rules of Ct 5.695(b)(2), if appointing a legal guardian at the disposition hearing, the court must

(a) State on the record that it has read and considered the assessment (see also Welf & I C §360(a)).

(b) State findings on the record and the factual basis for them.

(c) Advise the parent that there will be no reunification services (see also Welf & I C §360(a)), accept the completed JV-195 form, and confirm that the parent has read and understood it.

(d) Make visitation orders as appropriate, including sibling visitation.

(e) Order that letters of guardianship be issued (see also Welf & I C §360(a)).

L. Reunification Services

1. [§102.62] In General

Reunification with the family is a primary objective when the child has been removed from the family's custody. Welf & I C §202(a); see *In re Zacharia D.* (1993) 6 C4th 435, 447, 24 CR2d 751 (at the disposition hearing stage, reunification is given precedence over child's need for stability). When a child is removed from a parent's or guardian's custody, the court must order reunification services for both the child and the parent or guardian to facilitate reunification of the family within a limited time. Welf & I C §361.5(a); Cal Rules of Ct 5.695(h)(1). The statutory scheme contemplates immediate and intensive support services to reunify a family when the dispositional order removes the children from the home. *In re Kristin W.* (1990) 222 CA3d 234, 254, 271 CR 629. It also contemplates the formulation of a plan that is specifically tailored to each family and designed to eliminate those conditions leading to the finding of jurisdiction. *In re Dino E.* (1992) 6 CA4th 1768, 1777, 8 CR2d 416. However, there is no constitutional entitlement to reunification services (*In re Joshua M.* (1998) 66 CA4th 458, 472-477, 78 CR2d 110), nor is there a requirement that a parent accept such services. A parent may waive reunification services, using Judicial Council form JV-195.

A parent who rejects reunification services waives the right to complain of their inadequacy. *In re Joanna Y.* (1992) 8 CA4th 433, 442, 10 CR2d 422. Noncustodial parents who do not want to assume custody need not be given reunification services. *In re Terry H.* (1994) 27 CA4th 1847, 1856, 34 CR2d 271. Courts sometimes give services to such parents, however, in order to enhance their relationships with their children.

Reunification services are only mandated at the original disposition hearing; if the court later holds a hearing on a subsequent petition under Welf & I C §342 alleging additional bases for jurisdiction, the court is not required to order additional services if the previously ordered

services are sufficient to address all bases for jurisdiction. *In re Barbara P.* (1994) 30 CA4th 926, 934, 36 CR2d 27. Even if additional services are ordered, the time limitation for reunification is not necessarily extended. See 30 CA4th at 933.

2. Length of Services

a. [§102.63] Calculating Length; Terminating or Extending Services

For a child who is three years of age or older on the date of initial removal, reunification services must not exceed the period of time beginning with the disposition hearing and ending 12 months after the child entered foster care under Welf & I C §361.49. Welf & I C §361.5(a)(1)(A); Cal Rules of Ct 5.695(h)(1). When the child was under three years of age at the time of removal, the period of reunification services is six months, beginning with the disposition hearing and lasting no longer than 12 months from the date the child entered foster care under Welf & I C §361.49. Cal Rules of Ct 5.695(h)(1). Welf & I C §361.5(a)(1)(B). When children are members of a sibling group (full or half siblings) in which one sibling was under three years of age at the time of removal, the period of reunification services may be limited for some or all of the children. Welf & I C §361.5(a)(1)(C); Cal Rules of Ct 5.695(h)(2). When the parent is incarcerated, however, services may not *automatically* be limited to six months even when the child is under three years of age. *In re Kevin N.* (2007) 148 CA4th 1339, 1343–1344, 56 CR3d 464. See also discussion of Welf & I C §361.5(a)(4) below.

Under most circumstances, it is reasonable to expect a parent will receive at least six months of reunification services. However, a parent is not entitled to any set minimum period of services. *In re Aryanna C.* (2005) 132 CA4th 1234, 1243, 34 CR3d 288. The court has discretion to terminate reunification services at any time after it has ordered them, if it determines that continuing services are not in the child's best interests. *In re Aryanna C., supra*, 132 CA4th at 1242, 1243. Indeed, although the default length of reunification services is 12 months for a child over three years of age, the court may terminate services any time after it has ordered them. *In re Derrick S.* (2007) 156 CA4th 436, 447, 67 CR3d 367 (mother was on the run from law enforcement and had not taken advantage of previously arranged services).

If DSS or any other party, including the child, seeks early termination of reunification services before the 12- month permanency hearing (or the six-month review hearing if the child is under three), the court must proceed according to Welf & I C §388(c). Welf & I C §361.5(a)(2); Cal Rules of Ct 5.695(h)(4). A motion to terminate reunification services is not required at the six-month hearing if the court finds any of the following by clear and convincing evidence: (1) child was initially removed under Welf & I C §300(g) and parent's whereabouts are still unknown, (2) parents have failed to contact and visit the child, and (3) the parent has failed to contact or visit the child. Welf & I C §361.5(a)(2); Cal Rules of Ct 5.695(h)(4).

Despite these limitations, reunification services may be extended for a period not to exceed 18 months from the date of removal if the parents can show that there is a substantial probability that the goals of the reunification efforts may be reached within that extended time. Welf & I C §361.5(a)(3). And the services period may be extended to 24 months if, at the 18-month permanency hearing, it is shown that the child may be returned and safely maintained in the home within that time period. Welf & I C §361.5(a)(4).

In deciding whether to extend services for a parent who is incarcerated or institutionalized, who is receiving drug treatment services, or who has been arrested and issued an immigration hold, detained by the United States Department of Homeland Security, or deported to his or her

country of origin, the court must consider that parent's special circumstances, including barriers to access to services and ability to maintain contact with the child. Welf & I C §361.5(a)(3). Although Welf & I C §361.5(a)(3) provides a safety valve for incarcerated parents, this safety valve is not applicable when evidence shows that conditions leading to incarceration have not been ameliorated, and thus, the parent will be unlikely to avoid incarceration in the future. *A.H. v Superior Court* (2010) 182 CA4th 1050, 1062, 107 CR3d 78.

The court may grant an extension under Welf & I C §361.5(a)(3) only if it is shown that it is in the best interests of the child to do so and that there is a substantial probability of return. Welf & I C §361.5(a)(4). The court must also specify the factual basis for its conclusion. Welf & I C §361.5(a)(4).

If the child is returned to the custody of the parent or guardian during this period of extension of services, this hiatus will not interrupt the running of the period. Welf & I C §361.5(a)(4).

b. [§102.64] Continuing or Terminating Family Services

The court may order family reunification services to continue for a nonminor dependent if the nonminor dependent and parent, parents, or legal guardian are in agreement and the court finds that the continued provision of these services is in the nonminor dependent's best interests, and there is a substantial probability that the nonminor dependent will be able to safely reside in the home of the parent or guardian by the next review hearing. The continuation of these services may not exceed the timeframes as set forth in Welf & I C §361.5. Welf & I C §361.6(a); see Welf & I C §11400(v) (defining "nonminor dependent").

If the nonminor dependent or parent, parents, or legal guardian are not in agreement, or the court finds there is not a substantial probability that the nonminor will be able to safely reside in the parent's or guardian's home, the court must terminate family reunification services to the parents or guardian. The nonminor dependent's legal status as an adult is, in and of itself, a compelling reason not to hold a .26 hearing. The court may order that a nonminor dependent who is otherwise eligible for AFDC-FC benefits remain in a planned, permanent living arrangement. Welf & I C §361.6(a).

Any motion to terminate court-ordered family reunification services for a nonminor dependent prior to the final review hearing must be made in the form of a motion for a modification (a "388" motion). Welf & I C §361.6(b); see Welf & I C §388(c). An order terminating court-ordered family reunification services may not be considered evidence of a condition required for the filing of a petition to terminate a parent's or legal guardian's court-ordered family reunification services with the nonminor dependent's sibling or half-sibling. Welf & I C §361.6(c).

An order terminating court-ordered family reunification services must not be used to deny family reunification services to a parent or legal guardian for a nonminor dependent's sibling or half-sibling. Welf & I C §361.6(d); see Welf & I C §361.5(b). The continuation of court-ordered family reunification services does not affect the nonminor's eligibility for extended foster care benefits as a nonminor dependent. Welf & I C §361.6(e); see Welf & I C §366.31.

3. [§102.65] Advisements

When the child was under three years of age at the time of removal or is a member of a sibling group with one sibling under three years of age at that time, the court must inform the parent or guardian that if the parent or guardian does not participate regularly in any court-

ordered treatment program or cooperate or use the services and make sufficient progress, efforts to reunify may be terminated after six months. Welf & I C §361.5(a)(3); Cal Rules of Ct 5.695(h)(1)–(2). If the child is a member of a sibling group as described above, the court must inform the parent or guardian of the factors that led to the decision to limit services to six months. Welf & I C §361.5(a)(3).

The presumptive time limits for reunification services begins on the date the child entered foster care. Welf & I C §361.5(a)(1). This date is defined as the earlier of the date of the jurisdictional hearing or the date that is 60 days after removal from the custody of the parent or guardian. Welf & I C §§361.49, 361.5(a)(1); Cal Rules of Ct 5.502(9)(A). The 18-month reunification period, which is almost always the maximum, begins on the date the child is removed from the physical custody of the parent or guardian. Welf & I C §361.5(a)(3). So does the 24-month period to which services may be extended in an unusual case. See Welf & I C §361.5(a)(4).

4. [§102.66] Formulating Reunification Plans

Although it is generally stated that the reunification plan should address the issues that caused the child to come within the jurisdiction of the juvenile court, the plan actually should include more. The goal of the plan is to facilitate the reunification of the family within a short period. See Welf & I C §361.5(a). As such, the plan should also address the reasons the child was removed from the custodial parent’s home. Welf & I C §361(c).

- **JUDICIAL TIP:** Although case plans are created and offered by DSS, the court must ensure that the plans are tailored to meet the needs of individual families as closely as possible.

The court may order counseling even for parents who have not been abusive or neglectful. See *In re A.E.* (2008) 168 CA4th 1, 4–5, 85 CR3d 189. In that case, the court properly ordered the noncustodial parent to participate in counseling sessions because that parent did not seem to grasp the seriousness of the other parent’s abusive behavior.

Reunification services must be sufficiently comprehensive to permit parents to learn new skills and put them into practice. See *In re Kristin W.* (1990) 222 CA3d 234, 255, 271 CR 629. It is insufficient to order that the parent be offered a parenting class and counseling, and require the parent to show an ability to maintain an appropriate home, if there is only limited provision for visitation and the parent has not been clearly apprised of what was needed in order to regain custody of the children. 222 CA3d at 254–255. Nor is a reunification plan reasonable when compliance with the plan is impossible because the parent is deported before the plan begins. *In re Maria S.* (2000) 82 CA4th 1032, 1039–1040, 98 CR2d 655 (child was born while mother was incarcerated and she was deported on release from prison). See discussion of case-specific plans in §102.67.

When out-of-home services are used and the goal is reunification, the plan must consider the importance of developing and maintaining sibling relationships. Welf & I C §16501.1(f)(9).

a. [§102.67] Case-Limited and Case-Specific Plans

Consistent with the requirement that the plan be tailored to the individual case, reunification plans should be both “case limited” and “case specific.” Case-limited plans limit the services ordered to those actually needed in a particular case to achieve reunification. For instance, all

parents would no doubt benefit from both counseling and parenting classes. However, not all parents, even those of dependent children, actually need counseling and parenting classes to have their child placed safely with them. Therefore, the ordering of services must be limited to those services actually needed in the particular case to achieve reunification. By limiting the plan in this way, the court can ensure that both DSS and the parent will be able to fulfill their respective roles within the plan. Without these limitations the plan might be more than the parent could physically complete or DSS could reasonably provide.

Case-specific plans ensure that the specific type of service needed is that which is ordered. For instance, a parenting class for parents with teenage children will not normally meet the needs of parents whose children are infants. Thus a plan that calls for a “parenting class” may be insufficient or be misinterpreted. Instead, the plan should require that the parent “participate in and complete a parenting class designed to address the parenting of infants, including nutrition, medical follow-through, and psychological support, and thereafter demonstrate an ability to care for the infant in a safe and nurturing manner.” An example of a failure to order a case-specific plan is requiring the mother to attend a parenting class when the children were declared dependents because of the father’s rampage, and the mother protected them as well as she could. See *In re Jasmin C.* (2003) 106 CA4th 177, 181–182, 130 CR2d 558. In this case the court noted that, while the requirement that a parent or guardian attend a parenting class is a fairly common one, it is inappropriate for a parent who did not abuse, neglect, fail to protect, or engage in any other unsuitable behavior. *In re Jasmin C., supra.*

- **JUDICIAL TIP:** When one parent has been abusive towards the other, the court should consider ordering that parent into a certified domestic violence batterers’ treatment program as part of a case-specific plan and should postpone couples’ counseling until the batterer has participated in such a program.

Another example of the need for case-specific plans is an order that simply requires “counseling” or “therapy.” Instead, the order should indicate the type of therapy, the nature of the issues to be addressed, and the goal to be achieved. For example, a case-specific order might read “participate and make progress in individual and group therapy to deal with issues surrounding the molestation of his daughter, to recognize his role in that molestation and the emotional trauma suffered by his daughter, and remain in therapy until he poses no further danger of sexual molestation to his daughter.”

➤ **JUDICIAL TIPS:**

- Many judges require a separate case plan for each parent.
- It is a good idea to find out if a parent is on probation and, if so, the conditions of that probation. The services can then be tailored to dovetail with those conditions.

b. [§102.68] Family Dynamics and Issues

In crafting an appropriate plan for a family, DSS and the court should not overlook the role that both parents played in the abusive or neglectful situation, and should address the requirements for each parent separately. For instance, in a substance abuse case one parent may be required to go to Narcotics Anonymous to deal with her drug problem while the other parent is required to go to Al-Anon to deal with his codependency problems.

- **JUDICIAL TIP:** When substance abuse is one of the core problems in a case, it may often be appropriate to require that the parent find a “sponsor” with a minimum number

of years of recovery (usually at least two) who is willing to be identified within the confidential juvenile court proceedings and to relate the progress of the parent in his or her own “program.” Many sponsors are willing to do this and it may be a crucial step in facilitating the parent’s recovery.

Many judges have found it effective to schedule regular checks on attendance in a treatment program because the constant monitoring assists parents who are motivated to recover and have their children returned. See also discussion in §102.98.

It is a rare case that has only one limited problem to be addressed by the reunification plan. Accordingly, although the plan should be case-limited and case-specific, it still must be thorough enough to include all the issues that must be addressed for the child to be returned safely to the home.

- **JUDICIAL TIP:** To avoid overwhelming parents with necessary services, some judges order services, one step at a time. The problem with this approach is that the parents may feel as if the plan is endless. To prevent this problem, judges can provide the parents with the entire plan and advise them to work with the social worker to break it into manageable parts.

In addition, reunification plans should include a release to the social worker of limited information, including attendance at programs, addresses, and other information, that would aid in assessing the appropriateness of reunification.

5. Who Is Entitled to Services

a. [§102.69] Generally

If the court orders counseling or treatment services, it must order the parent or guardian to participate in those services in order for the court to be able to find substantial probability of return. Welf & I C §361.5(a)(4). There are exceptions when this participation would be inappropriate or harmful to the child, when the parent or guardian is incarcerated and his or her facility does not provide access to treatment services, or when a parent has been arrested and issued an immigration hold, detained by the United States Department of Homeland Security, or deported to his or her country of origin. Welf & I C §361.5(a)(3). See also Welf & I C §362(d) (dispositional orders are to be directed to the parent or guardian).

Other adults in the child’s life are generally not entitled to reunification services.

b. [§102.70] Stepparents, Foster Parents, and De Facto Parents

Courts are generally not required to provide reunification services for stepparents because they do not have the legal status of parents or guardians for the purposes of juvenile court dependency proceedings, nor does a stepparent have a right to custody or reunification services that is independent of the right of the parent. *In re Jodi B.* (1991) 227 CA3d 1322, 1329, 278 CR 242 (permanency planning order made under former Welf & I C §366.25). See also *In re Jody R.* (1990) 218 CA3d 1615, 1628, 267 CR 746 (no statutory authority to order reunification services for a de facto parent). Denial of reunification services to de facto parents is not a due process violation. *In re Jamie G.* (1987) 196 CA3d 675, 680, 241 CR 869. But see *In re Venus B.* (1990) 222 CA3d 931, 936, 272 CR 115, disagreeing with *Jody R.*, and holding that the court may order counseling for a stepfather under Welf & I C §362(d) (former subdivision (c)). Under this

section, a foster parent or relative with whom a child is placed, although not necessarily entitled to services, may be required to participate in a counseling or educational program if participation is appropriate and it is in the child's best interest.

- **JUDICIAL TIP:** A parent who resides with the perpetrator of child abuse has the responsibility to ensure that the perpetrator makes the progress necessary to allow the child to be returned to the home. Thus, while the perpetrator, who may be a stepparent, may have no independent right to services, such services may flow through the parent. In such a case the plan might read: "If the mother continues to reside with the stepfather, she shall ensure that the stepfather participate in and complete a course in appropriate disciplinary techniques and that he demonstrate an ability and willingness to use alternative forms of discipline so as to allow the child to be returned to the home safely."

It may be helpful in this type of situation to have the perpetrator appear in court and be advised that, without his or her compliance with the plan, the custodial parent may have to choose between the perpetrator and the child.

Many judges feel that a parent who has lost custody of his or her child is entitled to know what is required of a stepparent or partner living in the home in order to achieve reunification. Therefore, when the court orders a case plan for that partner, the parent has measurable criteria to use in deciding whether to stay with that partner in attempting to reunify.

c. [§102.71] Services for Biological Fathers

A biological father who is not a presumed father is not generally entitled to reunification services under Welf & I C §361.5. *In re Zacharia D.* (1993) 6 C4th 435, 451–453, 24 CR2d 751. But if there is a conclusively presumed father who has parented the child, and the biological father has not, the court should order reunification services for the presumed father and may not order services for the biological father. *In re Elijah V.* (2005) 127 CA4th 576, 589, 25 CR3d 774. Alleged fathers are not legally recognized as fathers and hence are not entitled to custody, reunification services, or visitation. *In re O.S.* (2002) 102 CA4th 1402, 1410, 126 CR2d 571.

In *In re Sarah C.* (1992) 8 CA4th 964, 976, 11 CR2d 414, the court held that a man has no right to reunification services based on his status as the child's biological father when he is not the presumed father, has not been thwarted by the mother in his efforts to become a presumed father, and has not stepped forward at an early stage to take an active role in his child's life. Nevertheless, the court may order services for a man declared by the juvenile court or by a previous court to be the child's biological father when such services are in the child's best interest and the time for the provision of reunification services has not ended. See Welf & I C §361.5(a); *In re Zacharia D.*, *supra*, 6 C4th at 452–456. Moreover, when the biological father is thwarted by DSS in efforts to establish a relationship with the child despite his strenuous efforts to do so, it is reasonable to grant him reunification services. *In re Andrew L.* (2004) 122 CA4th 178, 195, 18 CR3d 591.

An alleged father who has not established that he is the biological father of the child and who does not take the child into his home or remain out of prison long enough to establish a home does not attain presumed father status. Thus he is not entitled to reunification services, even though he maintained contact with the child during part of the incarceration, diligently attended a parenting program, and held the child out as his own. *Glen C. v Superior Court* (2000) 78 CA4th 570, 585–586, 93 CR2d 103.

d. [§102.72] Noncustodial Parents and Grandparents

A noncustodial parent may be entitled to services even if that person does not immediately assume custody. See Welf & I C §361.2(b)(3). However, a court is not required to provide reunification services to a noncustodial parent who has no interest in custody. *Robert L. v Superior Court* (1996) 45 CA4th 619, 628, 53 CR2d 41; *In re Terry H.* (1994) 27 CA4th 1847, 1856, 34 CR2d 271 (Welf & I C §361.5 does not require services in such a situation).

There is no statutory authority giving grandparents the right to reunification services. *In re Albert B.* (1989) 215 CA3d 361, 381, 263 CR 694.

e. Incarcerated, Institutionalized, or Detained Parents

(1) [§102.73] In General

The court must order reunification services for an incarcerated or institutionalized parent, or a parent detained by the United States Department of Homeland Security or deported to his or her country of origin, unless the court determines by clear and convincing evidence that these services would be detrimental to the child. Welf & I C §361.5(e)(1); Cal Rules of Ct 5.695(h)(13). One of the services that must generally be offered to an incarcerated parent is visitation. *In re Brittany S.* (1993) 17 CA4th 1399, 1407, 22 CR2d 50.

In determining whether there is detriment to the child, the court must consider the following factors under Welf & I C §361.5(e)(1):

- Age of the child,
- Degree of parent-child bonding,
- Length of the sentence,
- Length and nature of treatment,
- Severity of crime or illness,
- Detriment should services not be offered,
- Wishes of the child who is ten years of age or older,
- Likelihood of discharge from incarceration, institutionalization, or detention within reunification period, and
- Other appropriate factors (such as the nature of any in-custody visits).

In determining what services to order, the court must consider what barriers the incarcerated, institutionalized, detained, or deported parent faces to access those services, as well as the parent's ability to maintain contact with the child, and must document this information in the case plan. Welf & I C §361.5(e)(1).

A parent who is incarcerated while awaiting trial, as well as one who is already serving a sentence, may be denied reunification services under Welf & I C §361.5(e)(1). *Edgar O. v Superior Court* (2000) 84 CA4th 13, 18, 100 CR2d 540. The court need not make a specific finding regarding the term of incarceration in order to apply Welf & I C §361.5(e)(1). *Edgar O. v Superior Court, supra.*

Under Welf & I C §361.5(e)(1), examples of services include the following:

- Phone contact using collect phone calls,
- Transportation,

- Visitation (see *In re Brittany S., supra*),
- Reasonable services to the child’s caretakers if not detrimental to the child, and
- Reasonable efforts to assist parents who have been deported to contact child welfare authorities in their country of origin, to identify any available services that would substantially comply with case plan requirements, to document the parents' participation in those services, and to accept reports from local child welfare authorities as to the parents' living situation, progress, and participation in services

(2) [§102.74] Incarcerated or Detained Parents

An incarcerated or detained parent may be required to attend parenting or vocational training classes if actual access to these services is provided. Welf & I C §361.5(e)(1). There must be *some* effort to reunify a child with an incarcerated parent unless the court finds detriment to the child under Welf & I C §361.5(e)(1); this effort must include at a minimum contacting the institution to learn if there are programs in which the parent may participate. *Mark N. v Superior Court* (1998) 60 CA4th 996, 1013–1015, 70 CR2d 603. Reunification services may not be feasible, however, when the child is very young and the parent places himself or herself beyond the reach of meaningful rehabilitative services by pursuing criminal activities that caused the incarceration out of state. *Elijah R. v Superior Court* (1998) 66 CA4th 965, 971, 78 CR2d 311.

If an incarcerated mother would like to participate in the community treatment program operated by the Department of Corrections and Rehabilitation under Pen C §§3410–3424, the judge must determine whether she should be permitted to do so based on the best interest of the child and the suitability of the program to the needs of both the child and the parent. Welf & I C §361.5(e)(3).

It is not sufficient merely to provide the parents with stamped envelopes as a means of keeping in contact with the child; DSS must also: (1) provide the parent with requested parenting pamphlets, (2) determine whether requested visits can take place, and (3) review the service plan with the parent or give the parent advice on how to secure parental rights. See *Robin V. v Superior Court* (1995) 33 CA4th 1158, 1165, 39 CR2d 743.

- ☛ JUDICIAL TIP: Some judges order incarcerated parents, who cannot take parenting courses, to read books on this subject from the prison library and to write reports on those books. Additionally, DSS can be directed to send this type of book to an incarcerated parent, together with a return mail envelope. However, judges need to be sure the parent is able to read and understand the material for this order to be useful. If not, DSS might work with a prison counselor to have another inmate read the material to or translate it for the parent. The Department of Corrections and Rehabilitation makes available a list of state prison facilities and the services that are offered to inmates at each site. However, the listed services are not always open to all inmates, and there are often long waiting lists and eligibility requirements for participation.

In denying reunification services to an incarcerated parent, the court must not only find that services would be futile because of the incarceration, but it must also find that services would be detrimental to the child under Welf & I C §361.5(e)(1). *In re Kevin N.* (2007) 148 CA4th 1339, 1344–1345, 56 CR3d 464. Being in compliance with parole conditions and with conditions of supervised visitation may not be sufficient to entitle to parent to reunification services when that parent has violated a restraining order and had previously committed violent felonies, without taking any responsibility for them. *In re Allison J.* (2010) 190 CA4th 1106, 1116, 118 CR3d 856.

(a) [§102.75] Facilitation of Court Appearances

To facilitate court appearances by incarcerated or institutionalized parents, the presiding juvenile court judge may convene a meeting with representatives of the county welfare department, sheriff's department, and other appropriate entities to develop procedures for ensuring that those parents are notified of hearings and transported to the court under Pen C §2625. Welf & I C §361.5(e)(2). Under Pen C §2625, the juvenile court must order notification to prisoners of any proceedings in which their children may be adjudicated dependents of the court and must also order their temporary removal from the penal institution to be present before the court at those proceedings. Judicial Council adopted form JV-450, Order for Prisoner's Appearance at Hearing Affecting Parental Rights, should be used to notify prison authorities. Under Pen C §2625(g), a parent who is incarcerated may attend the hearing by videoconferencing if that technology is available. See Cal Rules of Ct 5.531 (standards for local procedures and protocols to appear by telephone or other electronic means). See also Judicial Council form JV-451, Prisoner's Statement Regarding Appearance at Hearing Affecting Parental Rights.

- **JUDICIAL TIP:** It is recommended that DSS arrange a safe place for the child to visit the parent somewhere in the court facility if this is desirable.-

Unless waived, an incarcerated parent's appearance is required if the hearing is one involving termination of parental rights or declaration of dependency. See *In re Barry W.* (1993) 21 CA4th 358, 370, 26 CR2d 161. The court may not, however, order the appearance of an incarcerated parent who has been sentenced to death, regardless of whether that sentence is being appealed. Pen C §2625(g).

(b) [§102.76] Visitation

As a possible exception to the general rule favoring reunification services with an incarcerated parent, visitation with a parent who has been incarcerated because of sexual offenses in which the child was a victim is generally prohibited. Pen C §1202.05; Welf & I C §362.6(a). Contact or visitation in these cases may be ordered by the juvenile court only if it is in the best interests of the child. Welf & I C §362.6(a). If the court orders such visitation, it must notify the Department of Corrections and Rehabilitation and may impose appropriate restrictions or safeguards. Welf & I C §362.6(b). Whether this section prevails over Welf & I C §361.5(e)(1) (generally requiring visitation) is not clear. For a more comprehensive discussion of visitation as it relates to incarcerated parents, see §§102.90–102.91.

- **JUDICIAL TIP:** The judge should check to see if there are any protective orders under Pen C §136.2 that also might restrict visitation with an incarcerated parent.

The absence of an equivalent to Pen C §2625 (providing for transportation of prisoners to dependency hearings) for facilitating visitation with out-of-state or federal prisoners does not deprive the court of jurisdiction, nor does it require the court to suspend proceedings pending the parent's release from custody as long as the prisoner is represented by counsel. *In re Maria S.* (1997) 60 CA4th 1309, 1312, 71 CR2d 30; *In re Gary U.* (1982) 136 CA3d 494, 498–499, 186 CR 316 (no denial of equal protection to out-of-state prisoners).

6. Denial of Reunification Services

a. [§102.77] Generally

In the absence of specific findings, the court need not order reunification services if it has made any of the following findings (sometimes called “bypass provisions”) by clear and convincing evidence:

- (1) The whereabouts of the parent or guardian are unknown. Welf & I C §361.5(b)(1); Cal Rules of Ct 5.695(h)(6)(A). See discussion in §102.81.
- (2) The parent or guardian is suffering from a mental disability that would prevent that parent or guardian from using the services. Welf & I C §361.5(b)(2); Cal Rules of Ct 5.695(h)(6)(B). See discussion in §102.82.
- (3) The child or a sibling had previously been removed because of abuse and then was reunited and is being removed because of additional abuse. Welf & I C §361.5(b)(3); Cal Rules of Ct 5.695(h)(6)(C).
- (4) The parent or guardian caused the death of another child through abuse or neglect. Welf & I C §361.5(b)(4); Cal Rules of Ct 5.695(h)(6)(D). See discussion in §102.84.
- (5) The court has jurisdiction because of Welf & I C §300(e) (severe physical abuse under the age of five) based on parent’s or guardian’s conduct. Welf & I C §361.5(b)(5); Cal Rules of Ct 5.695(h)(6)(E).
- (6) The court has jurisdiction because of severe physical or sexual abuse to the child, sibling, or half sibling, and the court finds that it would not benefit the child to pursue reunification services with the offending parent or guardian. Welf & I C §361.5(b)(6); Cal Rules of Ct 5.695(h)(6)(F). For discussion of severe sexual or physical abuse, see §102.80.
- (7) The parent is not receiving reunification services for a sibling or half sibling because of Welf & I C §361.5(b)(3), (5), or (6). Welf & I C §361.5(b)(7); Cal Rules of Ct 5.695(h)(6)(G). See discussion in §102.82.
- (8) The child was conceived as a result of a sexual assault. Welf & I C §361.5(b)(8); Cal Rules of Ct 5.695(h)(6)(H). This ground for denial of reunification services only applies to the parent who committed the assault. Welf & I C §361.5(b)(8).
- (9) The child is described by Welf & I C §300(g) (left without provision for support), the parent or guardian willfully abandoned the child, placing the child in such serious danger that without intervention the child would have suffered severe or permanent injury or the parent voluntarily surrendered physical custody of the child under Health & S C §1255.7. Welf & I C §361.5(b)(9); see Cal Rules of Ct 5.695(h)(6)(I).
- (10) The court ordered termination of reunification services for a sibling or half sibling when reunification efforts failed after the sibling or half sibling was removed pursuant to Welf & I C §361, and the parent or guardian has not made a subsequent effort to treat the problem that led to the removal. Welf & I C §361.5(b)(10); Cal Rules of Ct 5.695(h)(6)(J). See discussion in §102.55.
- (11) Parental rights with respect to a sibling or half sibling had been permanently severed, and the parent or guardian has not made a subsequent effort to treat the problem that led to the removal. Welf & I C §361.5(b)(11); Cal Rules of Ct 5.695(h)(6)(K).

- (12) The parent or guardian has been convicted of a violent felony as listed in Pen C §667.5(c). Welf & I C §361.5(b)(12); Cal Rules of Ct 5.695(h)(6)(L).
- (13) The parent or guardian has a history of extensive and chronic drug abuse and has resisted or failed court-ordered treatment during a three-year period or has failed or refused to comply with a treatment program on at least two prior occasions. Welf & I C §361.5(b)(13); Cal Rules of Ct 5.695(h)(6)(M). See discussion in §102.83.
- (14) The parent or guardian who is represented by counsel is not interested in receiving reunification services after having been advised by the court of the right to receive services and the consequences of declining (including termination of parental rights and adoption). Welf & I C §361.5(b)(14); Cal Rules of Ct 5.695(h)(6)(N). See discussion in §102.85.
- **JUDICIAL TIP:** To ensure that the waiver of services under Welf & I C §361.5(b)(14) has been appropriately made, the court must make certain that the parents have been represented by counsel and use Judicial Council form JV-195 for the waiver, in addition to advising the parents of their right to services and consequences of failing to receive them.
- (15) The parent has abducted the child or a sibling or half sibling and refused to disclose the child's whereabouts or return the child to his or her placement or to the social worker. Welf & I C §361.5(b)(15); Cal Rules of Ct 5.695(h)(6)(O); see *A.A. v Superior Court* (2012) 209 CA4th 237, 243–245, 146 CR3d 805 (no abduction from placement).
- (16) The parent or guardian has been required to be registered on a sex offender registry under the federal Adam Walsh Child Protection and Safety Act of 2006 (42 USC §16913(a)). Welf & I C §361.5(b)(16); see 42 USC §5106a(2)(B)(xvi)(VI) of the Child Abuse Prevention and Treatment Act of 2006.

If the court makes any one or more of the findings under Welf & I C §361.5(b)(2)–(16), the burden shifts to the parent for whom services may be denied to show why the exception should not be imposed. See, e.g., Welf & I C §361.5(c).

Services may not be denied unless they come within one of these exceptions. *Rosa S. v Superior Court* (2002) 100 CA4th 1181, 1188, 122 CR2d 866. A parent may not be precluded from receiving reunification services solely because he or she had previously received 18 months of services in a prior dependency proceeding that temporarily resulted in a successful reunification. 100 CA4th at 1188.

Reunification services need not be ordered when the parent has voluntarily relinquished the child and the relinquishment has been filed with the state DSS. Welf & I C §361.5(a); Cal Rules of Ct 5.695(h)(6). Moreover, a court may deny reunification services under Welf & I C §361.5(b)(11) (termination of parental rights with respect to a sibling or half sibling, and the parent has not made a reasonable attempt to treat the problem) even when the parent's rights with respect to that sibling were voluntarily relinquished. *In re Angelique C.* (2003) 113 CA4th 509, 519, 6 CR3d 395. Nor need reunification services be ordered if the court finds that the parent (and child if old enough) agree to the appointment of the guardian and waive the right to reunification services, and the court appoints the guardian at the disposition hearing. See Welf & I C §361.5(a); Cal Rules of Ct 5.695(b)(1)(C). See discussion in §§102.59–102.61.

- **JUDICIAL TIP:** If the case comes under ICWA and the court is denying reunification services, it is a good idea to find that active efforts have been made to prevent the

breakup of the Indian family. See 25 USC §1912(d). The standard of proof for this finding is “clear and convincing.” *In re Michael G.* (1998) 63 CA4th 700, 711, 74 CR2d 642. For a discussion of ICWA, see California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §§100.49–100.57 (Cal CJER).

Additionally, a court may deny reunification services when it adjudicates a petition under Welf & I C §329 to modify the court's jurisdiction from delinquency jurisdiction to dependency jurisdiction (Welf & I C §607.2(b)(2)(A)) and the ward's parents or guardian have had reunification services terminated under the delinquency jurisdiction. Welf & I C §361.5(a).

Before denying reunification services, the court must hold a hearing after DSS has had time to investigate whether reunification is likely to be successful. Welf & I C §361.5(c); *In re Rebekah R.* (1994) 27 CA4th 1638, 1656, 33 CR2d 265 (DSS must investigate the circumstances leading to the child's removal and advise the court whether reunification would be successful or whether it would be detrimental to the child).

When reunification services are not ordered at a disposition hearing that includes a permanency hearing, the court must determine whether to set a .26 hearing and consider in-state and out-of-state placement options. Welf & I C §361.5(f). The permanency plan must include consideration of whether there are siblings and, if so, the child's relationship to them and the impact of these considerations on placement and visitation. Welf & I C §362.1(b). See discussion on setting a .26 hearing in §102.111.

When the court determines that reunification services will not be ordered, it must order that the child's caregiver receive the child's birth certificate and, when appropriate, that a child who is 16 years of age or older receive his or her birth certificate. Welf & I C §361.5(j); see Welf & I C §§16010.4, 16010.5.

b. [§102.78] Exceptions

If the court finds by clear and convincing evidence that reunification is in the child's best interests, it may order reunification services in situations described by Welf & I C §361.5(b)(3)–(4), and (6)–(16). Welf & I C §361.5(c). In addition, if the court finds by competent evidence that services are needed to prevent further abuse or continued neglect of the child or that failure to attempt reunification is likely to be detrimental to the child because of a close attachment to the parent, it may order services in a situation governed by Welf & I C §361.5(b)(5) (severe physical abuse under the age of five). Welf & I C §361.5(c); Cal Rules of Ct 5.695(h)(12). See summary of statutory exceptions in the Appendix.

c. [§102.79] Denial of Services to One Parent Only

When a child has been adjudged a dependent child because of Welf & I C §300(h) (parental rights of one or both parents have been relinquished or terminated), reunification services may not be ordered to the person whose rights have been terminated, although the other parent may still be entitled to appropriate services. See Welf & I C §300.1. When custody is transferred from one parent to the other, a court may deny reunification services to the former custodial parent under Welf & I C §361.2, even though the court may not have been able to deny services to the former custodial parent under Welf & I C §361.5 had there not been another parent to assume custody. In the limited situation in which custody is transferred to a noncustodial parent, Welf & I C §361.2, rather than Welf & I C §361.5, applies. *In re Erika W.* (1994) 28 CA4th 470, 475, 33 CR2d 548. That is because the Welf & I C §361.5 time limits on services would only apply if the

child was removed from the custody of *both* parents at the time of the disposition hearing. *In re A.C.* (2008) 169 CA4th 636, 649, 88 CR3d 1.

The court may terminate reunification services to one parent on a petition for modification without setting a section 366.26 hearing if the other parent is still being offered reunification services. *In re Katelynn Y.* (2012) 209 CA4th 871, 879–880, 147 CR3d 423; see Welf & I C §388(c)(1)(B).

d. [§102.80] Severe Sexual or Physical Abuse

A denial of reunification services under Welf & I C §361.5(b)(5) for severe physical abuse of a child under the age of five may be appropriate when someone other than the parent perpetrates the abuse and the parent knew or should have known about it. *In re Joshua H.* (1993) 13 CA4th 1718, 1731–1732, 17 CR2d 282. And it may be appropriate to deny reunification services under Welf & I C §361.5(b)(6) to the parent who exposed the child to that risk even though he or she is not the actual abuser but had permitted the other parent (who had molested another child) to stay in the house with a child, knowing that the risk of abuse is high. *Amber K. v Superior Court* (2006) 146 CA4th 553, 561–562, 52 CR3d 701. But when the mother only knew that the baby was crying and fussy, it is insufficient evidence that she knew or should have known that the baby had been abused, and thus, she should not be denied services because of this. *L.Z. v Superior Court* (2010) 188 CA4th 1285, 1292–1293, 115 CR3d 883 (baby had rib injuries and broken arm).

Under Welf & I C §361.5(b)(6), a parent who deliberately inflicts severe physical harm on one child, whether by act or omission, may not be entitled to reunification services with respect to any of that parent’s other children who have been adjudicated dependents because of the abuse of their sibling (*Deborah S. v Superior Court* (1996) 43 CA4th 741, 748, 50 CR2d 858) because an abusive parent’s risk of re-abusing is not limited to the child who was the subject of the abuse (*Pablo S. v Superior Court* (2002) 98 CA4th 292, 302, 119 CR2d 523). And when one parent kills the other in the child’s presence, it is tantamount to inflicting severe physical harm to the *child* under Welf & I C §361.5(b)(6). *Jose O. v Superior Court* (2008) 169 CA4th 703, 708, 87 CR3d 1.

Under Welf & I C §361.5(b)(6), the parents must have been more than merely negligent to be denied reunification services; they must have known about the abuse and failed to intervene. *Tyrone W. v Superior Court* (2007) 151 CA4th 839, 851, 60 CR3d 486 (child’s injuries were not obvious). And the fact that a person’s ward or foster child was abused or injured is not grounds for denial of reunification services under Welf & I C §361.5(b)(6) with respect to other nonrelated wards or foster children. *In re Tanyann W.* (2002) 97 CA4th 675, 679, 118 CR2d 596 (the term “sibling” in Welf & I C §361.5(b)(6) means a child with a parent in common with the abused or injured child).

The court need not make explicit findings before denying reunification services under Welf & I C §361.5(b)(6) especially when the parent has submitted jurisdiction on the report and petition, which contained the allegations of severe abuse. *In re S.G.* (2003) 112 CA4th 1254, 1260–1261, 5 CR3d 750. To determine whether reunification services would benefit the child who would otherwise be denied services under Welf & I C §361.5(b)(6) (severe abuse) or §361.5(b)(7) (services have been denied with respect to a sibling or half sibling because of Welf & I C §361.5(b)(3), (5), or (6)), the court must consider any relevant information including (Welf & I C §361.5(i); Cal Rules of Ct 5.695(h)(11)):

- (1) The act or omission comprising the severe sexual abuse or physical harm inflicted on the child or a sibling.
- (2) The circumstances under which the harm was inflicted.
- (3) The child’s emotional trauma.
- (4) History of abuse of other children.
- (5) Likelihood that the child might safely be returned to the offending person’s care within 12 months.
- (6) The child’s desires for reunification.

The analysis required by Welf & I C §361.5(i) in deciding whether to grant or deny reunification services is only required when the court is assessing whether to deny services under Welf & I C §361.5(b)(6). *In re Rebekah R.* (1994) 27 CA4th 1638, 1651, 33 CR2d 265. When services are denied because of severe sexual or physical abuse, the court must read into the record the basis for the finding of the abuse and the factual findings that are used to determine that reunification services would not benefit the child. Welf & I C §361.5(k).

Once DSS has proved by clear and convincing evidence that the child falls under Welf & I C §300(e) (see Welf & I C §361.5(b)(5)), the general rule favoring granting reunification services no longer applies; at that point, the *parents* have the burden of proof by “substantial evidence” that services are likely to prevent reabuse. *Raymond C. v Superior Court* (1997) 55 CA4th 159, 163–164, 64 CR2d 33.

e. [§102.81] Whereabouts of Parent or Guardian Unknown

The court need not provide reunification services to a parent or guardian if the court finds by clear and convincing evidence that the whereabouts of the parent or guardian are unknown. Welf & I C §361.5(b)(1); Cal Rules of Ct 5.695(h)(6)(A). When making a finding under this section, the court must support the finding with an affidavit or proof that the parent or guardian cannot be found after a reasonably diligent search. Welf & I C §361.5(b)(1); Cal Rules of Ct 5.695(h)(6)(A). Neither posting of notices nor publication is required to be part of that search. Welf & I C §361.5(b)(1); Cal Rules of Ct 5.695(h)(6)(A).

Due diligence statements by DSS can constitute clear and convincing evidence that that parent’s whereabouts were unknown. *In re Baby Boy L.* (1994) 24 CA4th 596, 605, 29 CR2d 654. If the whereabouts of a parent for whom reunification services were not ordered under Welf & I C §361.5(b)(1) become known within six months of the out-of-home placement of the child, the court must order DSS to provide services. Welf & I C §361.5(d).

- **JUDICIAL TIP:** If the parents had not previously been ordered to apprise the court of their changes of address and if their whereabouts are unknown at the disposition hearing, many judges will order a new “due diligence” search for the parents within the next six months.

f. [§102.82] When Parent Has Mental or Developmental Disability

The court may also deny reunification services if the parent is mentally disabled and therefore incapable of using these services. Welf & I C §361.5(b)(2); Cal Rules of Ct 5.695(h)(6)(B). To deny reunification services based on the parent’s disability, the court must also find that competent professional evidence establishes that the parent will be unlikely to be able to care for the child within 12 months even with the provision of services. Welf & I C §361.5(c); Cal Rules of Ct 5.695(h)(10). Competent professional evidence requires the opinions

of two mental health professionals. *In re Catherine S.* (1991) 230 CA3d 1253, 1258, 281 CR 746. The court may deny services under Welf & I C §361.5(b)(2), however, to a parent who refuses to comply with a valid court order to submit to psychological examinations. *In re C.C.* (2003) 111 CA4th 76, 80, 3 CR3d 354.

One case has held that in denying reunification services under Welf & I C §361.5(b) and (c) because of a parent's mental illness, it is not necessary that the two psychologists' reports required by Fam C §7827 contain identical recommendations if the court can determine from their conclusions that it is unlikely that the parent will be able to reunify. *Curtis F. v Superior Court* (2000) 80 CA4th 470, 474, 95 CR2d 232. Nor need DSS affirmatively raise the issue of the qualifications of its mental health experts in proffering psychological testimony to support the denial of reunification services under Welf & I C §361.5(b)(2). *In re Joy M.* (2002) 99 CA4th 11, 19, 120 CR2d 714. But see *In re Rebecca H.* (1991) 227 CA3d 825, 841, 278 CR 185 (no denial of reunification services when psychologists did not agree).

When a parent has a mental disability that does *not* prevent him or her from utilizing reunification services, but it is unlikely that the parent would be capable of learning to care adequately for the child within six months, reunification may be denied under Welf & I C §361.5(c), rather than under Welf & I C §361.5(b) (reunification services need not be provided if parent suffers from mental disability). *In re Rebecca H., supra*, 227 CA3d at 844. Harm to a child cannot be inferred from a parent's mental illness, and reunification services and visitation should not necessarily be denied because of a parent's suicide attempt when the parent is otherwise caring and responsible. See *In re David D.* (1994) 28 CA4th 941, 953, 33 CR2d 861.

In assessing the effect of a mental disability on the issue of reunification services, the court must address the following (*In re Rebecca H., supra*, 227 CA3d at 843):

(1) Does the parent suffer a mental disability as described in former CC §232(a)(6) (now Fam C §7826, or §7827)? If it is alleged that the parent is "mentally disabled," the evidence of any two experts as described in Fam C §7827(c) or (d) is required.

(2) If so, and the disability renders the parent incapable of using reunification services, reunification may be denied under Welf & I C §361.5(b)(2).

(3) If not, but the parent is unlikely to be capable of using services so as to be able to care for the child within 12 months, reunification may be denied under Welf & I C §361.5(c).

The court must not, however, deny reunification under Welf & I C §361.5(c) on the basis of a parent's lifestyle. *In re Rebecca H., supra*, 227 CA3d at 844.

h. [§102.83] Parents Resistant to Drug Treatment

Under Welf & I C §361.5(b)(13), resistance to court-ordered treatment need not be shown by direct action. *Randi R. v Superior Court* (1998) 64 CA4th 67, 73, 74 CR2d 770. Resistance may also be passive as when the parent participates in a program but continues to abuse illicit drugs or alcohol or otherwise fails to benefit from the program. *Karen S. v Superior Court* (1999) 69 CA4th 1006, 1010, 81 CR2d 858. When a parent, while participating in treatment, has tested positive many times for multiple substances, this pattern constitutes resistance to treatment, not merely a relapse. *Karen H. v Superior Court* (2001) 91 CA4th 501, 504, 110 CR2d 665. Court-ordered treatment programs include treatment that is a condition of probation or parole. *D.B. v Superior Court* (2009) 171 CA4th 197, 203-204, 89 CR3d 566.

Courts have held that resistance may be shown by evidence that a parent enrolled in and then dropped out of programs or resumed regular drug use (*Laura B. v Superior Court* (1998) 68

CA4th 776, 780, 80 CR2d 472) or by the parent’s failure to participate in a treatment program or to maintain long-term sobriety despite participation (*In re Levi U.* (2000) 78 CA4th 191, 200, 92 CR2d 648). Disagreeing with *Levi U.*, however, one court has held that mere nonparticipation in a treatment program is not tantamount to “resisting prior treatment”; instead, it must be shown that at some point the parent either started such a program or affirmatively refused to enter one. *In re Brian M.* (2000) 82 CA4th 1398, 1403, 98 CR2d 881.

Resistance to treatment is shown when the child has been removed four times and the parent has not been able to remain sober despite years of reunification services. *In re William B.* (2008) 163 CA4th 1220, 1228, 78 CR3d 91. In this situation, reunification might not be in the best interests of the child because whatever parent-child bond had been formed must be balanced against the child’s need for stability and continuity. 163 CA4th at 1228–1229.

When extensive unsuccessful efforts have been made to address a parent’s well-established drug addiction in a case involving one child and the parent shows no interest in changing, it is reasonable under Welf & I C §361.5(b)(10), (13) not to duplicate those efforts with respect to a second child, even if ICWA’s requirement of “active efforts” (25 USC §1912(d)) applies. *Letitia V. v Superior Court* (2000) 81 CA4th 1009, 1016, 97 CR2d 303.

i. [§102.84] Causing Death of Another Child

When a parent has caused the death of a child’s sibling, it is not an abuse of discretion to deny reunification services; indeed, it may be an abuse of discretion to provide them. *In re Alexis M.* (1997) 54 CA4th 848, 850, 63 CR2d 356. The phrase “parent or guardian” in Welf & I C §361.5(b)(4) refers to the person’s current status in the dependency proceedings and the phrase “death of another child” refers to any other child; the person in question need not have been a parent or guardian at the time he or she caused the death of a child. *Mardado F. v Superior Court* (2008) 164 CA4th 481, 491–492, 78 CR3d 884.

Moreover, the parent need not have directly caused the sibling’s death. When a boyfriend inflicted the injuries that should have caused obvious symptoms and pain, and the mother had been told about the abuse but had done nothing to stop it, she was guilty of criminal neglect, which may warrant denial of reunification services under Welf & I C §361.5(b)(4). *Patricia O. v Superior Court* (1999) 69 CA4th 933, 942, 81 CR2d 662. Similarly, when a parent is responsible for the death of another child, the fact that he or she has visited regularly and happily with the surviving child and has demonstrated sobriety do not constitute clear and convincing evidence that reunification is in the best interests of that child, even though they demonstrate progress in alleviating the conditions that led to the child being removed. *In re Ethan N.* (2004) 122 CA4th 55, 65–66, 18 CR3d 504.

A nolo contendere plea to felony child endangerment (Pen C §273), which was part of a plea bargain to an original charge of murder, may be equivalent to a conviction for causing the death of another child through abuse or neglect if the underlying facts of the case support that conclusion. *In re Jessica F.* (1991) 229 CA3d 769, 776–778, 282 CR 303.

j. [§102.85] Waiver of Services

In order to deny reunification services because the parents or guardians have waived them, the parents or guardians must have been represented by counsel, and must have advised the court by executing the Judicial Council form, Waiver of Reunification Services (JV-195), indicating that they do not wish the child returned or placed in their custody and do not wish to receive family maintenance or family reunification services. Welf & I C §361.5(b)(14). If the court

accepts the waiver of services, it must state on the record its finding that the parents or guardians knowingly and intelligently waived the right to services. Welf & I C §361.5(b)(14). A request to withdraw a waiver may be granted only if the parent seemed to be confused at the time of waiver and acted expeditiously thereafter. See *Cynthia C. v Superior Court* (1999) 72 CA4th 1196, 1200–1201, 85 CR2d 669 (in this case, the court had held a hearing in which it found that the parent had not been confused, nor had she been coerced or misled into relinquishing the right to services; in addition, many months had passed before the parent reported a change of heart).

M. [§102.86] Visitation

To maintain the ties between the dependent child and the parents, guardians, and siblings, every order placing a child in foster care and ordering reunification services must provide for visitation between the child and the parent or guardian as long as the child’s safety is protected (Welf & I C §362.1(a)(1) (child’s address may be kept confidential)) and must provide for sibling visitation unless the court finds by clear and convincing evidence that sibling interaction is contrary to the safety or well-being of either sibling. Welf & I C §362.1(a)(2); see discussion in §102.43.

Visitation must be as frequent as possible, consistent with the child’s welfare. Welf & I C §362.1(a)(1); Cal Rules of Ct 5.695(h)(5). Every parent and child, nearly without exception, is entitled to a meaningful judicial evaluation of the question of visitation each time an order is made regarding reunification services. *In re Jonathan M.* (1997) 53 CA4th 1234, 1238, 62 CR2d 208.

In the case of a dependent teen parent whose child is not a dependent, the court must arrange for visitation with the child’s noncustodial parent and appropriate family members unless the court finds by clear and convincing evidence that visitation would be detrimental to the teen parent. Welf & I C §362.1(a)(3).

When no reunification services have been ordered, visitation is entirely at the discretion of the court, with “best interests of the child” being one factor that the court may use in making its decision. *In re J.N.* (2006) 138 CA4th 450, 459, 41 CR3d 494.

When reunification services are not ordered, the permanency plan must include consideration of the existence of siblings and the child’s relationship to them, as well as the impact of these considerations on placement and visitation. Welf & I C §362.1(b). See discussion in §§102.95, 102.99.

1. Crafting Visitation Orders

a. [§102.87] In General

In crafting visitation orders, a court must balance its obligation of finality in decision making against the need for flexibility in response to the changing needs of the child and changing family circumstances. To effect this balance, the system envisions a cooperative effort between DSS and the juvenile court, in which the department exercises its limited discretion in the administration of the court’s visitation order. See *In re Moriah T.* (1994) 23 CA4th 1367, 1374, 28 CR2d 705, citing *In re Danielle W.* (1989) 207 CA3d 1227, 1234–1235, 255 CR 344. However, when the court places too much reliance on the discretion of DSS, it is an impermissible delegation of judicial power.

- JUDICIAL TIP: Some courts have standing orders regarding visitation that apply from the moment a petition is filed. These orders ensure that in most cases, parents and children receive a minimum amount of court-ordered visitation.

An order suspending visitation altogether is improper under Welf & I C §361.2(a)(1) even when the child requests it, unless the court can determine that visitation would actually jeopardize the child's safety. *In re C.C.* (2009) 172 CA4th 1481, 1490–1491, 92 CR3d 168.

b. [§102.88] Impermissible Delegation

The court may not delegate discretion over whether visits occur to a third person, not even to the child himself or herself. *In re Hunter S.* (2006) 142 CA4th 1497, 1504–1505, 48 CR3d 823.

An order providing solely that “visitation with the mother and father be under the direction of the Department of Social Services” is an impermissible delegation. *In re Jennifer G.* (1990) 221 CA3d 752, 755, 270 CR 326. At the very least, the court must determine whether there is a right to visitation, although it may delegate the details of time, place, and manner of visitation to DSS. See *In re Jennifer G., supra*, 221 CA3d at 757. In the same vein, the court may not permit the child's wishes to be the sole factor in whether visitation occurs generally, although children may refuse a particular visit from time to time. See *In re S.H.* (2003) 111 CA4th 310, 317–319, 3 CR3d 465. Moreover, a visitation order that provides for no visitation with the parent “without permission of minors' therapists” is an invalid delegation of judicial authority. *In re Donovan J.* (1997) 58 CA4th 1474, 1476, 68 CR2d 714.

Similar to *Jennifer G.* is *In re Shawna M.* (1993) 19 CA4th 1686, 1691, 24 CR2d 126, holding that an order that “supervised visitation . . . be arranged through, and approved by, the San Benito County Human Services Agency” is an improper delegation of judicial authority. While specifying the right to visitation, this order gives no guidance to the social service agency in exercising its discretion. 19 CA4th at 1690. In dicta, the court stated that the order might have been valid had it specified that the frequency of visitation be determined by DSS in consultation with the psychiatrist treating the child. *In re Shawna M., supra*. In accord is *In re Kyle E.* (2010) 185 CA4th 1130, 1134–1135, 111 CR3d 199, holding that an order requiring supervised visitation as frequently as is consistent with the child's well-being, without necessary detail, and whether visitation would take place at all is an improper delegation to DSS. And an exit order, terminating jurisdiction and permitting the parents to determine issues concerning supervised visitation with the father under Welf & I C §362.4 is invalid in that it leaves too much discretion with the parents with respect to visitation; at the very least the court must specify the amount of visitation required. *In re T.H.* (2010) 190 CA4th 1119, 1123–1124, 119 CR3d 1.

- JUDICIAL TIP: Although case law is still developing as to an acceptable level of delegation, all cases are in agreement in allowing only the court to decide that a parent should be denied visitation on an ongoing basis and in requiring that when the court orders visitation, it should also provide parameters or guidelines necessary under the facts of the case. For example, the court might order a minimum number of hours per week for visitation under supervision with the proviso that the social worker has discretion to increase the hours and end the supervision requirement when it becomes appropriate to do so.

c. [§102.89] Permissible Delegation

Examples of valid orders permitting delegation to DSS of details concerning visitation are:

- Visitation to be facilitated by the child’s therapist and to begin when father’s therapist determined that father had made satisfactory progress. *In re Chantal S.* (1996) 13 C4th 196, 213, 51 CR2d 866.
- Monitored visitation with a proviso that DSS has “full discretion to liberalize the visitation” even when the length and time of visitation not specified. *In re Dirk S.* (1993) 14 CA4th 1037, 1045–1046, 17 CR2d 643.
- Visitation required to be at the discretion of the children and DSS, with the children choosing when they want to visit and DSS choosing the location to accommodate the needs of the mother and children. *In re Danielle W.* (1989) 207 CA3d 1227, 1237, 255 CR 344.
- Father required to have regular visitation with the child in such a way that the visitation be “at the discretion of Child Protective Services as to time, place, and manner.” *In re Moriah T.* (1994) 23 CA4th 1367, 1374–1375, 28 CR2d 705 (disagreeing with *In re Jennifer G.* (1990) 221 CA3d 752, 755, 270 CR 326, insofar as it suggests that a court must specify the length and frequency of visitation).
- “Reasonable visitation.” *In re Christopher H.* (1996) 50 CA4th 1001, 1009, 57 CR2d 861 (order was valid, because it did not delegate to DSS the discretion to determine whether or not visitation occurred and required that the court, not DSS, supervise the details of the visitation).

The child’s wishes cannot be the *sole* factor in determining whether or not visitation should take place. See §102.88. In a situation in which the child’s wishes are an issue, a good practice would be to provide an order for regular visits, with social workers or therapists being ordered to respond to the dynamics of the parent/child relationship in such a way as to cause increases or decreases in visits as the dynamics evolve. *In re Julie M.* (1999) 69 CA4th 41, 51, 81 CR2d 354.

2. Incarcerated Parents

a. [§102.90] In General

Visitation with an incarcerated parent is one of the kinds of reunification services that the court may order under Welf & I C §361.5(e). A parent who is incarcerated for reasons not involving abuse of the child should ordinarily be offered visitation. See, e.g., *In re Brittany S.* (1993) 17 CA4th 1399, 1407, 22 CR2d 50. Denial of visitation with an incarcerated parent may not be based solely on the child’s age (*In re Dylan T.* (1998) 65 CA4th 765, 773–775, 76 CR2d 684) or on geography (*In re Jonathan M.* (1997) 53 CA4th 1234, 1237, 62 CR2d 208—DSS attempted to place a 50-mile limitation on prison visitation).

When the parent is incarcerated, a visitation plan should not depend on the parent’s own efforts even if payment for visitation comes from DSS, nor should DSS delegate to the parent the responsibility of informing the social worker of the available services in prison. *In re Monica C.* (1995) 31 CA4th 296, 306–307, 36 CR2d 910. Moreover, a court cannot condition personal contact between parent and child on acceptance of the parent into a prison program with limited availability. 31 CA4th at 307.

When the parent's prison sentence is longer than 18 months (necessitating keeping the child out of the home for the reunification period), DSS has an obligation to consider relative placement or guardianship in order to protect the parent's interest. 31 CA4th at 308–310. See also *In re Precious J.* (1996) 42 CA4th 1463, 1479–1480, 50 CR2d 385 (services are not reasonable for an incarcerated parent when DSS failed to arrange any visits or establish a visitation schedule despite court orders directing it to do so).

See discussion in §§102.73–102.74 regarding services for incarcerated parents.

- **JUDICIAL TIP:** If an incarcerated parent requests a hearing on visitation, the judge should ensure that DSS is notified and appears at the hearing.

b. [§102.91] When Incarceration Is for Sexual Abuse

Visitation with a person who has been incarcerated because of sexual offenses in which the child was a victim is generally prohibited under Pen C §1202.05. See §102.76. The parent or guardian of the child may request a hearing on this issue when it is referred to the Child Welfare Agency by the sentencing court. See Welf & I C §362.6(a). The agency must then initiate a hearing in the juvenile court (see Welf & I C §362.6(a); Pen C §1202.05(a)), which may order visitation if such a course of action is determined to be in the child's best interests. Welf & I C §362.6(a). If the court orders visitation, it must notify the Department of Corrections and Rehabilitation and may impose appropriate restrictions or safeguards. Welf & I C §362.6(b). Whether Welf & I C §362.6 applies in a situation in which a child is already a dependent is not clear. Even without this procedure, however, little or no visitation with an incarcerated parent may be reasonable when the parent is incarcerated because of abuse perpetrated against the dependent child and the prison is a long distance from the foster family's residence. In this situation, a visitation plan consisting of monthly overnight visits at the prison arranged and supervised by grandparents (with the child's consent) may be a reasonable arrangement under the circumstances. *In re Ronell A.* (1996) 44 CA4th 1352, 1362–1365, 52 CR2d 474.

3. [§102.92] Denying Visitation

Visitation with a parent may be denied if a preponderance of the evidence shows that it would be harmful to the child. See *In re Manolito L.* (2001) 90 CA4th 753, 761–762, 109 CR2d 282 (review hearing). See also *In re Cheryl H.* (1984) 153 CA3d 1098, 1133, 200 CR 789, disapproved on other grounds in 2 C4th at 893. In *Cheryl H.*, the court discontinued visitation because the child believed her father had molested her and was afraid of him, although the father denied any wrongdoing. The court held that visitation with the father was to be precluded until the father was “rehabilitated.” *In re Cheryl H., supra.* See also *In re Chantal S.* (1996) 13 C4th 196, 213, 51 CR2d 866, noting that a court has two options when protecting a child from an abusive parent: (1) it may deny visitation altogether, or (2) it may restrict visitation to a time when the parent's therapist determines that the parent had made sufficient progress. Denial of visitation, the first option, would be proper when visitation would cause the child to experience great stress. *In re Daniel C. H.* (1990) 220 CA3d 814, 839, 269 CR 624. The court may also order supervised visitation. See §§102.87–102.89 for discussion of drafting visitation orders. For denial of reunification services generally, see §102.54.

4. [§102.93] Grandparents

Although only parents and guardians have a *right* to visitation (see Welf & I C §362.1), the court may order visitation with grandparents and others if it is in the child's best interests to do so. The court must consider whether visitation with the grandparents is in the child's best interests and will serve to maintain family ties when placing the child outside the home. Welf & I C §361.2(i); Cal Rules of Ct 5.695(a)(7)(C). The judge must clearly specify these visitation rights to the social worker. Welf & I C §361.2(i).

Noncustodial grandparents of dependent children do not have substantive due process constitutional rights either to family integrity or to freedom of association with their grandchildren. *In re Brittany K.* (2005) 127 CA4th 1497, 1508, 26 CR3d 487.

5. [§102.94] De Facto Parents

Visitation may be ordered with de facto parents. See, e.g., *In re Hirenia C.* (1993) 18 CA4th 504, 514, 22 CR2d 443 (former partner of a foster parent should be permitted to bring a petition for visitation when he or she continues to have substantial and regular contact with the child). However, in ordering visitation with a de facto parent, even one with whom the child has had a deep, close, and continuing relationship, as well as with the mother and biological father, a court must be cautious not to require that a child be “shuffled about among several caretakers.” *In re Robin N.* (1992) 7 CA4th 1140, 1147, 9 CR2d 512. A court should weigh visitation with people important to the child against the unsettling effects of frequent changes in the child's life. *In re Robin N., supra.*

When a de facto parent's request for visitation is denied, that person has no standing to challenge the court's failure to order these services because a de facto parent does not have a *right* to visitation or other reunification services. *Clifford S. v Superior Court* (1995) 38 CA4th 747, 752, 45 CR2d 333.

6. [§102.95] Siblings

Visitation with siblings must be ordered unless the court finds by clear and convincing evidence that this interaction would be contrary to the safety or well-being of either child. Welf & I C §§362.1(a)(2), 16002(b). Siblings include any child related to the dependent child by blood, adoption, or affinity through a common biological or legal parent. Welf & I C §362.1(c). Sibling visitation may be denied when it might threaten the child's safety. *In re Valerie A.* (2007) 152 CA4th 987, 1005, 512 CR3d 403; Welf & I C §362.1(a)(1)(B).

Under Welf & I C §16501.1(f)(6), a case plan for a child for whom out-of-home services are ordered must include a recommendation regarding development and maintenance of sibling relationships. Indeed, DSS must make every effort to keep siblings together or at least to develop a case plan to provide for ongoing and frequent interaction among siblings. Welf & I C §16002(b). If the court orders suspension of visitation with siblings, it must note in the order the reason for the determination that sibling interaction would be harmful. See Welf & I C §362.1(b).

The issue of sibling visitation may be raised at any time by means of a petition for modification. See Welf & I C §388(b).

- **JUDICIAL TIP:** It would appear that siblings certainly have the right to raise sibling visitation matters. The answer to the question of who else has standing to raise such

issues is not yet clear. Nevertheless, the court has the ability to consider sibling visitation matters on its own motion and thus may wish to be open to having the issue identified by any of the parties or participants

N. Other Findings and Orders

1. [§102.96] Reasonable Efforts To Prevent Need for Removal of Child From Home

At the conclusion of the disposition hearing, if the child is removed from the home, the court must make findings as to whether reasonable efforts were made to prevent or eliminate the need for removing the child (or active efforts under Welf & I C §361.7 in the case of an Indian child). Welf & I C §361(d); see also Cal Rules of Ct 5.502(27) for definition. When removal is based on Welf & I C §361(c)(5) (child has been left without provision for support), the court must make a finding of whether it was reasonable *not* to make any such efforts. Welf & I C §361(d). When a court places the child with a noncustodial parent and does not order reunification services with the former custodial parent under Welf & I C §361.2, it must make findings supporting the denial of services. *In re Katrina C.* (1988) 201 CA3d 540, 550, 247 CR 784. A reasonable efforts finding should be tailored to the particular circumstances of the case. *In re Amy M.* (1991) 232 CA3d 849, 856, 283 CR 788.

- JUDICIAL TIP: Some judges require DSS workers to file a Declaration of Reasonable Efforts at each stage of the proceedings. This requirement will ensure that there is a clearly documented factual basis for a ruling on this issue at any subsequent hearing. However, in some counties the social worker's statement of efforts is included within the DSS report. See §102.120. for a sample Declaration of Reasonable Efforts form.

In considering whether reasonable efforts to prevent or eliminate the need for removal have been made, the court must make one of the following findings under Cal Rules of Ct 5.695(e) and record it in the court order:

- Reasonable efforts have been made, or
- Reasonable efforts have not been made.

- JUDICIAL TIP: A county is eligible to receive Title IV-E federal foster care funding if the judge makes specified reasonable efforts findings at the initial detention hearing and at subsequent hearings until the child is returned, or a hearing under Welf & I C §366.26 is conducted. See 45 CFR §1356.21(b)(2)(ii). It is strongly advised that the court find that "reasonable efforts to prevent removal were made" in a situation in which it might previously have found that the failure to make efforts was reasonable or that reasonable efforts were excused. If the court determines that DSS's concern for the child's safety was a valid basis for deciding not to provide services that would prevent or eliminate the need for removal, it may find that the level of effort was reasonable, and should thus make a finding that reasonable efforts were made.

2. [§102.97] Treatment of Child for Mental Disorders

If the court is in doubt concerning the child's mental health or believes the child is mentally ill, the court may order the child hospitalized for observation and for a recommendation for future care, supervision, and treatment. Welf & I C §357. This order may be made before or during the jurisdiction hearing. It is not clear that hospitalization after disposition is authorized

by §357. However, Welf & I C §§6550–6552 permit psychiatric treatment and evaluation after jurisdiction has been established. See discussion of case-specific orders in §102.67.

If a child has been adjudged a dependent and removed from the parent's or guardian's custody, only a juvenile court judicial officer has the authority to make orders regarding psychotropic medication for that child. Welf & I C §369.5(a); Cal Rules of Ct 5.640(b)(1); see Welf & I C §369.5(f) (not applicable to nonminor dependent as defined in Welf & I C §11400(v)). The court may delegate this authority to a parent on a finding that the parent has the capacity to make a decision in this area and that the parent poses no danger to the child (Welf & I C §369.5(a); Cal Rules of Ct 5.640(e)) or may permit the child to participate in the decision-making process if local rules permit (Welf & I C §369.5(e)). If there is opposition to the request for authorization to administer psychotropic medications, the court may need to hold a hearing on this issue. See generally Cal Rules of Ct 5.640(c) for procedures to follow in this situation.

See also Judicial Council form JV-226, Authorization to Release Health and Mental Information.

3. [§102.98] Treatment of Child or Parent for Addiction

When a child appears to be a danger to himself or herself or to others because of his or her use of narcotics or restricted dangerous drugs, the judge may order a continuance and direct the child to be evaluated at a facility that has been approved by the State Department of S as a facility for 72-hour treatment and evaluation. Welf & I C §359. The professional person in charge of the facility must make a written evaluation to the court. Welf & I C §359.

If the professional in charge of the facility reports that the child is not a danger to himself or herself or others as a result of drug use and that the child does not require 14-day intensive treatment, or if the child has been certified for that treatment but the certification has been terminated, the child must be released if the juvenile court proceedings have been dismissed. Welf & I C §359. If the proceedings are ongoing, the child is subject to the court's disposition and may be referred for further treatment on a voluntary basis. Welf & I C §359. See discussion in §§102.67–102.68 and the form in §102.117.

A requirement that a dependent child be tested for alcohol or other drugs can only be made in very limited circumstances that establish such testing is reasonably related to protecting the dependent child's safety or wellbeing. Even then, procedural safeguards for administering the tests and disclosing test results must be used to protect the child's rights. *In re Carmen M.* (2006) 141 CA4th 478, 486–496, 46 CR3d 117.

A requirement that a parent or guardian be tested for alcohol and other drugs is reasonable when that parent's use of these substances has the potential to negatively affect his or her ability to care for the child, even if DSS does not prove that use has already had this effect. *In re Christopher H.* (1996) 50 CA4th 1001, 1006–1007, 57 CR2d 861. An order for testing of a parent or guardian must be based on more than unsupported allegations that the parent is using drugs; DSS is required to investigate those allegations. *In re Sergio C.* (1999) 70 CA4th 957, 960, 83 CR2d 51. Moreover, under Welf & I C §362(d), an order requiring a parent to participate in in-patient drug rehabilitation may be reasonable if the parent is severely addicted even if it is easier to comply with less restrictive alternatives that are available. *In re Neil D.* (2007) 155 CA4th 219, 224–226, 65 CR3d 771 (former Welf & I C §362(c)).

The court may order counseling and drug treatment as a condition of reunification even when the parent's drug use is of medical marijuana and when the marijuana use has given rise to

behavioral changes in the parent that could present a risk of harm to the children. *In re Alexis E.* (2009) 171 CA4th 438, 453–454, 90 CR3d 44.

Although a court has the authority to order a parent to participate in a substance abuse treatment program as part of a reunification plan, it may not punish the failure to satisfy that condition with contempt sanctions. *In re Nolan W.* (2009) 45 C4th 1217, 1124, 1230–1237, 91 CR3d 140 (disapproving San Diego rule 6.1.19 to the extent that it authorizes jail time for failure to comply with a reunification condition).

4. [§102.99] Siblings

Placement of siblings and half siblings in the same home is a factor to consider under Welf & I C §361.3(a)(4). However, because such placement is not mandatory, the juvenile court order may eventually order long term foster care for one sibling and adoption for another, even over objection. *In re Gerald J.* (1991) 1 CA4th 1180, 1187–1188, 2 CR2d 569 (siblings were nearly nine years apart in age; case arose before the existence of the “substantial interference with a sibling relationship” exception to adoption).

- JUDICIAL TIP: The damage to a child from separation from a sibling can be mitigated by having the social worker try to find an adoptive placement home in which the new parents will maintain sibling contact.

For discussion of the need for addressing sibling relationships in the case plan, see §102.43.

5. [§102.100] Psychological Evaluations and Therapy

A judge may order an evaluation by a psychologist, psychiatrist, or other clinical expert to help determine the appropriate treatment for the child. Welf & I C §370. See also Evid C §730 (court may appoint its own expert to make an evaluation or investigation). The selection of an evaluator may be delegated to DSS because choosing a psychologist is a ministerial rather than a judicial function. *In re Walter E.* (1992) 13 CA4th 125, 136, 17 CR2d 386. The court need not appoint a second psychologist at a parent’s request when the first had been chosen by DSS. 13 CA4th at 137. Moreover, the court’s decision on whether to appoint an expert is a matter of discretion, and the refusal to appoint a second expert to examine any particular issue will ordinarily not be an abuse of discretion. *In re Jennifer J.* (1992) 8 CA4th 1080, 1084, 10 CR2d 813.

- JUDICIAL TIP: Many judges permit all counsel to select and agree on an evaluator who is chosen from an approved list to help ensure cooperation with later recommendations and prevent a later challenge. Judges should ensure that the parties know that the evaluators are reporting to the court, not to DSS.

Although the statements that a parent or child makes to a treating psychologist are privileged, the statements made to a court-appointed psychologist for evaluation purposes are not. See *In re Eduardo A.* (1989) 209 CA3d 1038, 1042, 261 CR 68; Evid C §§730, 1017. The court may not obtain a psychological evaluation from a treating psychologist without obtaining a waiver of the privilege. 209 CA3d at 1044. If the psychological evaluation is to be obtained from the child’s therapist, either the child or the child’s counsel may invoke the psychotherapist-patient privilege and if the child invokes the privilege, counsel may not waive it, but if counsel invokes it, the child may waive it. Welf & I C §317(f). If the child is neither old nor mature

enough, counsel is the holder of the privileges. Welf & I C §317(f). See discussion of exception to the privilege in §102.34.

➤ JUDICIAL TIP:

- If the parent or child will not waive the privilege, the court may, in its order referring the parent for counseling, further order the treating psychologist to report on the parent's or child's participation and progress for the court's use at a review hearing. This method will alert both the therapist and the parent or child to the fact that some accounting is required and will ensure that there is no expectation of confidentiality in the therapeutic relationship. See *In re Eduardo A.*, *supra*, 209 CA3d at 1044.
- When there is no waiver, the court should order the psychological evaluation to be made by an independent evaluator.

It is within the court's discretion whether to order a psychological evaluation before denying services; the parent's lack of progress, along with the social worker's testimony that the parent would not benefit from services, supports a denial of a request for a psychological evaluation. *In re Kenneth M.* (2004) 123 CA4th 16, 22, 19 CR3d 752. And a parent has no standing to appeal the court's rescission of its order for a psychological evaluation of the child. *In re Holly B.* (2009) 172 CA4th 1261, 1266, 92 CR3d 80.

A parent who refuses to comply with a court order to participate in a psychological evaluation because of pending criminal proceedings or for any other reason gives up the right to complain of the inadequacy of the reunification services of which the evaluation was a part. *In re Joanna Y.* (1992) 8 CA4th 433, 442, 10 CR2d 422. Any statements that a parent makes during the course of treatment or evaluation ordered as part of a reunification plan would be immune from use in future criminal proceedings. See *In re Joanna Y.*, *supra*, 8 CA4th at 441.

The court has no jurisdiction under Welf & I C §362(d) to order relatives not living with the child to participate in counseling. *In re Silvia R.* (2008) 159 CA4th 337, 345, 71 CR3d 496 (former Welf & I C §362(c)).

6. [§102.101] Orders Relating to Education or Developmental Services

In making its disposition orders, the court may make an order specifically limiting the control to be exercised over the child by any parent or guardian, including the right to make educational or developmental services decisions concerning the child. Welf & I C §361(a)(1); Cal Rules of Ct 5.650(a), 5.695(c)(3). One of these orders may restrict a parent from home schooling the child. Although home schooling may qualify as a type of private school education, the issue of the child's safety may override the constitutional right to home school a child. *Jonathan L. v Superior Court* (2008) 165 CA4th 1074, 1099, 1104, 81 CR3d 571. Therefore, the court must consider whether the strict scrutiny needed to overcome the parents' due process right to educate their child at home would be satisfied by the requirement that the child have continuing contact with teachers who are mandated reporters in a situation in which abuse or neglect might occur. 165 CA4th at 1104.

If the court had temporarily limited the parent's or guardian's right to make educational decisions at the detention hearing, it must reconsider the issue at the disposition hearing. Cal Rules of Ct 5.640(a)(1). When the court limits the right of the parent or guardian to make educational or developmental services decisions for a child, nonminor, or, for a nonminor dependent, finds that the appointment of a developmental services decisionmaker to be in the

nonminor dependent's best interest, the court must appoint a responsible adult to make these decisions (using form JV-535) for a child, nonminor, or nonminor dependent until one of the following occurs (Welf & I C §361(a)(1)(A)–(E); Cal Rules of Ct 5.695(c)(3), 5.650(b)):

- The child turns 18 unless the child, nonminor, or nonminor dependent chooses not to make these decisions or is deemed incompetent by the court,
- Another responsible adult is appointed for this purpose,
- The court restores the parent's or guardian's right to make educational or developmental services decisions,
- The court appoints a successor guardian or conservator, or
- The child is placed in a planned permanent living arrangement. A foster parent, relative caretaker, or nonrelative extended family member may represent the child in educational matters, and may represent the child or nonminor dependent for developmental services matters unless the court specifies otherwise.

This responsible adult is an educational representative (Cal Rules of Ct 5.534(j)) who acts as the child's spokesperson and decision maker on educational issues (Cal Rules of Ct 5.502(13)). Among those the court should consider for appointment as the adult responsible for making educational or developmental services decisions are a responsible adult relative, a nonrelative extended-family member, foster parent, family friend, mentor, or CASA volunteer. Cal Rules of Ct 5.650(c)(1). The court may not appoint anyone to make educational or developmental services decisions who has a conflict of interest representing the child, nonminor, or nonminor dependent, such as those who are receiving attorney's fees or other compensation for making educational decisions. Welf & I C §361(a)(2); see Cal Rules of Ct 5.650(c)(2). If the court cannot identify a responsible adult who is known to the child and available to make educational decisions for the child, and the child is a special education student, the court must refer the child to the local educational agency for appointment of a surrogate parent under Govt C §7579.5 within 30 days. Welf & I C §361(a)(3). The child must be educated in the least restrictive environment, and educational decisions must be based on the best interest of the child. Welf & I C §361(a)(5); Cal Rules of Ct 5.650(d).

If an educational representative or surrogate is appointed, the appointee must meet with the child, investigate the child's educational needs and whether those needs are being met, and, prior to each review hearing, provide information and recommendations concerning the child's educational needs to the child's social worker, make written recommendations to the court, and attend the hearing and participate in those portions relating to educational needs. Welf & I C §361(a)(5).

Counsel for a child must provide contact information to any educational liaison at the local educational agency. A child's caregiver or other person who can make educational decisions may also provide their contact information to the local educational agency. Welf & I C §317(e)(4).

When the appointment of a surrogate is not warranted (*e.g.*, the child is not a special education student) and there is no responsible adult to make educational decisions for the child, the court may make those decisions itself with the input of any interested person. Welf & I C §361(a)(3).

The court may reimburse a child's educational representative for travel expenses. *In re Samuel G.* (2009) 174 CA4th 502, 512–513, 94 CR3d 237. Procedures for appointing a representative and requirements for serving in that capacity are set out in Cal Rules of Ct 5.650.

Nothing in Welf & I C §361 in any way removes the obligation to appoint surrogate parents for students with disabilities who are without parental representation in special education procedures required by state and federal law. Welf & I C §361(a)(6); see 20 USC §1415(b)(2); Educ C §56050; Govt C §7975.5; Cal Rules of Ct 5.650.

The court may also direct any reasonable orders to the parents or guardians to ensure the child's regular school attendance and to make reasonable efforts to obtain the services necessary to meet the child's educational needs. Welf & I C §362(e).

The policies underlying the juvenile court's involvement in meeting the child's educational needs are set out in Cal Rules of Ct, Standards of J Admin 5.40(g)–(h).

- JUDICIAL TIP: The court may use Cal Rules of Ct, Standards of J Admin 5.40(h) and Welf & I C §362(a) to join the local educational agency to ensure that the child's educational needs are met.

7. [§102.102] Restraining Orders

At any time after a petition has been filed, and until it is dismissed or dependency is terminated, the court may issue temporary and permanent restraining orders to any person as described in Welf & I C §213.5, and Cal Rules of Ct 5.620(b), 5.630. Applications for these orders may be made orally at any scheduled hearing, in writing submitted on Judicial Council form Request for Restraining Order—Juvenile (JV-245), , or on the court's own motion. A person submitting a request must also submit a completed Confidential CLETS Information Form (CLETS–001). The order must be prepared on Judicial Council form Restraining Order—Juvenile (CLETS—JUV) (JV-250). Cal Rules of Ct 5.630(b). Copies of these orders must be transmitted to local law enforcement agencies. See Welf & I C §213.5(g); Fam C §6380.

The court may issue these orders after notice and a hearing and, once issued, should state the time for the order on its face. Welf & I C §213.5(a), (d)(1) (not to exceed three years). Willful and knowing violations of a restraining order issued under Welf & I C §213.5, §304, or §362.4 are misdemeanors punishable under Pen C §273.65. Pen C §273.65(a). See also Welf & I C §213.5(h) (willful and knowing violation may constitute misdemeanor).

In addition, the court may restrain the parents of a dependent child from threatening physical harm to a social worker assigned to provide services or any member of the social worker's family. Welf & I C §340.5.

See further discussion of restraining orders under Welf & I C §213.5 in California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §§100.4–100.8 (Cal CJER).

- JUDICIAL TIP: The court should check to see if there are existing family law restraining orders so that there is no contradiction.

8. [§102.103] Periodic Reports by Social Worker

The court may require the social worker to make periodic reports concerning children who are under the supervision of DSS. Welf & I C §365. The court may also require that DSS visit a child who is under its supervision. Welf & I C §365. See also Welf & I C §366 (status of every child in foster care is to be reviewed periodically as ordered by the court).

9. [§102.104] Orders Regarding Life–Sustaining Medical Treatment

The juvenile court has jurisdiction under Welf & I C §362 to decide whether to withdraw life-sustaining medical treatment for a child and should use such factors in making its decision as: the child’s present level of functioning and quality of life; prognosis for recovery both with and without treatment, including the futility of continued treatment; the various treatment options, and the risks, side effects, and benefits of each; the physical suffering resulting from the medical condition; and the child’s preference for treatment, if such a thing may be determined. *In re Christopher I.* (2003) 106 CA4th 533, 551, 557, 131 CR2d 122. The burden of proof needed to sustain the court’s determination that withholding or withdrawing life-sustaining medical treatment is in the child’s best interests is clear and convincing evidence. 106 CA4th at 552.

In making such a decision, the court must hear live testimony and weigh each factor; it must then state its findings on the record or in a written order. 106 CA4th at 553. The court need not appoint a guardian ad litem for a child for whom the court must decide whether to withdraw or continue life-sustaining treatment—appointment of an attorney is sufficient. 106 CA4th at 557–560.

10. [§102.105] Additional Findings

If the court holds a parentage hearing as part of the disposition hearing, it must make a finding of parentage based on presentation of evidence by testimony, declaration, or tests. See Welf & I C §316.2; Cal Rules of Ct 5.635. See also discussion of paternity finding in California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §§100.32–100.33 (Cal CJER). In addition, at each hearing, after a determination that proper notice has been given, the court must make a finding that notice has been given as required by law and note the finding in the minutes. Cal Rules of Ct 5.534(l). For discussion of notification requirements, see §102.26.

- **JUDICIAL TIP:** It is rare that notice is an issue in this determination. Most such hearings are conducted with both the mother and alleged father present and represented, or with genetic test evidence, of which the alleged father clearly had knowledge (because he would have provided a blood or tissue sample). Most judicial officers would not conduct such a hearing based only on the mother’s statement or even on a birth certificate. In addition, judges should check with the Family Support Division to determine if a paternity order had already been made and to notify that division when the juvenile court makes such an order. Mandatory Judicial Council forms, Paternity Inquiry—Juvenile (JV-500) and Paternity—Finding and Judgment (JV-501), should be completed and transmitted to the appropriate agency or court.

If the child had previously been living in an out-of-home placement voluntarily or after the detention hearing under Welf & I C §319, the court must also make findings concerning the following under Welf & I C §§366(a)(1)–(2), 361(e):

- Necessity for and appropriateness of the placement.
- Extent of DSS compliance with the case plan in making reasonable efforts (or active efforts in the case of an Indian child) to return the child home and finalize permanent placement, together with efforts to maintain relationships with people who are important to the child when the child is 10 years of age or older and has been in out-of-home placement for six months or longer.

- Extent of progress toward alleviating or mitigating causes requiring foster care.
- Whether the child has siblings under the jurisdiction of the court and, if so (Welf & I C §366(a)(1)(D)):
 - The nature of the sibling relationship and whether to develop and maintain it,
 - Efforts to place the siblings together and, if appropriate, nature of sibling visits,
 - Impact of sibling relationships on placement and permanency planning, and
- Continuing need to suspend sibling interaction, if applicable.
- Whether there should be limitations on the parent's or guardian's right to make educational or developmental services decisions for the child.
- Likely date on which the child may be safely returned home or placed for legal guardianship, adoption, or other permanent placement.

At this hearing, the court must also determine whether the parent or guardian has provided health and educational information to DSS as ordered at the initial hearing. See Welf & I C §16010(e); Cal Rules of Ct 5.668(c).

O. Relationship of Juvenile Court to Other Courts

1. [§102.106] Family Law Court

Once a petition has been filed to have a child declared a dependent child of the juvenile court, that court has exclusive jurisdiction over custody and visitation issues. Welf & I C §§302(c), 304; Cal Rules of Ct 5.620(a). Juvenile court orders and proceedings take precedence even when the case has been before the family law court. Therefore, prior litigation of custody issues in family court, resulting in a determination that no abuse had occurred, does not estop the juvenile court from reconsidering those issues. *In re Desiree B.* (1992) 8 CA4th 286, 293, 10 CR2d 254. The precedence of juvenile court over other courts is the one exception to the rule that among courts of concurrent jurisdiction, the court taking jurisdiction first in time has exclusive jurisdiction. *In re Travis C.* (1991) 233 CA3d 492, 500, 284 CR 469. Moreover, subsequent rulings made in another part of the superior court may not invalidate juvenile court orders. *Slone v Inyo County Juvenile Court* (1991) 230 CA3d 263, 268, 282 CR 126 (plaintiffs sought to invalidate juvenile court orders on theory that they violated Indian Child Welfare Act).

For an in-depth discussion of the different functions of the two court systems, see Edwards, *The Relationship of Family and Juvenile Courts in Child Abuse Cases*, Santa Clara L Rev, p 201 (1987). See also discussion in *In re Chantal S.* (1996) 13 C4th 196, 201–202, 209–211, 51 CR2d 866, and *Marriage of Seaman & Menjou* (1991) 1 CA4th 1489, 1499, 2 CR2d 690, holding that because of the different emphases and objectives of the two court systems, a family law court may not order one parent to pay the other parent's attorneys' fees under the Family Law Act when those fees were incurred for a dependency proceeding occurring simultaneously with a dissolution action

2. [§102.107] Criminal Court

Formerly, the relationship between criminal court and juvenile court was problematic, with possible conflicts in the criminal court orders for conditions of probation and the juvenile court disposition orders. For example, a criminal court might require no contact with the child (see,

e.g., Pen C §136.2(a)(4)) while the juvenile court orders frequent monitored contact as a component of the reunification plan. Juvenile court judicial officers suggest that, when a child or family is involved in the two courts, there be frequent communication between the juvenile and criminal court benches so that conflicts do not occur. Judges in criminal court may choose to add “compliance with all juvenile court orders” as a condition of probation or of release on bail or own recognizance.

Under Pen C §136.2(f), the Judicial Council will have promulgated a protocol for timely coordination of all protective or restraining orders against the same defendant and same named victims. The safety of all parties must be the court’s paramount concern in issuing these orders. Pen C §136.2(f)(2). Under the protocol, custody and visitation with respect to the defendant’s children may be ordered by a family or juvenile court. Pen C §136.2(e)(3).

- **JUDICIAL TIP:** Unless the protocol is established for each local court, judges suggest that the social worker (in juvenile court) and the probation officer (in criminal court) also communicate so that their recommendations do not conflict. Juvenile Court judicial officers should contact their colleagues on the criminal court bench to attempt to work out procedures and methods of communication between the courts so conflicts may be anticipated and avoided.

3. [§102.108] Filing Juvenile Court Orders in Family Law Court

Once jurisdiction has been terminated, juvenile court custody and visitation orders must be filed in an existing proceeding for nullity, dissolution, guardianship, or paternity with no filing fee; if no family law proceeding had been filed, the juvenile court order may be used as the sole basis for opening a file. Welf & I C §362.4; Cal Rules of Ct 5.700(a)(1). The court must complete Judicial Council forms, Custody Order—Juvenile (JV-200) and Visitation Order—Juvenile (JV-205), for transmission to the appropriate family court. A juvenile court may order that its records and reports be made available to a family law court when jurisdiction is terminated under Welf & I C §362.4. *In re Michael B.* (1992) 8 CA4th 1698, 1704, 11 CR2d 290. Procedures for preparation and transmission of the order by the clerk, parent, parent’s counsel, or county counsel are set out in Cal Rules of Ct 5.700(a)(2). The court may order the same procedures to be followed if it orders custody to a parent but does not terminate jurisdiction. Cal Rules of Ct 5.700(b). A juvenile court custody and visitation order made at the time the juvenile court terminates jurisdiction under Welf & I C §362.4 is a final judgment that remains in effect after dependency jurisdiction is terminated. Welf & I C §302(d). It may only be changed by the family court based on a finding that there has been a significant change of circumstances since the juvenile court made the order, and that modification of the order is in the child’s best interests. Welf & I C §302(d).

- **JUDICIAL TIP:** Judges should consider suggesting criteria that must be met before the custody order is changed.

Because a court may make custody and visitation orders that will be transferred to a family court file and that will remain in effect until changed by the family court when terminating jurisdiction under Welf & I C §§362.4 and 364, the juvenile court should hear evidence regarding those orders when making custody orders that will be transferred. *In re Roger S.* (1992) 4 CA4th 25, 30, 5 CR2d 208, disagreeing with *In re Elaine E.* (1990) 221 CA3d 809, 814, 270 CR 489 (holding that Welf & I C §364 only permits presentation of evidence on whether conditions for continuing supervision exist). Following *Roger S.* is *In re Michael W.* (1997) 54

CA4th 190, 194–196, 62 CR2d 531, holding that the noncustodial parent is entitled to an evidentiary hearing before a dependency court makes its custody and visitation orders, terminates jurisdiction, and transfers the case to the family law court.

- JUDICIAL TIP: A juvenile court order made on termination of jurisdiction may be too restrictive if the custodial parent is prevented from removing the child from the state in order to permit visitation with the other parent. A better practice would be to conform with Fam C §3024 and authorize the custodial parent to change the child's residence on notice to the noncustodial parent of the intent to move. *In re Maribel T.* (2002) 96 CA4th 82, 85, 116 CR2d 631.

A juvenile court may make an open-ended counseling order on termination of jurisdiction as a condition of visitation under Welf & I C §362.4, although such an order would not be permissible under the Family Code. *In re Chantal S.* (1996) 13 C4th 196, 203–204, 51 CR2d 866. The court may also make an order under Welf & I C §362.4 restraining a mother from telling the child that his presumed father is not his biological father. *In re Nicholas H.* (2003) 112 CA4th 251, 269, 5 CR3d 261. But there is no authority in the Welfare & Institutions Code for the juvenile court to order child support. *In re Alexandria M.* (2007) 156 CA4th 1088, 1098, 68 CR3d 10.

- JUDICIAL TIP: It may be a good idea for the presiding judge of the juvenile court to work with the family court to develop procedures for opening files in family court under Welf & I C §362.4.

P. [§102.109] Confidentiality of or Access to Juvenile Court Records

Welfare and Institutions Code §827 and Cal Rules of Ct 5.552(b)(1) limit the disclosure of documents filed in juvenile court cases to individuals specified in Welf & I C §827(a), including court personnel, the child, parents, attorneys for the parties, county counsel or other attorneys representing DSS, district attorneys and city attorneys, family law judges, commissioners, and mediators assigned to a case involving the dependent child, as well as counsel for the child, and members of child protective agencies, juvenile justice commissions, and multidisciplinary teams. Those who are not mentioned in Welf & I C §§827 and 828 must obtain a court order before inspecting juvenile court documents. Cal Rules of Ct 5.552(c). Many courts have adopted local rules, specifying procedures for requesting access to documents.

The court has authority under Welf & I C §827(a)(2) to release records relating to deceased juveniles even when no petition has actually been filed. *In re Elijah S.* (2005) 125 CA4th 1532, 1548–1550, 24 CR3d 16.

Under Welf & I C §827(a), the juvenile court has discretion to determine whether members of the press may have access to juvenile court records and, if so, which of them. *In re Keisha T.* (1995) 38 CA4th 220, 238–239, 44 CR2d 822. In order to balance the best interests of the children against the interests of the public, the court must conduct an in camera hearing to determine what, if any, material should be disclosed. 38 CA4th at 239. The factors that the court should consider when determining the extent of disclosure are set out in Cal Rules of Ct 5.552(e)(4), (5) (balance interests of child and other parties against interests of public). See 38 CA4th at 240.

The procedure for determining access to juvenile court records is as follows:

(1) The petitioner applies for disclosure using Judicial Council form JV-570 and showing good cause. See *In re Keisha T.*, *supra*, 38 CA4th at 240; Cal Rules of Ct 5.552(d)(1), (e)(1), (2).

(2) Court may deny the petition with no hearing if the petitioner does not show good cause. See Cal Rules of Ct 5.552(e)(1).

(3) The petitioner must identify the records sought with specificity and must detail their relevancy. Cal Rules of Ct 5.552(c).

(4) If the court sets a hearing, it must provide notice and opportunity to be heard to all interested parties. Cal Rules of Ct 5.552(d); *In re Keisha T.*, *supra*.

(5) At the hearing, the court, in determining whether records may be disclosed, must review the records in camera and assume that all claims of privilege are asserted. See Cal Rules of Ct 5.552(e)(3).

(6) The court may permit disclosure only as far as necessary and only if petitioner shows by a preponderance of the evidence that the records are necessary and relevant. Cal Rules of Ct 5.552(e)(6).

(7) The court must make appropriate orders concerning the portion of the records to be disclosed, specifying information to be disclosed, protective orders, and the procedure for access. Cal Rules of Ct 5.552(e)(7), (8); *In re Keisha T.*, *supra*, 38 CA4th at 240–241.

If the in camera hearing is to be conducted by a judge pro tem it must be on stipulation of the parties. 38 CA4th at 241.

The court clerk must open a separate court file for *nonminor dependents* under the dependency, delinquency, or transition jurisdiction of the court. Welf & I C §362.5(a). Access to these files is limited to, *e.g.*, court personnel, the nonminor dependent and his or her attorney, the social services agency or probation department, and authorized legal staff or special investigators. Welf & I C §362.5(b)(1)–(9). The nonminor dependent’s parents and the parent’s attorney may only access the file if the parent is still receiving reunification services. Welf & I C §362.5(c). All other individuals requesting access must be designated by court order of the juvenile court judge on filing a petition under Welf & I C §827. Welf & I C §362.5(d).

A parent who is entitled to inspect juvenile court records under Welf & I C §827 may not automatically be entitled to copy or disseminate those records. See *In re Gina S.* (2005) 133 CA4th 1074, 1082, 35 CR3d 277.

Q. Setting Further Hearings

1. [§102.110] Detention Pending Execution of Disposition Order

When a child is detained in temporary care pending execution of the placement order, the court must periodically review the case to determine if the delay is reasonable. Welf & I C §367(b). The court must hold these reviews at least every 15 days and, at each hearing, the court must ask DSS what action it has taken to carry out the disposition order, the reasons for the delay, and the effect of the delay on the child. The reviews need not be appearance hearings. Welf & I C §367(b); Cal Rules of Ct 5.695(k).

2. [§102.111] Selection and Implementation (.26) Hearings

If the court has not ordered reunification services because of the application of Welf & I C §361.5(b)(2)–(16) or §361.5(e)(1), it must consider conducting a selection and implementation hearing within 120 days from the disposition hearing and consider in-state and out-of-state placement options, unless the whereabouts of the other parent are unknown or the other parent is

being provided reunification services under Welf & I C §361.5(a). Welf & I C §361.5(f). Under Welf & I C §361.5(b)(10) and (11), prior termination of parental rights of an alleged or biological father of a sibling or half sibling may serve as the basis for denying reunification services regarding another child, even if he is the presumed father of the child who is the subject of the newest petition. *Francisco G. v Superior Court* (2001) 91 CA4th 586, 599, 110 CR2d 679.

See discussion in California Judges Benchguide 104: *Juvenile Dependency Selection and Implementation Hearing* §104.11 (Cal CJER). When ordering that such a hearing be held, the court must direct DSS to prepare an assessment, which will include:

- Current search efforts for the missing parent or parents and notification of the noncustodial parent under Welf & I C §291. Welf & I C §361.5(g)(1)(A).
- Review of the nature and numbers of contacts between parent and child during placement, and of the child's contact with extended family members, including siblings. Welf & I C §361.5(g)(1)(B).
- Evaluation of the child's mental, emotional, developmental, medical, and scholastic status. Welf & I C §361.5(g)(1)(C).
- Preliminary assessment of eligibility of prospective adoptive parent or guardian, including a prospective tribal customary adoptive parent. Welf & I C §361.5(g)(1)(D).
- Child's relationship with prospective adoptive parent or guardian, motivation for seeking adoption or guardianship, and a statement from the child (unless the child's age or condition precludes it) concerning the placement, as well as the prospective guardian's commitment and the child's attachment to that person: a child who is 12 years or older must be consulted about the proposed arrangement. Welf & I C §361.5(g)(1)(E).
- An analysis of the likelihood that the child will be adopted if parental rights are terminated. Welf & I C §361.5(g)(1)(F).
- In the case of an Indian child, an assessment of the likelihood that the child will be adopted when a tribal customary adoption (see Welf & I C §366.24) is recommended. Welf & I C §361.5(g)(1)(G).

The court may continue to permit the parent to visit the child once it has set a selection and implementation hearing under Welf & I C §361.5(f), unless it finds that visitation would be detrimental to the child. Welf & I C §361.5(f).

If the court sets a .26 hearing, it must orally advise all parties and, if present, the child's parent, guardian, or adult relative, that if the party wishes to preserve the right to appeal the order, he or she must first seek an extraordinary writ using the proper Judicial Council forms. Cal Rules of Ct 5.590(b). Within a day after the order setting the .26 hearing, the clerk must notify any party not present by first-class mail; this advisement must include the time for filing a notice of intent to file a writ petition. Cal Rules of Ct 5.590(b)(2), (3). The procedures are set out in Cal Rules of Ct 8.400–8.474. Cal Rules of Ct 5.585. Orders, such as visitation orders, that are made contemporaneously with orders setting a .26 hearing are also only reviewable by writ. *In re Tabitha W.* (2006) 143 CA4th 811, 817, 49 CR3d 565.

If a parent is homeless or otherwise is not likely to have a permanent address, the court could comply with Welf & I C §316.1 by having the parent designate a permanent mailing address and advising the parent that the address will be used for notice purposes. See *In re Rashad B.* (1999) 76 CA4th 442, 450, 90 CR2d 462. In such an instance, the requirement to

advise the parent of the need to seek an extraordinary writ can be satisfied by mailing the notice to the designated address. See 76 CA4th at 447–450. The court could also comply with notice requirements by designating a permanent mailing address for the parent, such as the address of the social worker or parent’s counsel, and then requiring the parent to maintain close contact with that person. See 76 CA4th at 450.

- **JUDICIAL TIP:** Compliance with Welf & I C §316.1 is particularly important when the parent or guardian is homeless.

The court may not set a .26 hearing at the disposition hearing to consider terminating the rights of only one parent unless that parent is the sole surviving parent or the other parent’s parental rights have previously been terminated. Cal Rules of Ct 5.695(l), 5.705.

3. [§102.112] Review Hearings

Unless the court goes directly to the .26 hearing at disposition (see §102.111), the court must set a review hearing for a specific future date not to exceed six months from the disposition hearing if the child remains with a parent or guardian. Welf & I C §§364(a), 366(a)(1). If the child has been removed, the review hearing must be set within six months of the date the child is deemed to have entered foster care. See Welf & I C §361.49; *In re Christina A.* (2001) 91 CA4th 1153, 1163–1164, 111 CR2d 310; Cal Rules of Ct 5.695(j), 5.710(a).

If the scheduled review hearing is the last one before the child turns 18 years of age, certain rules apply. See Welf & I C §366.3, Cal Rules of Ct 5.707, and California Judges Benchguide 103: *Juvenile Dependency Review Hearings* (Cal CJER).

➤ **JUDICIAL TIPS:**

- Some judicial officers advise setting the 12-month hearing at this time to ensure that everyone is on notice and that deadlines are met. If the 12-month date had not been placed prominently on the front of the file at the detention hearing, it should be placed there at this time.
- It may be advisable to set an informal 90-day “progress” review hearing (90 days after the disposition hearing) so that the judge may determine that services are indeed available to the parents. Judges most often take this extra step in the “under three” cases.

The court must advise all persons who are present of the date of the future hearing and of their rights to be present and represented by counsel. Welf & I C §§364(a), 366.21(a).

R. [§102.113] Appeals and Reviews

Parents generally have a right to challenge dispositional findings and orders on appeal. See Welf & I C §395; Cal Rules of Ct 8.400–8.474, 5.585. *In re Meranda P.* (1997) 56 CA4th 1143, 1150, 65 CR2d 913 (disposition order is the first appealable judgment in a dependency proceeding); see also *In re Candida S.* (1992) 7 CA4th 1240, 1249, 9 CR2d 521 (no appeal from jurisdictional finding that child is described by Welf & I C §300). De facto parents are entitled to appeal a judgment denying them the right to participate in the proceedings (*In re Rachael C.* (1991) 235 CA3d 1445, 1454, 1 CR2d 473, disapproved on other grounds in 6 C4th at 80), but not from an order denying them visitation or reunification services (*Clifford S. v Superior Court* (1995) 38 CA4th 747, 752, 45 CR2d 333 (no standing)). Grandparents who had not been

accorded de facto status, however, do not have standing to appeal a court's orders solely on the basis of being relatives. *In re Miguel E.* (2004) 120 CA4th 521, 539, 16 CR3d 530.

If reunification services are denied to one parent but ordered for the other parent, the parent who was denied services may appeal that decision. See, e.g., *In re Nada R.* (2001) 89 CA4th 1166, 1178–1179, 108 CR2d 493. In such a case, the court cannot set a .26 hearing and, therefore, the decision is not subject to challenge by a writ. 89 CA4th at 1178–1179; *Wanda B. v. Superior Court* (1996) 41 CA4th 1391, 1395, 49 CR2d 175. Although disposition orders not related to referral orders may be appealable, the preferred method of challenging orders denying reunification services or providing for reunification services that are perceived to be inadequate is application for a traditional extraordinary writ because writs are heard in an expedited fashion. *In re Brittany S.* (1993) 17 CA4th 1399, 1406, 22 CR2d 50. The parents may also indirectly challenge an order denying reunification services or providing for inadequate services by filing a petition under Welf & I C §388 showing changed circumstances. See *In re Marilyn H.* (1993) 5 CA4th 295, 309, 19 CR2d 544. A parent may not, however, file an appeal from an order denying reunification services and also file a writ. *Joe B. v Superior Court* (2002) 99 CA4th 23, 120 CR2d 722.

Under the “disentitlement” doctrine, the appellate court may dismiss an appeal by a parent who has intentionally violated court orders, frustrating the purpose of the dependency law. *In re Kamelia S.* (2000) 82 CA4th 1224, 1229, 98 CR2d 816.

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.

1. [§102.114] From an Order Setting a .26 Hearing

An order making a referral to a .26 hearing is only reviewable by writ. Welf & I C §366.26(l); Cal Rules of Ct 5.590(b); see Cal Rules of Ct 8.450–8.452. Orders made contemporaneous with referral orders and which are “integrally related” to the issues underlying the setting of the hearing are not appealable; they may only be challenged by writ. *In re Charmice G.* (1998) 66 CA4th 659, 671, 78 CR2d 212. The court of appeal has extended this holding to all orders entered at a hearing at which a .26 hearing is set, including an order based on a Welf & I C §388 motion. *In re Anthony B.* (1999) 72 CA4th 1017, 1024, 85 CR2d 594. When services are denied to both parents at the disposition hearing, all challenges to the dispositional judgment and underlying jurisdictional findings must be made by writ. *Anthony D. v Superior Court* (1998) 63 CA4th 149, 156, 73 CR2d 479. One exception might be when services are denied to both parents and the case referred to permanency planning, but the only issue the parent seeks to challenge is the visitation order. *Anthony D. v Superior Court, supra.* Nevertheless, following the *Anthony B.* decision, even this may need to be raised by way of a petition for extraordinary writ.

The timely filing of a writ is a prerequisite for an appeal when a .26 hearing is set, as are the requirements that (1) the writ petition must substantively address the issues to be challenged on appeal, and (2) the appellate court must summarily deny the petition or otherwise fail to decide the case on the merits. Welf & I C §366.26(l); see Cal Rules of Ct 5.590(b). See also Welf & I C §366.28(b) (requiring similar actions before an appeal may be filed from a placement order after termination of parental rights has occurred. If the court has ordered that a .26 hearing be held under Welf & I C §361.5(f), that order may be reviewed on appeal only if the procedures in Cal Rules of Ct 8.450, 8.452, and 5.590 (procedures for filing writ) have been met. See Welf & I C §366.26(l). Parents must consent to the filing of a writ petition; consent may not be inferred from

the parent's failure to appear for a crucial hearing. *Guillermo G. v Superior Court* (1995) 33 CA4th 1168, 1172, 39 CR2d 748. In addition, parents must sign the petition. See *Suzanne J. v Superior Court* (1996) 46 CA4th 785, 787, 54 CR2d 25. See also §102.111. for the judge's obligation to notify parties of the procedures for seeking an extraordinary writ.

2. [§102.115] Advice Concerning Appeal

After a disposition hearing, the court must advise the parent, guardian, and child of the right to appeal. See Welf & I C §395(a). This right includes the right of an indigent appellant to a free copy of the transcript. Welf & I C §395(a)(3).

- JUDICIAL TIP: Many judges keep Judicial Council forms JV-820, JV-822, and JV-825 available in the courtroom.

Failure to give a homeless parent notice of right to file a writ petition will make the orders appealable following the .26 hearing, even though the issues raised would otherwise have only been reviewable by writ. *In re Rashad B.* (1999) 76 CA4th 442, 450, 90 CR2d 462 (court could have complied with Welf & I C §316.1 by designating a permanent mailing address, such as the address of the social worker or parent's counsel, and then required the parent to maintain close contact with that person). However, if a parent has failed to stay in contact with his or her attorney at the time the .26 hearing is being set, has failed to sign a document indicating personal authorization of the writ petition, and has generally disappeared, the attorney is absolved from the professional responsibility of filing a petition or a notice of intent. *Janice J. v Superior Court* (1997) 55 CA4th 690, 692, 64 CR2d 227.

If the conditions are met, the appeal must follow the procedures in Cal Rules of Ct 8.400–8.416. Cal Rules of Ct 5.708(o). The court may not stay an order pending an appeal unless suitable provision has been made for the child's care, maintenance, and custody. Cal Rules of Ct 5.595.

IV. SAMPLE FORMS

A. [§102.116] Script: Conduct of Disposition Hearing

(1) Introduction

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

[If parents and child are represented by counsel and all required conflict of interest statements are on file, go to (5).]

(2) Appointment of Attorney for Parent(s) or Guardian(s)

You have a right to be represented by an attorney during this disposition hearing and during all other hearings in the juvenile court and the court will appoint an attorney for you if you cannot afford to hire one. If you want to employ a private attorney, the court will give you an opportunity to do so.

[Or]

The court has reviewed the financial declaration of *[name of parent or guardian]* and finds that *[he/she]* is entitled to appointment of counsel. At this time, the court appoints *[name of attorney]* to represent *[him/her]*.

- JUDICIAL TIP: When the attorney is on the staff of a governmental agency, it is the *office*, not the individual attorney, that is being appointed.

[If parents waive counsel]

This is a serious matter. The court might determine that *[name of child]* will need to 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 parents have intelligently waived their right to counsel at this hearing.

[If child is represented by counsel and there is no motion for separate counsel, go to (4) and/or (5).]

(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 the benefit, if any, of appointing 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 a need to appoint counsel for the child at this time. The court appoints *[name of attorney]* as the child's CAPTA guardian ad litem to represent the child.

[Or]

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 reason]*.

- JUDICIAL TIP: It is advisable to ask counsel for DSS if there are any potential conflicts of interest among the children (if multiple siblings are involved) and, if so, to appoint separate counsel for the siblings.

(4) De Facto Parent

Mr. and Ms. *[name of parents]*, the court has received your request to be granted "de facto parent" status. With this status, you will be entitled to be present and to present evidence at this hearing. A de facto parent is one who cares deeply for the child and who has assumed a parental role on a day-to-day basis for a substantial time. A de facto parent may also have information about the child that other participants in the juvenile court process might not have.

[*Testimony is presented on this issue with respect to each person claiming de facto status either at this time or at some later time. See §102.14 for factors in finding de facto status.*]

(5) *Explanation of Procedure/Notification of Consequences*

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 a detention hearing and a jurisdiction hearing. At the jurisdiction hearing [*which just took place/which took place on [date]*], the court found that the facts set out in the petition filed by the Department of Social Services were true. This hearing will determine whether your child should be declared a dependent child of the court, that is, whether the court should take jurisdiction of your child's case in order to exercise supervision over the child. Also to be determined at this hearing is whether your child should [*remain in/be returned to*] your custody or should be removed from your custody until certain conditions are met and, if so, what services should be provided to help you meet these conditions.

If [*name of child*] cannot be returned home at the end of a ____-month period, your parental rights may be terminated. There will be further hearings before this happens.

- JUDICIAL TIP: Very often, the attorney for the parent or guardian will state that he or she has explained these matters to the parents and will go on to explain the position of the parents or guardians. Many judges train attorneys who appear in their courts to take this responsibility.

[*If Welf & I C §361.5(b) is applicable*]

By now, [*the social worker/your attorney*] should have informed you that the Department of Social Services is claiming that your child should be removed from your custody and that services that could help your family reunite (reunification services) should not be offered because of the seriousness of the [*abuse/neglect*] and the unlikelihood that you could become a fit parent. If it is found that it would not be worthwhile to offer you reunification services, I will set a hearing for 120 days from now to select and implement a permanent plan for your child. Your parental rights may be terminated at that hearing.

(6) *Notice of Hearing*

(a) *One Parent Not Present*

[*If one parent is not present, make sure that the absent parent 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.

(b) *Both Parents 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.

(c) *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.

(d) *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 shall take the following steps to locate the [parent(s)/guardian(s)]: [List steps, e.g., check with Department of Corrections and Rehabilitation; check with child's school].

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

(7) *Waiver of Advisement of Rights*

[To each participant]

Did your attorney explain your rights to you? Do you waive advisement of rights?

[If the answer to both is yes, go to (10).]

(8) *Advisement of Rights*

You have certain rights at this hearing. These are (1) the right to see and hear all witnesses who may be examined by the court at this hearing, (2) the right to cross-examine, which means ask questions of, any witness who may testify at this hearing, (3) the right to present to the court any witnesses or other evidence you may desire, and (4) the right to 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].

Note: See discussion in §102.27.

(9) *Advisement re Addresses Under Welf & IC §316.1*

The address that [is in the petition/you gave the court [at previous hearings/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.

(10) *Evidence*

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

The court has read and considered and now receives into evidence the social study report of [date].

Note: The term for the social worker's report varies from county to county. Whatever the local usage is, the court must indicate which documents it is relying on. The social study is required to be filed and transmitted to the parties 48 hours before the hearing. Cal Rules of Ct 5.690(a). In the order of disposition, the court must state that it has read and considered the social study report. Welf & IC §358(b); Cal Rules of Ct 5.690(b).

[To parent, guardian, child, or other interested person]

Now is the time for you to present evidence or make a statement. The court's orders may include an order removing [name of child] from [his/her] home and placement with other

caretakers. Orders may also cover visitation and plans for reunification should *[name of child]* be removed from the custody of *[his/her]* *[parents/guardians]*.

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?

[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?

[If the answer is no, the court should orally examine the child, if present, and the parents or other persons with relevant knowledge bearing on disposition. The court must allow cross-examination of any witness who may testify.]

Now is the time for you to present any evidence or make any statement you may wish to make before the court decides on a placement for *[name of child]*.

[To persons seeking fifth amendment protection from testifying (see §102.27)]

I am going to grant the *[joint]* request of the Department of Social Services *[and the district attorney]* for immunity and will order you to testify despite your claim of self-incrimination. However, anything you say here may not be used against you in any criminal court or juvenile court proceeding arising out of the same conduct we are discussing here today.

[If there is no joint request, the judge must hear argument on why immunity should not be granted. Cal Rules of Ct 5.548(d).]

(11) 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]*, the court reporter, can hear you.

Mr. *[name]* and Ms. *[name]* 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."

(12) *Assessing Child's Competency*

Note: Judges and child development experts suggest assessing children's communication skills and other aspects of competency by determining whether the child's speech is intelligible and whether he or she can follow the discussion. Here 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 [*certain 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?

(13) *Advisement on Reunification*

At this time I am required to advise the parents of what happens if you fail to meet your reunification requirements. We review your progress on your reunification requirements in six months. If you have failed to meet your reunification requirements at that time, we review your progress on meeting your reunification requirements again in another six months. If you have still failed to meet your reunification requirements, the court may give you an additional six months or terminate all further reunification services. In no event can the court generally give you more than 18 months from the date of original detention to meet your reunification requirements. If reunification services are terminated, the court will ask the Department of Social Services to propose a long-term plan for the child. That plan can be foster care, guardianship, or adoption. If the department recommends adoption, there is a possibility that your parental rights will be terminated. I urge you to stay in touch with your social worker and your attorney, and to put forth every effort to meet your reunification requirements.

(14) *Advice to Child, Parent, and Guardian Concerning Right To Appeal*

You have the right to appeal the dispositional order. You have 60 days from today to file an appeal to the Court of Appeal and may use Judicial Council form JV-800, which is available

here in the courtroom. If you do not have an attorney and cannot afford one, one will be appointed for your appeal. If you have appointed counsel, [*he/she*] will represent you for appeal. You will need to include a transcript of these hearings. If you are indigent, one will be provided to you free of charge.

Do you understand your appeal rights? Do you have any questions?

(15) Advice to Attorneys, Child, Parent, and Guardian Concerning Right To Appeal the Setting of .26 Hearing

To preserve your right to appeal from the order setting a .26 hearing, you must first seek an extraordinary writ using Judicial Council forms JV-820 and JV-825, which are available here in the courtroom. The writ petition must be filed with the Court of Appeal within seven days of the date of the order setting a .26 hearing. You or your attorney must file the petition, after consulting experienced writ attorneys if necessary.

(16) Final Question

Do you have any questions about the court's order(s) or what is going to take place in the future?

B. [§102.117] Script: Findings and Orders

(1) Introduction

The court has read and considered [*name the documents, e.g., the sustained petition, the social worker's report of [date], and attached documents*].

[Add, if applicable]

The court has also considered the testimony of the witnesses and their demeanor on the stand, as well as the arguments of counsel.

Note: In the order of disposition, the court must state that it has read and considered the social study report. Welf & I C §358(b); Cal Rules of Ct 5.690(b).

(2) Parties

[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 legal, biological, alleged, or presumed father after holding a hearing on the issue.]

The court finds that the legal status of [*name of party*] is the [*legal/biological/alleged /presumed*] father.

[If de facto parent status is sought]

The court finds by a preponderance of the evidence that [*name of party*] should be accorded the status of de facto parent because of the following: [*Specify reasons*].

[Or]

The court does not find by a preponderance of the evidence that [*name of party*] should be accorded the status of de facto parent. The facts underlying this finding are: [*Specify reasons*].

[Optional]

Therefore, [*name of party*] may not participate in future hearings.

(3) *Declaration of Dependency (see §102.37)*

The court adjudges the child a dependent child of the court because of the following reasons: [*E.g.: The child has been neglected and therefore continuing supervision is required/Even though the child may be placed with [his/her] custodial parent, continuing supervision is necessary to ensure that the child's [educational/medical/emotional] needs are met*].

[Or]

The court does not adjudge the child as a dependent child of the court because of the following reasons: [*E.g.: The child's noncustodial parent will provide a loving, stable home and continuing supervision of the court is not necessary/Although the allegations in the petition were true, they did not overcome the fact that the custodial parent has now learned of the abuse and has taken forceful steps to prevent recurrence*].

The Department of Social Services is ordered to provide informal supervision of the family, by providing services as it deems necessary, without court supervision.

(4) *In-Home Placement of Child*

The court does not find by clear and convincing evidence that the child must be removed from the custody of [*his/her*] custodial parent. Therefore, the child is ordered to [*remain/be placed*] in the home with [*name of custodial parent*].

[*If limitations are to be placed on parents' control of child*]

The following limitations are to be placed on the parents' exercise of control of [*name of child*]. [*List limitations on medical, educational, disciplinary, or other decisions that are necessary for the child's protection (see Welf & I C §361(a); Cal Rules of Ct 5.695).*]

Note: See discussion in §102.44. Limitations on the right of the parent to make educational or developmental services decisions must be explicitly set out in the order whether the child remains at home or is removed from the home; the court must also appoint a responsible adult as the educational or developmental services representative under Cal Rules of Ct 5.650, or a developmental services decision maker for a nonminor dependent. Welf & I C §361(a); Cal Rules of Ct 5.695(c)(3); see §102.102.

(5) *Out-of-Home Placement of Child*

The court finds clear and convincing evidence that the child must be removed from the custody of [name(s)] and orders that the child live with [name(s)]. The reason(s) for the removal [is/are]: [Give reason(s).]

[Leaving/Returning] the child home would cause a substantial danger to the child's physical health and there are no reasonable means by which the child's health can be protected without removal.

[Or]

The parent or guardian is unwilling to assume physical custody of the child and has been notified that the child might be declared permanently free of parental custody and control if he or she remains outside the home for the time specified in Welfare and Institutions Code section 366.26.

[Or]

The child is suffering severe emotional damage from [specify anxiety, depression, aggressive behavior, withdrawal], and the child's emotional health requires removal.

[Or]

The child or a sibling has been sexually abused, or is at substantial risk of abuse, by the parent, guardian, or member of the household, and removal is the only means of protecting the child.

[Or]

The child has been left without provision for support.

[Or]

An incarcerated parent cannot arrange for the child's care.

[Or]

An adult custodian with whom the child was left is unable or unwilling to care for the child and the parent cannot be located.

[Or]

[State other reasons (see Welf & I C §361(c); Cal Rules of Ct 5.695(d); see also Welf & I C §361(c); Cal Rules of Ct 5.695(i)(1) (the court must state facts on which the removal is based)).]

(a) *Placement With Relative* (see Welf & I C §361.2):

The court has considered the following factors in making the placement: [List applicable factors set out in Welf & I C §361.3(a). See §102.55].

(b) *Placement With Nonrelative*

- The approved home of a nonrelative extended family member (see Welf & I C §362.7) (Welf & I C §361.2(e)(3)).
- A foster home that had been a previous placement if in the child's best interests (Welf & I C §361.2(e)(4)).
- A suitable licensed community care facility (Welf & I C §361.2(e)(5), (8)).
- A foster family agency for placement in a foster family home or certified family home (Welf & I C §361.2(e)(6)).
- A home or facility in compliance with the federal Indian Child Welfare Act (ICWA) (Welf & I C §361.2(e)(7); see 25 USC §§1901 et seq).

The court denies placement with a relative for the following reasons: *[List reasons]*.

Note: The court must state reasons on the record why placement with a relative was denied. Welf & I C §361.3(e); see §102.55.

(c) Voluntary or Temporary Out-of-Home Placement

The child *[should/should not]* continue to live with *[name]* *[an out-of-home placement in which the child was placed voluntarily or after the detention hearing]* because *[discuss appropriateness of the placement, extent of compliance with the case plan, and other factors set out in Welf & I C §366(a) (see Welf & I C §361(d))]*.

(d) Guardianship

The court has read and considered the assessment and orders that letters of guardianship issue. *[Name]* is to be appointed guardian. The court finds that *[state findings and the factual basis for them, e.g., prospective guardian has had a close relationship with the child since birth, neither parent seeks reunification with the child, the child's medical status would weigh against adoptability (see Welf & I C §360(a); Cal Rules of Ct 5.695(b); discussion in §§102.59–102.61)]*.

[To the parents]

Once the guardianship is established, there will be no reunification services.

(6) Siblings (Welf & I C §§362.1, 361.2(j))

The court finds that the child *[does/does not]* have siblings under the court's jurisdiction.

The nature of the relationship between the child and siblings is *[describe relationship]*.

Developing or maintaining the sibling relationships *[is/is not]* appropriate because *[state reasons]*.

The siblings are not placed together because *[state reasons]*.

Efforts being made to place the siblings together are *[describe]*.

Efforts to place the siblings together are not appropriate because *[state reasons]*.

(7) Reasonable Efforts

The court finds [*by a preponderance of the evidence*] that reasonable efforts were made to prevent or eliminate the need for removing the child from the home. [*State facts.*] This finding is based on the [*name the document, such as Declaration of Efforts*], of [*date*].

Note: If the child is an Indian child, active efforts must be made. See 25 USC §1912(d).

[Or]

The court finds that reasonable efforts have not been made.

(8) Reunification

(If there is a signed case plan)

- Did you review this case plan with your attorney (with the assistance of the interpreter if applicable)?
- Did you understand it?
- Did you sign it?

The court orders the Department of Social Services to provide the following reunification services for the following people: [*List the services that are offered and the people who are to participate in them, e.g., parents to visit the child once a week, father to participate in psychological evaluation and counseling, grandmother to attend parent support group meetings, etc. See discussion of case-limited and case-specific plans in §102.67.*]

The court finds by clear and convincing evidence that reunification services should be denied to the [*parent/guardian*] because [*list reasons, e.g., that the child has suffered severe sexual or physical abuse by the parent (see Welf & I C §361.5(b))*].

Note: If a parent's mental illness is the reason for the denial of services, the judge should make the sequential series of findings set out in *In re Rebecca H.* (1991) 227 CA3d 825, 843, 278 CR 185 (see §102.82).

- **JUDICIAL TIP:** Clear and convincing evidence is only required for a denial of reunification services under Welf & I C §361.5(b). However, many judges use this more stringent burden of proof when denying reunification services on any ground.

[*If child was adjudicated a dependent based on severe sexual abuse or physical harm*]

The court finds that it would not benefit the child and therefore orders no reunification services, based on the following findings: [*State findings based on factors in Welf & I C §361.5(i); Cal Rules of Ct 5.695(h)(11)*].

Note: When services are denied because of severe sexual or physical abuse, the court must read into the record the basis for the finding of the abuse and the factual findings that are used to determine that reunification services would not benefit the child. Welf & I C §361.5(k).

[*If reunification services are denied and guardian or child who is 16 years of age or over needs birth certificate*]

[*Name of party*] must deliver the child's birth certificate to [*name of caregiver*] [*and to (name child 16 years of age or older)*].

[If reunification services are ordered despite finding of presence of circumstance listed in Welf & I C §361.5(b)]

Despite the circumstance that *[state circumstance as outlined in Welf & I C §361.5(b), e.g., parent has been convicted of causing death of another child through abuse or neglect]*, the court finds by a preponderance of the evidence that reunification services are necessary *[to prevent reabuse/to prevent further neglect/because of the child's positive attachment to the parent]*.

[If the parent is incarcerated or institutionalized]

The court orders the following reunification services for *[name of parent]*: *[List services, e.g., maintenance of telephone contact, transportation, visitation, and services to extended family members who are caring for the child (see Welf & I C §361.5(e))]*.

[Or]

The court finds by clear and convincing evidence that reunification services with *[name of parent]*, *[an incarcerated parent,]* would be detrimental to the child because *[list reasons]*.

Note: In giving reasons, the court must consider such factors as the age of the child, the degree of parent-child bonding, the length of the sentence, the severity of crime or illness, detriment if services are not offered, and the wishes of the child, if the child is ten years or older. Welf & I C §361.5(e).

(9) Other Findings

The court also finds that:

[Add, if applicable]

Notice has been given as required by law.

[Name of parent/guardian] has knowingly waived the following rights to:

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

Good cause is found for the issuance of restraining orders against *[name]* which are necessary because *[state reasons]*.

Note: Restraining orders under Welf & I C §340.5 (threatening a social worker) and Fam C §6320 (order enjoining family member from harassment, etc.) must be based on a showing of good cause.

The court finds that *[name of person on behalf of whom the dwelling exclusion order is granted]* has a right to possession of the premises under color of law because *[state reasons]*.

The court also finds that [name of person to be excluded] has [assaulted/threatened to assault] [name of child/name of child's caretaker] and that physical harm would result to [name of child/name of caretaker] if this restraining order is not granted.

Note: See Fam C §6321.

The court also finds that (Welf & I C §§366(a)(1), 361(e)):

[Add, if applicable]

The placement is necessary and appropriate because [state reasons]:

DSS has complied with the case plan in making reasonable efforts [or active efforts in the case of an Indian child] to return the child home and finalize permanent placement, together with efforts to maintain relationships with people who are important to the child when the child is 10 years of age or older and has been in out-of-home placement for six months or longer. These efforts are as follows [describe]:

The progress made toward alleviating or mitigating causes requiring foster care is [describe].

The child [has/has no] siblings under the jurisdiction of the court (Welf & I C §366(a)(1)(D)). [If there are siblings], The court finds that:

- The nature of the sibling relationship is [state relationship] and therefore it [is/is not] necessary to develop and maintain it,
- Efforts to place the siblings together and nature and extent of sibling visits are as follows [describe]:
- The impact of sibling relationships on placement and permanency planning is [describe impact].
- There [is/is not] the continuing need to suspend sibling interaction.
- Limitations on the parent's or guardian's right to make educational decisions for the child are as follows [state limitations]:
- Likely date on which the child may be safely returned home or placed for legal guardianship, adoption, or other permanent placement is [specify date].

(10) Visitation

[Name of parent/guardian/sibling/other] may visit [name of child] [give frequency, e.g., regularly, once a week, as frequently as possible as determined by the Department of Social Services] at [give location, e.g., the grandmother's house, a place convenient to the parent by public transportation to be determined by the Department of Social Services].

[Or]

[Name of parent/guardian/sibling/other] may have full, unmonitored visitation with [name of child] at [a place of [his/her] choosing/a place chosen by mutual agreement between the child and [name]].

Note: Under Welf & I C §16501.1(f)(9)(A), a case plan for a child for whom out-of-home services are ordered must include a recommendation regarding unsupervised sibling visitation. Visitation may be ordered even if the court has established a legal guardianship. Cal Rules of Ct 5.695(b)(2)(D).

[Or]

Visitation with [name of parent/guardian/other] is to be monitored by a social worker and limited to [specify frequency] at [place].

- ☛ JUDICIAL TIP: If the court determines that visitation is likely to be harmful, it may require the order setting limited, monitored visitation to stand until a later court hearing. However, in an appropriate case, the court may modify the restricted visitation order with the statement that visitation may be increased and supervision eliminated as DSS finds appropriate.

[Or]

Sibling interaction is to be suspended.

(11) *Other Orders*

[Add, if applicable]

The court orders that [name of child/parent/guardian/other] receive an evaluation for [mental health/addiction] treatment. The case is continued until the court receives a report on the [mental health/substance abuse] regarding [name].

Note: For discussion of evaluation and treatment for mental disorders, see Welf & I C §§357, 370, 6550–6552, and of evaluation and treatment for addiction, see Welf & I C §359.

The court orders the Department of Social Services to make [monthly/other [specify]] reports on the status of [name of child] in [foster care/[specify other out-of-home placement] (see Welf & I C §365)].

The court hereby issues an order [restraining the conduct of [name] in the following respects: [[specify]/excluding [name] from the residence of [name]/enjoining [name] from threatening [name of social worker assigned to the case/member(s) of social worker's family]]. This restraining order is to be in effect for [specify length of time].

Note: See Welf & I C §340.5; Fam C §§6320, 6321, 6345 (duration may be a maximum of three years); Cal Rules of Ct 5.630(h).

(12) *Review Hearing*

The first review hearing is scheduled for [date], at _____.m. in Department _____. All persons who are present today [*i.e., parent, guardian, etc.*] have the right to be present and to be represented by counsel.

Note: When a child is detained pending execution of the placement order, the court must periodically review the case (at least every 15 days) to determine if the delay was reasonable. Welf & I C §367(b); Cal Rules of Ct 5.695(k); see §102.110. The standard review hearing must be set for a date not to exceed six months from the disposition hearing or 12 months from the date the child entered foster care if applicable. Welf & I C §§361.49, 364(a), 366(a); Cal Rules of Ct 5.695(j), 5.710(a).

[Or]

A selection and implementation hearing is scheduled for [date], at _____.m. in Department _____. All persons who are present today [*e.g., parent, guardian*] have the right to be present and to be represented by counsel. The Department of Social Services shall prepare an assessment, including an analysis of the following factors: [*Set out the relevant factors from Welf & I C §361.5(g)(1)*].

Note: If the court has not ordered reunification services because of the application of Welf & I C §361.5(b)(2)–(6) or §361.5(e)(1), it must conduct a selection and implementation hearing within 120 days of the disposition hearing, unless the other parent is provided with reunification services under Welf & I C §361.5(a). Welf & I C §361.5(f).

C. [§102.118] Written Form: Standing Order—Disclosure of Testimony and Psychological Evaluations

IN THE SUPERIOR COURT
JUVENILE DIVISION

STANDING ORDER

DISCLOSURE OF TESTIMONY AND
PSYCHOLOGICAL EVALUATIONS

ORDER

IT IS HEREBY ORDERED that, absent a waiver by a parent, neither the testimony of a parent nor the report from a psychological evaluation, provided in the context of a juvenile dependency proceeding, shall be discoverable by the district attorney. Welf & I C §355.1; *In re Jessica B.* (1989) 207 CA3d 504, 517–521, 254 CR 883.

In the event that a parent testifies in a criminal proceeding, or the district attorney anticipates such testimony, the district attorney can petition the Supervising Judge of the Juvenile Court to provide any relevant transcripts and psychological reports, under seal, to the Judge presiding over the criminal matter.

Dated: _____

Judge of the Superior Court

D. [§102.119] Written Form: Order Approving Child’s Application for Authorization of Inpatient Mental Health Services

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA JUVENILE DIVISION

In the Matter of) No. _____
)
) **ORDER APPROVING**
) **CHILD’S APPLICATION**
) **FOR AUTHORIZATION**
) **OF INPATIENT MENTAL**
) **HEALTH SERVICE**
)
_____)

FOR GOOD CAUSE SHOWN, and after consideration of the attached Declarations, the application for authorization of inpatient mental health services pursuant to Welfare and Institutions Code §6552 is hereby approved.

Accordingly, it is ordered that:

Should this child desire release from the hospital, the staff shall notify the child’s attorney, Guardian Ad Litem (if appointed), and the child’s social worker, and the social worker shall notify the court and the parents. If there are no other psychiatric holds on the child, the social worker shall return the child to [e.g., *shelter care*] within one working day if the child is housed locally or two working days if [*he/she*] is hospitalized outside [*name of county*].

Should the hospital initiate an involuntary hold after this child requests release, the hospital staff must immediately contact the child’s attorney, Guardian Ad Litem (if appointed), and the child’s social worker.

The child has a right to refuse medication.

[Optional]

This matter is continued for a progress report to [date], at _____ .m. in Department _____ of the above-captioned court.

Dated: _____

Judge of the Superior Court

Appendix: Summary of Statutory Exceptions to Reunification Services Orders

Prepared by Hon. Patricia Bresee (Ret.)

Welf & I C §361.5; Cal Rules of Ct 5.695

Exception (proved by petitioner by clear and convincing evidence) Welf & I C §361.5(b)(1)–(16)	Order
(1) Whereabouts of parent or guardian unknown.	No services; set for 6-month review. Welf & I C §366(a).
(2) Parent mentally disabled (2 experts state parent incapable of caring for child).	<i>Services UNLESS</i> “competent evidence by mental health professionals” establishes that services are unlikely to enable the parent to care for the child within 12 months. Welf & I C §361.5(c).
(3) Child or sibling previously removed due to physical or sexual abuse; returned and now being removed again for physical or sexual abuse.	<i>No services UNLESS</i> by <i>clear and convincing evidence</i> that reunification is in the best interest of the child (burden on parent if court finds basis not to offer services). Welf & I C §361.5(c).
(4) Parent caused the death of another child through abuse or neglect.	Same as above.
(5) Petition based on Welf & I C §300(e) was sustained.	<i>No services UNLESS</i> parent proves by preponderance and based on “competent testimony that services are likely to prevent re-abuse, or that it would be detrimental to the child to not order services.” Welf & I C §361.5(c).
(6) Severe sexual or physical abuse to the child, a sibling, or half-sibling, by the same parent, and court finds that reunification services would not benefit the child (abuse as defined in Welf & I C §361.5(b)(6)).	<i>No services UNLESS</i> parent proves by clear and convincing evidence that reunification is in the best interest of the child. Welf & I C §361.5(i) sets out factors the court is to consider. Welf & I C §361.5(c).
(7) The parent is not receiving services for a sibling because of subsections 3, 5, or 6, above.	Same as above. Welf & I C §361.5(i) sets out factors court is to consider.
(8) The child was conceived as a result of a violation of Pen C §288 or 288.5.	<i>No services UNLESS</i> parent proves by clear and convincing evidence that reunification is in the best interest of the child. Welf & I C §361.5(c).
(9) The child was abandoned and thereby placed in serious danger,	Same as above.

Exception (proved by petitioner by clear and convincing evidence) Welf & I C §361.5(b)(1)–(16)	Order
or child has been surrendered under Health & S C §1225.7.	
(10) The court-ordered termination of reunification services for a sibling, AND the court finds that the [same] parent has not made a reasonable effort to treat the problems that led to removal of the sibling.	Same as above.
(11) Parental rights of the same parent have been terminated AND the court finds that the [same] parent has not made a reasonable effort to treat the problems that led to removal of the sibling.	Same as above.
(12) The parent has been convicted of a violent felony as described in Pen C §667.5(c).	Same as above.
(13) The parent has a history of extensive, abusive and chronic use" of alcohol and other drugs and (a) has resisted prior court-ordered treatment for this problem during a 3-year period immediately prior to the filing of the petition that brought the child to the court's attention, OR (b) has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Welf & I C §358.1 on at least 2 prior occasions, even though the programs identified were available and accessible.	Same as above.
(14) Parent has advised the court that he or she is not interested in family maintenance or reunification services or having child returned or placed in the parent's custody and does not wish services. Must have an attorney be advised by the court of rights and consequences, including possible termination of rights. Court must state its finding that the parent has knowingly and intelligently waived right to service.	Same as above.
(15) On at least one occasion, parent has abducted the child or sibling	Same as above.

Exception (proved by petitioner by clear and convincing evidence) Welf & I C §361.5(b)(1)–(16)	Order
from placement and refused to reveal whereabouts, to return custody to placement or to social worker.	
(16) Parent or guardian required to be registered as a sex offender under 42 USC §16913(a).	Same as above.

Parent or Guardian Incarcerated, Institutionalized, Detained, or Deported (Welf & I C §361.5(e)(1)):

The court must order services unless it determines by clear and convincing evidence that services would be detrimental to the child.

In determining detriment, the court must consider the following:

- a. Age of child
- b. Degree of relationship
- c. Length of sentence
- d. Length and nature of the treatment
- e. Nature of the crime or illness
- f. Degree of detriment to child if services not offered
- g. If child is age 10 or older, child's attitude towards implementation of reunification services
- h. Likelihood of discharge from incarceration or institutionalization within reunification period
- i. Any other appropriate factors

Services may include:

- a. Collect phone calls
- b. Transportation (where appropriate)
- c. Visitation (where appropriate)
- d. Services to extended family members or foster parents IF services not detrimental to child
- e. Order to parent to attend counseling, parenting classes, vocational training—
IF AVAILABLE

Table of Statutes

CALIFORNIA

CONSTITUTION

art VI, §21: 102.24

CIVIL CODE

232(a)(6) (former): 102.82

4600.5(a): 102.45

EVIDENCE CODE

730: 102.31–102.32, 102.100

1017: 102.100

1101: 102.32

1228.1(b): 102.31

1293: 102.31

FAMILY CODE

3024: 102.108

3080: 102.45

6320: 102.117

6321: 102.117

6345: 102.117

6380: 102.102

7541–7644: 102.48

7611: 102.48

7826: 102.82

7827: 102.82

7827(c): 102.82

7900–7912: 102.50

7950: 102.2

7950–7952: 102.55

7950(a)(1): 102.52

7950(a)(2): 102.58

7951: 102.58

7952: 102.58

8616.5: 102.29

GOVERNMENT CODE

7579.5: 102.44, 102.101

HEALTH AND SAFETY CODE

1255.7: 102.77

PENAL CODE

136.2: 102.76

136.2(a)(4): 102.107

136.2(e)(3): 102.107

136.2(f): 102.107

136.2(f)(2): 102.107

273: 102.84

273.65: 102.102

273.65(a): 102.102

667.5(c): 102.77

1202.05: 102.76, 102.91

1202.05(a): 102.91

1324: 102.35

1324.1: 102.35

2625: 102.2, 102.75–102.76

2625(d): 102.4

2625(g): 102.75

3410–3424: 102.74

WELFARE AND INSTITUTIONS CODE

202(a): 102.62

202(b): 102.51

213.5: 102.102

213.5(a): 102.102

213.5(d)(1): 102.102

213.5(g): 102.102

213.5(h): 102.102

215: 102.1

224.2: 102.1

224.6: 102.2, 102.39, 102.54

224–224.2: 102.2

245.5: 102.36

248: 102.23

249: 102.23

250: 102.23

251: 102.23

252: 102.23

253: 102.23

280: 102.28

281.5: 102.52

290.1: 102.8

290.2: 102.8	350(a)(1): 102.21
291: 102.60, 102.111	350(b): 102.2, 102.31
291(a)(8): 102.8, 102.26	350(c): 102.21
297: 102.2, 102.8	352: 102.5–102.6
300: 102.4, 100.36102.37, 102.40, 102.59, 102.111	352(a): 102.5, 102.6, 102.7
300.1: 102.79	352(b): 102.4–102.6
300(e): 102.42, 102.75, 102.80	352(c): 102.7
300(g): 102.63, 102.77	355(b): 102.27
300(h): 102.79	355.1: 102.118
301: 102.37	355.1(b): 102.32
302(c): 102.106	355.1(d): 102.27
302(d): 102.108	355.1(f): 102.27, 102.35
304: 102.102, 102.106	355.5 (former): 102.32
309(d): 102.55	356.5: 102.2
316.1: 102.111, 102.115–102.116	357: 102.97, 102.117
316.1(a): 102.2	358: 102.29
316.2: 102.2, 102.105	358–364: 102.1
316.2(c): 102.6	358.1: 102.2, 102.29
317: 102.19, 102.27	358.1(a): 102.29
317.5(a): 102.17	358.1(b): 102.29
317.5(b): 102.8	358.1(c): 102.29
317(a)(1): 102.2	358.1(d): 102.29
317(a)(2): 102.2	358.1(e): 102.29
317(c): 102.2, 102.16, 102.18	358.1(f): 102.29
317(d): 102.16	358.1(g): 102.29
317(e)(1): 102.17–102.18	358.1(h): 102.29
317(e)(2): 102.18	358.1(i): 102.3, 102.29
317(e)(4): 102.101	358.1(j): 102.29
317(f): 102.34, 102.100	358(a): 102.2–102.4, 102.6
319: 102.105	358(a)(1): 102.4–102.5
319(e): 102.4	358(a)(2): 102.4–102.5
329: 102.77	358(a)(3): 102.5, 102.26
332: 102.2, 102.8	358(b): 102.2, 102.28–102.29, 102.32, 102.116–102.117
340.5: 102.100, 102.115	359: 102.98, 102.117
341: 102.8, 102.27, 102.30	360: 102.36–102.37
342: 102.62	360(a): 102.29, 102.36, 102.59–102.61, 102.117
345: 102.9	360(b): 102.2, 102.37
345–346: 102.2, 102.21	360(c): 102.37
346: 102.2, 102.8–102.9, 102.11	360(d): 102.3, 102.37
347: 102.22	361: 102.21, 102.26, 102.36, 102.43, 102.101
349: 102.2	361(a): 102.29, 102.44, 102.117
349(a): 102.2, 102.8	361(a)(1): 102.101
349(c): 102.2, 102.8	361(a)(1)(A)–(E): 102.101
349(d): 102.2, 102.5	
349(d): 102.2	

361(a)(2): 102.101	361.3(a): 102.52, 102.117
361(a)(3): 102.101	361.3(a)(1): 102.55
361(a)(5): 102.101	361.3(a)(2): 102.55
361(b): 102.44	361.3(a)(3): 102.55
361(c): 102.2, 102.6, 102.21, 102.40, 102.66, 102.117	361.3(a)(4): 102.55, 102.99
361(c)(1): 102.39, 102.42, 102.44	361.3(a)(5): 102.55
361(c)(2): 102.39	361.3(a)(6): 102.55
361(c)(3): 102.39, 102.41	361.3(a)(7): 102.55
361(c)(4): 102.39	361.3(a)(7)(G)–(H): 102.55
361(c)(5): 102.39, 102.94	361.3(a)(8): 102.55
361(c)(6): 102.39	361.3(c)(1): 102.56
361(c)(6)(B): 102.39	361.3(c)(2): 102.56
361(d): 102.2, 102.38, 102.94, 102.117	361.3(d): 102.52
361(e): 102.103, 102.117	361.3(e): 102.52, 102.57, 102.117
361.2: 102.36, 102.45–102.46, 102.48– 102.49, 102.51, 102.79, 102.96, 102.117	361.3(f): 102.55
361.2(a): 102.45, 102.51, 102.53	361.31(b): 102.54
361.2(a)(1): 102.87	361.31(d): 102.54
361.2(b)(1): 102.46–102.47	361.31(h): 102.54
361.2(b)(2): 102.46	361.31(j): 102.54
361.2(b)(3): 102.46–102.47, 102.72	361.4: 102.57
361.2(c): 102.45	361.4(b): 102.57
361.2(d): 102.44	361.4(d)(2): 102.57
361.2(e): 102.2, 102.51, 102.58	361.4(d)(2)(6): 102.57
361.2(e)(2): 102.52	361.49: 102.2, 102.62–102.63, 102.65, 102.112, 102.117
361.2(e)(3): 102.52, 102.117	361.5: 102.21, 102.45, 102.49, 102.64, 102.69–102.70, 102.77
361.2(e)(4): 102.52, 102.117	361.5(a): 102.2, 102.6, 102.62, 102.64, 102.71, 102.77, 102.111, 102.117
361.2(e)(6): 102.52, 102.117	361.5(a)(1): 102.2, 102.63
361.2(e)(7): 102.52	361.5(a)(1)–(4): 102.2
361.2(e)(7): 102.117	361.5(a)(1)(A): 102.63
361.2(e)(8): 102.52, 102.117	361.5(a)(1)(B): 102.63
361.2(e)(9): 102.53	361.5(a)(1)(C): 102.63
361.2(f): 102.53	361.5(a)(2): 102.63
361.2(f)(1): 102.53	361.5(a)(3): 102.26, 102.63, 102.65, 102.69
361.2(f)(2): 102.53	361.5(a)(4): 102.26, 102.63, 102.65, 102.69
361.2(f)(3): 102.53	361.5(b): 102.2, 102.5, 102.17, 102.26, 102.29, 102.45, 102.64, 102.82, 102.116–102.117
361.2(f)(4): 102.53	361.5(b)(1): 102.77, 102.81
361.2(f)(5): 102.53	361.5(b)(2): 102.6, 102.77, 102.80
361.2(f)(6): 102.53	361.5(b)(2)–(16): 102.77, 102.111
361.2(g): 102.52	361.5(b)(2)–(6): 102.117
361.2(g)–(h): 102.52	361.5(b)(3): 102.75
361.2(i): 102.93	361.5(b)(4): 102.77, 102.84
361.2(j): 102.43, 102.117	
361.3: 102.29, 102.52, 102.55–102.57	

- 361.5(b)(5): 102.2, 102.77–102.78, 102.80
361.5(b)(6): 102.2, 102.77, 102.80
361.5(b)(7): 102.2, 102.77, 102.80
361.5(b)(8): 102.77
361.5(b)(9): 102.77
361.5(b)(10): 102.77, 102.111
361.5(b)(11): 102.77
361.5(b)(12): 102.77
361.5(b)(13): 102.77, 102.83
361.5(b)(14): 102.59, 102.77, 102.85
361.5(b)(15): 102.77
361.5(b)(16): 102.77
361.5(c): 102.2, 102.29, 102.77–102.78,
102.82
361.5(d): 102.81
361.5(e): 102.90, 102.117
361.5(e)(1): 102.73–102.74, 102.76,
102.111, 102.117
361.5(e)(2): 102.75
361.5(e)(3): 102.74
361.5(f): 102.2, 102.8, 102.26, 102.77,
102.111, 102.114, 102.117
361.5(g)(1): 102.60, 102.117
361.5(g)(1)(A): 102.111
361.5(g)(1)(B): 102.111
361.5(g)(1)(C): 102.111
361.5(g)(1)(D): 102.111
361.5(g)(1)(E): 102.111
361.5(g)(1)(F): 102.111
361.5(g)(1)(G): 102.111
361.5(g)(2)(A): 102.57
361.5(g)(2)(B): 102.61
361.5(i): 102.2, 102.80, 102.117
361.5(j): 102.77
361.5(k): 102.80, 102.117
361.6(a): 102.64
361.6(b): 102.64
361.6(c): 102.64
361.6(d): 102.64
361.6(e): 102.64
361.7: 102.54, 102.96
361.7(a): 102.54
361.7(c): 102.54
362: 102.45, 102.102
362(a): 102.36, 102.101,
362(b)(1): 102.36
362(b)(3): 102.36
362(c): 102.44
362(d): 102.69, 102.70, 102.98, 102.100
362(e): 102.36, 102.101
362.1: 102.46, 102.48, 102.93, 102.117
362.1(a)(1): 102.86
362.1(a)(1)(B): 102.95
362.1(a)(2): 102.86, 102.95
362.1(a)(3): 102.86
362.1(b): 102.77, 102.86, 102.95
362.1(c): 102.95
362.3: 102.2, 102.8
362.4: 102.88, 102.102, 102.108
362.5(a): 102.109
362.5(b)(1)–(9): 102.109
362.5(c): 102.109
362.5(d): 102.109
362.6: 102.91
362.6(a): 102.76, 102.91
362.6(b): 102.76, 102.91
362.7: 102.52, 102.117
364: 102.45, 102.108
364(a): 102.110, 102.115
365: 102.101, 102.115
366: 102.68, 102.101, 102.112
366(a): 102.117
366(a)(1): 102.112, 102.117
366(a)(1)–(2): 102.105
366(a)(1)(D): 102.105, 102.117
366.21(a): 102.112
366.21(e): 102.2, 102.6
366.21(f): 102.2
366.23: 102.29, 102.45
366.24: 102.28–102.29, 102.111
366.26: 102.26, 102.39, 102.59, 102.96,
102.117
366.26(l): 102.114
366.28(b): 102.114
366.3: 102.112
366.31: 102.64
367(b): 102.110, 102.117
369.5(a): 102.97
369.5(e): 102.97
369.5(f): 102.97
370: 102.100, 102.117
388: 102.2, 102.6, 102.41, 102.113–102.114

388(b): 102.95	5.531: 102.2, 102.21, 102.75
388(c): 102.63, 102.64	5.532(a): 102.22
388(c)(1)(B): 102.79	5.532(b): 102.22
390: 102.2, 102.37	5.534: 102.10
395: 102.113	5.534(a): 102.21
395(a): 102.115	5.534(b): 102.21
395(a)(3): 102.113	5.534(c): 102.2, 102.31
395(b)(1): 102.113	5.534(d): 102.21
607.2(b)(2): 102.77	5.534(e): 102.14
827: 102.15, 102.20, 102.109	5.534(e)–(f): 102.2
827(a): 102.109	5.534(e)(2): 102.15, 102.16
827(a)(2): 102.109	5.534(e)(3): 102.15
828: 102.109	5.534(f): 102.8, 102.11
903: 102.59	5.534(f)(2): 102.8
1901 et seq: 102.117	5.534(g): 102.27
6550–6552: 102.97, 102.117	5.534(g)–(h): 102.2
6552: 102.119	5.534(i): 102.2
11400(v): 102.2, 102.36, 102.65	5.534(j): 102.101
16002(b): 102.43, 102.95	5.534(k): 102.2, 102.27, 102.30
16010(e): 102.103	5.534(l): 102.2, 102.26, 102.105
16010.4: 102.77	5.534(m): 102.2
16010.5: 102.77	5.534(p)(1): 102.2
16500–16521.5: 102.2, 102.44	5.534(p)(2): 102.2
16501.1: 102.28	5.536: 102.23
16501.1(f)(6): 102.95	5.536(a): 102.23
16501.1(f)(9): 102.66	5.536(b): 102.24
16501.1(f)(9)(A): 102.117	5.538(a)(2): 102.23
16501.1(f)(10): 102.3	5.540(b): 102.23
	5.542(a): 102.23
ACTS BY POPULAR NAME	5.546: 102.20
Family Law Act: 102.106	5.546(c): 102.20
Interstate Compact on Placement of Children (ICPC): 102.50	5.546(d): 102.20
	5.546(e): 102.20
	5.546(f)–(i): 102.20
	5.546(j): 102.20
	5.546(k): 102.20
CALIFORNIA RULES OF COURT	5.548(a): 102.27
2.816: 102.2, 102.24	5.548(d): 102.35, 102.116
5.481: 102.2	5.548(d)(1): 102.35
5.502(10): 102.2, 102.10	5.548(d)(2): 102.35
5.502(13): 102.101	5.548(d)(3): 102.35
5.502(27): 102.96	5.548(e): 102.35
5.502(9)(A): 102.2, 102.65	5.550(a)(1): 102.5
5.526(d): 102.8	5.550(a)(2): 102.5–102.6
5.530(a): 102.9	5.550(a)(3): 102.4
5.530(b): 102.8	5.550(a)(4): 102.7
5.530(d)–(e): 102.2	
5.530(e): 102.2	

5.550(a)(5): 102.7	5.660(d): 102.17
5.550(a)(6): 102.6	5.660(d)(4): 102.18
5.552(b)(1): 102.109	5.660(e): 102.17
5.552(c): 102.109	5.661: 102.113
5.552(d): 102.109	5.668(c): 102.105
5.552(e)(1): 102.109	5.686(a): 102.4
5.552(e)(2): 102.109	5.686(a): 102.5
5.552(e)(3): 102.109	5.686(b): 102.5, 102.26
5.552(e)(5): 102.109	5.690: 102.2
5.552(e)(6): 102.109	5.690–5.705: 102.1
5.552(e)(8): 102.109	5.690(a): 102.20
5.570(f): 102.36	5.690(a): 102.116
5.575(a): 102.36	5.690(a)(1)(A): 102.29, 102.60
5.575(b): 102.36	5.690(a)(1)(B)(i): 102.29
5.575(b)(1)–(2): 102.36	5.690(a)(1)(B)(ii): 102.29
5.575(c): 102.36	5.690(a)(1)(B)(iii): 102.29
5.585: 102.111, 102.113	5.690(a)(1)(C): 102.29
5.590: 102.114	5.690(a)(1)(D): 102.29
5.590(b): 102.111, 102.114	5.690(a)(1)(E): 102.29
5.590(b)(3): 102.111	5.690(a)(2): 102.2, 102.5, 102.20
5.595: 102.115	5.690(b): 102.2, 102.31–102.32, 102.116– 102.117
5.616: 102.50	5.690(c): 102.28
5.616(b)(1): 102.50	5.690(c)(2)(A): 102.28
5.620(a): 102.106	5.690(c)(2)(B): 102.28
5.620(b): 102.102	5.690(c)(3): 102.28
5.620(c): 102.29, 102.36, 102.46	5.695: 102.117
5.620(d): 102.59	5.695(a): 102.3, 102.37
5.630: 102.102	5.695(a)(1): 102.37
5.630(b): 102.102	5.695(a)(1)–(2): 102.2, 102.36
5.630(h): 102.117	5.695(a)(2): 102.37
5.635: 102.2, 102.105	5.695(a)(3)–(4): 102.36
5.637: 102.29, 102.52, 102.55	5.695(a)(5)–(7): 102.36
5.640(a)(1): 102.101	5.695(a)(6): 102.44
5.640(b)(1): 102.97	5.695(a)(7)(A): 102.46
5.640(c): 102.97	5.695(a)(7)(B): 102.46
5.640(e): 102.97	5.695(a)(7)(C): 102.29, 102.93
5.650: 102.101, 102.117	5.695(b): 102.36, 102.117
5.650(a): 102.101	5.695(b)(1)(A): 102.59
5.650(b): 102.101	5.695(b)(1)(B): 102.59
5.650(c)(1): 102.101	5.695(b)(1)(C): 102.59, 102.77
5.650(c)(2): 102.101	5.695(b)(1)(D): 102.59
5.650(d): 102.101	5.695(b)(2): 102.61
5.651(b): 102.28	5.695(b)(2)(D): 102.117
5.655: 102.2, 102.8	5.695(b)(3): 102.59
5.660: 102.2, 102.16	5.695(c)(1): 102.36, 102.44
5.660(c): 102.2	

5.695(c)(2): 102.44
5.695(c)(3): 102.29, 102.101, 102.117
5.695(d): 102.40, 102.117
5.695(d)(1): 102.39
5.695(d)(2): 102.39
5.695(d)(3): 102.39
5.695(d)(4): 102.39
5.695(d)(5): 102.39
5.695(e): 102.96
5.695(f): 102.55
5.695(g): 102.2, 102.55
5.695(h)(1): 102.63
5.695(h)(1)-(2): 102.65
5.695(h)(2): 102.2, 102.63
5.695(h)(4): 102.63
5.695(h)(5): 102.86
5.695(h)(6): 102.2, 102.77
5.695(h)(6)(A): 102.77, 102.81
5.695(h)(6)(B): 102.77, 102.82
5.695(h)(6)(C): 102.77
5.695(h)(6)(D): 102.77
5.695(h)(6)(E): 102.77
5.695(h)(6)(F): 102.77
5.695(h)(6)(G): 102.77
5.695(h)(6)(H): 102.77
5.695(h)(6)(I): 102.77
5.695(h)(6)(J): 102.77
5.695(h)(6)(K): 102.77
5.695(h)(6)(L): 102.77
5.695(h)(6)(M): 102.77
5.695(h)(6)(N): 102.77
5.695(h)(6)(O): 102.77
5.695(h)(7)-(8): 102.29
5.695(h)(10): 102.82
5.695(h)(11): 102.2, 102.80, 102.117
5.695(h)(12): 102.2, 102.78
5.695(h)(13): 102.73
5.695(i)(1): 102.38, 102.117
5.695(i)(2): 102.26
5.695(j): 102.112, 102.117
5.695(k): 102.108, 102.117
5.695(l): 102.111
5.700: 102.47
5.700(a): 102.46
5.700(a)(1): 102.108
5.700(a)(2): 102.108

5.700(b): 102.108
5.705: 102.111
5.707: 102.112
5.708(o): 102.115
5.710(a): 102.2, 102.112, 102.117
5.900: 102.2
8.400-8.416: 102.115
8.400-8.474: 102.111, 102.113
8.450: 102.114
8.450-8.452: 102.114
8.452: 102.114

STANDARDS OF JUDICIAL ADMINISTRATION

Standards of J Admin 5.40(h): 102.101
Standards of J Admin 5.40(g)-(h): 102.101

LOCAL RULES

San Diego Super Ct, 6.1.3(C): 102.14

UNITED STATES

CONSTITUTION

Amend V: 102.35

UNITED STATES CODE

Title 25

25 USC §1903: 102.54
25 USC §1912(b): 102.2
25 USC §1912(d): 102.54, 102.77, 102.83,
102.117

Title 42

42 USC §671-672: 102.29
42 USC §5106a(2)(B)(xvi)(VI): 102.77
42 USC §16913(a): 102.77

Title 50 Appendix

50 USC §App: 102.5

CODE OF FEDERAL REGULATIONS

Title 45

45 CFR §1356.21(b)(2)(ii): 102.96

ACTS BY POPULAR NAME

Child Abuse Prevention and Treatment Act
of 2006: 102.77

Indian Child Welfare Act (ICWA): 102.2,
102.6, 102.8, 102.10, 102.32, 102.39,
102.52, 102.54, 102.77, 102.83,
104.117

Servicemembers Civil Relief Act (SCRA):
102.5

Table of Cases

- A.A., In re (2008) 167 CA4th 1292, 84 CR3d 841: §102.54
- A.A. v Superior Court (2012) 209 CA4th 237, 146 CR3d 805: §102.77
- A.C., In re (2008) 169 CA4th 636, 88 CR3d 1: §§102.45, 102.79
- A.E., In re (2008) 168 CA4th 1, 85 CR3d 189: §102.66
- A.H. v Superior Court (2010) 182 CA4th 1050, 107 CR3d 78: §102.63
- A.R., In re (2009) 170 CA4th 733, 88 CR3d 448: §102.5
- Adam D., In re (2010) 183 CA4th 1250, 108 CR3d 611: §102.37
- Adoption of Kelsey S. (1992) 1 C4th 816, 4 CR2d 615: §102.47
- Adrianna P., In re (2008) 166 CA4th 44, 81 CR3d 918: §102.45
- Albert B., In re (1989) 215 CA3d 361, 263 CR 694: §102.72
- Alexandria M., In re (2007) 156 CA4th 1088, 68 CR3d 10: §102.108
- Alexis E., In re (2009) 171 CA4th 438, 90 CR3d 44: §102.98
- Alexis H., In re (2005) 132 CA4th 11, 33 CR3d 242: §102.3
- Alexis M., In re (1997) 54 CA4th 848, 63 CR2d 356: §102.84
- Alicia B. v Superior Court (2004) 116 CA4th 856, 11 CR3d 1: §102.55
- Allison J., In re (2010) 190 CA4th 1106, 118 CR3d 856: §102.74
- Amber K. v Superior Court (2006) 146 CA4th 553, 52 CR3d 701: §102.80
- Amber S., In re (1993) 15 CA4th 1260, 19 CR2d 404: §102.31
- Amos L., In re (1981) 124 CA3d 1031, 177 CR 783: §102.27
- Amy M., In re (1991) 232 CA3d 849, 283 CR 788: §102.96
- Andres G., In re (1998) 64 CA4th 476, 75 CR2d 285: §102.44
- Andrew L., In re (2004) 122 CA4th 178, 18 CR3d 591: §102.71
- Angelique C., In re (2003) 113 CA4th 509, 6 CR3d 395: §§102.4, 102.77
- Anthony B., In re (1999) 72 CA4th 1017, 85 CR2d 594: §102.114
- Anthony D. v Superior Court (1998) 63 CA4th 149, 73 CR2d 479: §102.114
- Antonio G., In re (2008) 159 CA4th 369, 71 CR3d 79: §102.52
- Arlena M. v Superior Court (2004) 121 CA4th 566, 17 CR3d 321: §102.26
- Arturo A., In re (1992) 8 CA4th 229, 10 CR2d 131: §102.17
- Aryanna C., In re (2005) 132 CA4th 1234, 34 CR3d 288: §102.64
- Ashley P., In re (1998) 62 CA4th 23, 72 CR2d 383: §102.13
- Austin P., In re (2004) 118 CA4th 1124, 13 CR3d 616: §102.45
- Axsana S., In re (2000) 78 CA4th 262, 92 CR2d 70: §102.8
- B.F., In re (2010) 190 CA4th 811, 118 CR3d 561: §102.15
- B.G., In re (1974) 11 C3d 679, 114 CR 444: §102.10
- Baby Boy L., In re (1994) 24 CA4th 596, 29 CR2d 654: §102.81
- Baby Girl D., In re (1989) 208 CA3d 1489, 257 CR 1: §§102.3, 102.52
- Barbara P., In re (1994) 30 CA4th 926, 36 CR2d 27: §102.62
- Barry W., In re (1993) 21 CA4th 358, 26 CR2d 161: §102.75
- Basilio T., In re (1992) 4 CA4th 155, 5 CR2d 450: §§102.38, 102.40–102.41
- Brandon M., In re (1997) 54 CA4th 1387, 63 CR2d 671: §102.10
- Brian C. v Ginger K. (2000) 77 CA4th 1198, 92 CR2d 294: §102.48
- Brian M., In re (2000) 82 CA4th 1398, 98 CR2d 881: §102.83
- Brittany K., In re (2005) 127 CA4th 1497, 26 CR3d 487: §§102.10, 102.93

- Brittany S., In re (1993) 17 CA4th 1399, 22 CR2d 50: §§102.73, 102.90, 102.113
- C.B., In re (2010) 188 CA4th 1024, 116 CR3d 294: §102.50
- C.C., In re (2003) 111 CA4th 76, 3 CR3d 354: §102.82
- C.C., In re (2009) 172 CA4th 1481, 92 CR3d 168: §102.87
- Candida S., In re (1992) 7 CA4th 1240, 9 CR2d 521: §§102.27, 102.37, 102.113
- Carmen M., In re (2006) 141 CA4th 478, 46 CR3d 117: §102.98
- Carroll v Superior Court (2002) 101 CA4th 1423, 124 CR2d 891: §102.2
- Catherine H., In re (2002) 102 CA4th 1284, 126 CR2d 342: §102.45
- Catherine S., In re (1991) 230 CA3d 1253, 281 CR 746: §102.82
- Cesar V. v Superior Court (2001) 91 CA4th 1023, 111 CR2d 243: §102.52
- Chantal S., In re (1996) 13 CA4th 196, 51 CR2d 866: §§102.89, 102.92, 102.106, 102.108
- Charmice G., In re (1998) 66 CA4th 659, 78 CR2d 212: §102.114
- Cheryl H., In re (1984) 153 CA3d 1098, 200 CR 789: §§102.40, 102.92
- Christina A., In re (2001) 91 CA4th 1153, 111 CR2d 310: §102.112
- Christina K. v Superior Court (1986) 184 CA3d 1463, 229 CR 564: §102.14
- Christopher H., In re (1996) 50 CA4th 1001, 57 CR2d 861: §§102.89, 102.98
- Christopher I., In re (2003) 106 CA4th 533, 131 CR2d 122: §102.104
- Clifford C., In re (1997) 15 CA4th 1085, 64 CR2d 873: §102.23
- Clifford S. v Superior Court (1995) 38 CA4th 747, 45 CR2d 333: §§102.94, 102.112
- Cliffton B., In re (2000) 81 CA4th 415, 96 CR2d 778: §102.2
- Cole C., In re (2009) 174 CA4th 900, 95 CR3d 62: §102.42
- Corey A., In re (1991) 227 CA3d 339, 227 CR 782: §102.30
- Corienna G., In re (1989) 213 CA3d 73, 261 CR 462: §102.38
- Courtney H., In re (1995) 38 CA4th 1221, 45 CR2d 560: §102.25
- Crystal J., In re (2001) 92 CA4th 186, 111 CR2d 646: §102.14
- Curtis F. v Superior Court (2000) 80 CA4th 470, 95 CR2d 232: §102.82
- Cynthia C. v Superior Court (1999) 72 CA4th 1196, 85 CR2d 669: §102.85
- D.B. v Superior Court (2009) 171 CA4th 197, 89 CR3d 566: §102.8, 102.83
- D.E. v Superior Court (2003) 111 CA4th 502, 4 CR3d 10: §102.4
- D.R., In re (2010) 185 CA4th 852, 110 CR3d 839: §§102.12, 102.14
- Damonte A., In re (1997) 57 CA4th 894, 67 CR2d 369: §102.44
- Daniel C. H., In re (1990) 220 CA3d 814, 269 CR 624: §102.92
- Daniel D., In re (1994) 24 CA4th 1823, 30 CR2d 245: §102.12
- Danielle W., In re (1989) 207 CA3d 1227, 255 CR 344: §§102.87, 102.89
- David D., In re (1994) 28 CA4th 941, 33 CR2d 861: §102.82
- Deborah S. v Superior Court (1996) 43 CA4th 741, 50 CR2d 858: §102.80
- Derrick S., In re (2007) 156 CA4th 436, 67 CR3d 367: §102.63
- Desiree B., In re (1992) 8 CA4th 286, 10 CR2d 254: §102.106
- Diamond H., In re (2000) 82 CA4th 1127, 98 CR2d 715: §102.42
- Dino E., In re (1992) 6 CA4th 1768, 8 CR2d 416: §102.62
- Dirk S., In re (1993) 14 CA4th 1037, 17 CR2d 643: §102.89
- Dolly D., In re (1995) 41 CA4th 440, 48 CR2d 691: §102.30
- Donnovan J., In re (1997) 58 CA4th 1474, 68 CR2d 714: §102.88

- Dorothy I., In re (1984) 162 CA3d 1154, 209 CR 5: §102.32
- Dylan T., In re (1998) 65 CA4th 765, 76 CR2d 684: §102.90
- Edgar O. v Superior Court (2000) 84 CA4th 13, 100 CR2d 540: §102.73
- Eduardo A., In re (1989) 209 CA3d 1038, 261 CR 68: §102.100
- Elaine E., In re (1990) 221 CA3d 809, 270 CR 489: §102.108
- Elijah R. v Superior Court (1998) 66 CA4th 965, 78 CR2d 311: §102.74
- Elijah S., In re (2005) 125 CA4th 1532, 24 CR3d 16: §102.109
- Elijah V., In re (2005) 127 CA4th 576, 25 CR3d 774: §102.71
- Elizabeth T., In re (1992) 9 CA4th 636, 12 CR2d 10: §102.31
- Emily L., In re (1989) 212 CA3d 734, 260 CR 810: §102.5
- Emily R., In re (2000) 80 CA4th 1344, 96 CR2d 285: §102.8
- Emmanuel R., In re (2001) 94 CA4th 452, 114 CR2d 320: §102.50
- Erika W., In re (1994) 28 CA4th 470, 33 CR2d 548: §§102.49, 102.79
- Esperanza C., In re (2008) 165 CA4th 1042, 81 CR3d 556: §102.57
- Ethan N., In re (2004) 122 CA4th 55, 18 CR3d 504: §102.84
- Francisco G. v Superior Court (2001) 91 CA4th 586, 110 CR2d 679: §102.111
- G.L., In re (2009) 177 CA4th 683, 99 CR3d 356: §102.54
- Gary U., In re (1982) 136 CA3d 494, 186 CR 316: §102.76
- Gerald J., In re (1991) 1 CA4th 1180, 2 CR2d 569: §102.99
- Gina S., In re (2005) 133 CA4th 1074, 35 CR3d 277: §102.109
- Giovanni F., In re (2010) 184 CA4th 594, 108 CR3d 885: §§102.6, 102.13
- Glen C. v Superior Court (2000) 78 CA4th 570, 93 CR2d 103: §102.71
- Guardianship of Phillip B. (1983) 139 CA3d 407, 188 CR 781: §102.11
- Guillermo G. v Superior Court (1995) 33 CA4th 1168, 39 CR2d 748: §102.114
- H.E., In re (2008) 169 CA4th 710, 724, 86 CR3d 820: §102.42
- Heather B., In re (1992) 9 CA4th 535, 11 CR2d 891: §102.3
- Henry V., In re (2004) 119 CA4th 522, 14 CR3d 496: §102.41
- Hirenia C., In re (1993) 18 CA4th 504, 22 CR2d 443: §§102.12, 102.94
- Holly B., In re (2009) 172 CA4th 1261, 92 CR3d 80: §102.100
- Horton., In re (1991) 54 C3d 82, 284 CR 305: §102.25
- Hunter S., In re (2006) 142 CA4th 1497, 48 CR3d 823: §102.88
- I.S., In re (2002) 103 CA4th 1193, 127 CR2d 398: §102.23
- Isayah C., In re (2004) 118 CA4th 684, 13 CR3d 198: §102.45
- J.B., In re (2009) 178 CA4th 751, 100 CR3d 679: §102.45
- J.N., In re (2006) 138 CA4th 450, 41 CR3d 494: §102.86
- J.W. v Superior Court (1993) 17 CA4th 958, 22 CR2d 527: §102.15
- Jacob E., In re (2004) 121 CA4th 909, 18 CR3d 430: §102.13
- James B. v Superior Court (1995) 35 CA4th 1014, 41 CR2d 762: §102.58
- James T., In re (1987) 190 CA3d 58, 235 CR 127: §102.41
- Jamie G., In re (1987) 196 CA3d 675, 241 CR 869: §102.70
- Janee W., In re (2006) 140 CA4th 1444, 45 CR3d 445: §§102.45, 102.46
- Janet O. v Superior Court (1996) 42 CA4th 1058, 50 CR2d 57: §§102.16, 102.19
- Janice J. v Superior Court (1997) 55 CA4th 690, 64 CR2d 227: §102.115
- Jasmin C., In re (2003) 106 CA4th 177, 130 CR2d 558: §102.67
- Jasmine G., In re (2000) 82 CA4th 282, 98 CR2d 93: §102.41

- Jason L., In re (1990) 222 CA3d 1206, 272 CR 316: §102.38
- Jason V., In re (1991) 229 CA3d 1168, 280 CR 562: §102.59
- Jeff M. v Superior Court (1997) 56 CA4th 1238, 66 CR2d 343: §102.6
- Jeanette H., In re (1990) 225 CA3d 25, 275 CR 9: §102.20
- Jeanette V., In re (1998) 68 CA4th 811, 80 CR2d 534: §§102.28, 102.30
- Jennifer G., In re (1990) 221 CA3d 752, 270 CR 326.: §§102.88, 102.89
- Jennifer J., In re (1992) 8 CA4th 1080, 10 CR2d 813: §102.100
- Jennifer P., In re (1985) 174 CA3d 322, 219 CR 909: §102.37
- Jennifer R., In re (1993) 14 CA4th 704, 17 CR2d 759: §102.45
- Jerry P., In re (2002) 95 CA4th 793, 116 CR2d 123: §102.48
- Jessica B., In re (1989) 207 CA3d 504, 254 CR 883: §§102.35, 102.118
- Jessica F., In re (1991) 229 CA3d 769, 282 CR 303: §§102.26, 102.84
- Joanna Y., In re (1992) 8 CA4th 433, 10 CR2d 422: §§102.62, 102.100
- Jodi B., In re (1991) 227 CA3d 1322, 278 CR 242: §102.70
- Jody R., In re (1990) 218 CA3d 1615, 267 CR 746: §§102.14, 102.70
- Joe B. v Superior Court (2002) 99 CA4th 23, 120 CR2d 722: §102.113
- Joel H., In re (1993) 19 CA4th 1185, 23 CR2d 878: §102.15
- Joel T., In re (1999) 70 CA4th 263, 82 CR2d 538: §102.44
- John M., In re (2006) 141 CA4th 1564, 47 CR3d 281: §102.50
- Johnny S., In re (1995) 40 CA4th 969, 47 CR2d 94: §102.50
- Jonathan L. v Superior Court (2008) 165 CA4th 1074, 81 CR3d 571: §102.101
- Jonathan M., In re (1997) 53 CA4th 1234, 62 CR2d 208: §§102.86, 102.90
- Jose O. v Superior Court (2008) 169 CA4th 703, 87 CR3d 1: §102.80
- Joshua H., In re (1993) 13 CA4th 1718, 17 CR2d 282: §102.80
- Joshua M., In re (1998) 66 CA4th 458, 78 CR2d 110: §102.62
- Joshua S., In re (2007) 41 C4th 261, 59 CR3d 460: §102.53
- Joshua S., In re (1988) 205 CA3d 119, 252 CR 106: §102.14
- Joy M., In re (2002) 99 CA4th 11, 120 CR2d 714: §102.82
- Julie M., In re (1999) 69 CA4th 41, 81 CR2d 354: §102.89
- Kamelia S., In re (2000) 82 CA4th 1224, 98 CR2d 816: §102.113
- Karen G., In re (2004) 121 CA4th 1384, 18 CR3d 301: §102.2
- Karen H. v Superior Court (2001) 91 CA4th 501, 110 CR2d 665: §102.83
- Karen S. v Superior Court (1999) 69 CA4th 1006, 81 CR2d 858: §102.83
- Karla C., In re (2010) 186 CA4th 1236, 113 CR3d 163: §102.53
- Katelynn Y., In re (2012) 209 CA4th 871, 147 CR3d 423: §102.79
- Katrina C., In re (1988) 201 CA3d 540, 247 CR 784: §§102.40, 102.49, 102.96
- Keisha T., In re (1995) 38 CA4th 220, 44 CR2d 822: §102.109
- Kenneth M., In re (2004) 123 CA4th 16, 22, 19 CR3d 752: §102.100
- Kevin N., In re (2007) 148 CA4th 1339, 56 CR3d 464: §§102.63, 102.74
- Kieshia E., In re (1993) 6 C4th 68, 23 CR2d 775: §102.12
- Kimberly F., In re (1997) 56 CA4th 519, 65 CR2d 495: §102.41
- Kristin W., In re (1990) 222 CA3d 234, 271 CR 629: §§102.62, 102.66
- Kristine W., In re (2001) 94 CA4th 521, 114 CR2d 369: §102.34
- Kyle E., In re (2010) 185 CA4th 1130, 111 CR3d 199: §102.88
- L.A., In re (2009) 180 CA4th 413, 103 CR3d 179: §102.59

- L.Z. v Superior Court (2010) 188 CA4th 1285, 115 CR3d 883: §102.80
- Laura B. v Superior Court (1998) 68 CA4th 776, 80 CR2d 472: §102.83
- Lauren Z., In re (2008) 158 CA4th 1102, 70 CR3d 583: §102.55
- Laurie S. v Superior Court (1994) 26 CA4th 195, 31 CR2d 506.: §102.32
- Leticia S., In re (2001) 92 CA4th 378, 111 CR2d 810: §102.12
- Letitia V. v Superior Court (2000) 81 CA4th 1009, 97 CR2d 303: §102.83
- Levi U., In re (2000) 78 CA4th 191, 92 CR2d 648: §102.83
- Los Angeles County Dep't of Children & Family Servs. v Superior Court (2001) 87 CA4th 1161, 105 CR.2d 254: §102.57
- Los Angeles County Dep't of Children & Family Servs. v Superior Court (2003) 112 CA4th 509, 5 CR3d 182: §102.57
- Los Angeles County Dep't of Children & Family Servs. v Superior Court (2005) 126 CA4th 144, 24 CR3d 256: §102.57
- Los Angeles County Dep't of Children & Family Servs. v Superior Court (2006) 145 CA4th 692, 51 CR3d 816: §102.42
- Luke L., In re (1996) 44 CA4th 670, 52 CR2d 53: §§102.55–102.56, 102.58
- Luke M., In re (2003) 107 CA4th 1412, 132 CR2d 907: §102.45
- M.B., In re (2010) 182 CA4th 1496, 107 CR3d 107: §102.32
- M.V., In re (2006) 146 CA4th 1048, 53 CR3d 324: §102.15
- Malcolm D., In re (1996) 42 CA4th 904, 50 CR2d 148: §102.19
- Manolito L., In re (2001) 90 CA4th 753, 109 CR2d 282: §102.92
- Mardado F. v Superior Court (2008) 164 CA4th 481, 78 CR3d 884: §102.84
- Maria S., In re (1997) 60 CA4th 1309, 71 CR2d 30: §102.76
- Maria S., In re (2000) 82 CA4th 1032, 98 CR2d 655: §102.66
- Maribel T., In re (2002) 96 CA4th 82, 116 CR2d 631: §102.106
- Marilyn H., In re (1993) 5 C4th 295, 19 CR2d 544: §102.113
- Mark A., In re (2007) 156 CA4th 1124, 68 CR3d 106: §102.35
- Mark C., In re (1992) 7 CA4th 433, 8 CR2d 856: §102.32
- Mark L., In re (2001) 94 CA4th 573, 114 CR2d 499: §102.34
- Mark N. v Superior Court (1998) 60 CA4th 996, 70 CR2d 603: §102.74
- Marquis D., In re (1995) 38 CA4th 1813, 46 CR2d 198: §102.45
- Marriage of Arceneaux (1990) 51 C3d 1130, 275 CR 797: §102.38
- Marriage of Seaman & Menjou (1991) 1 CA4th 1489, 2 CR2d 690: §102.106
- Marriage of Teegarden (1986) 181 CA3d 401, 226 CR 417: §102.6
- Matthew S., In re (1996) 41 CA4th 1311, 49 CR2d 139: §102.37
- Meranda P., In re (1997) 56 CA4th 1143, 65 CR2d 913: §102.113
- Merrick V., In re (2004) 122 CA4th 235, 19 CR3d 490: §102.12
- Michael B., In re (1992) 8 CA4th 1698, 11 CR2d 290: §102.108
- Michael E., In re Jr. (2013) 213 CA4th 670, 153 CR3d 234: §102.52
- Michael G., In re (1998) 63 CA4th 700, 74 CR2d 642: §102.77
- Michael R., In re (1998) 67 CA4th 150, 78 CR2d 842: §§102.12–102.13
- Michael W., In re (1997) 54 CA4th 190, 62 CR2d 531: §102.108
- Miguel E., In re (2004) 120 CA4th 521, 16 CR3d 530: §102.113
- Monica C., In re (1995) 31 CA4th 296, 36 CR2d 910: §102.90
- Monique T., In re (1992) 2 CA4th 1372, 4 CR2d 198: §102.27
- Moriah T., In re (1994) 23 CA4th 1367, 28 CR2d 705: §§102.97, 102.89

- Nada R., In re (2001) 89 CA4th 1166, 108 CR2d 493: §102.113
- Neil D., In re (2007) 155 CA4th 219, 65 CR3d 771: §102.98
- Nicholas H., In re (2003) 112 CA4th 251, 5 CR3d 261: §102.108
- Nolan W., In re (2009) 45 C4th 1217, 91 CR3d 140: §102.98
- O.S., In re (2002) 102 CA4th 1402, 126 CR2d 571: §102.71
- P.A., In re (2007) 155 CA4th 1197, 66 CR3d 783: §102.38
- Pablo S. v Superior Court (2002) 98 CA4th 292, 119 CR2d 523: §102.80
- Patricia L., In re (1992) 9 CA4th 61, 11 CR2d 631: §§102.8, 102.11–102.12, 102.15
- Patricia O. v Superior Court (1999) 69 CA4th 933, 81 CR2d 662: §102.84
- Patricia T., In re (2001) 91 CA4th 400, 109 CR2d 904: §102.21
- Paul E., In re (1995) 39 CA4th 996, 46 CR2d 289: §§102.38, 102.41
- Payne v Superior Court (1976) 17 C3d 908, 132 CR 405: §102.15
- Pedro Z., In re Jr. (2010) 190 CA4th 12, 117 CR3d 605: §102.49
- Petra B., In re (1989) 216 CA3d 1163, 265 CR 342: §102.37
- Phillip B., In re (1979) 92 CA3d 796, 156 CR 48: §102.37
- Phoenix B., In re (1990) 218 CA3d 787, 267 CR 269: §102.37
- Precious J., In re (1996) 42 CA4th 1463, 50 CR2d 385: §102.90
- R.J., In re (2008) 164 CA4th 219, 79 CR3d 184: §102.13
- R.S. v Superior Court (2007) 154 CA4th 1262, 65 CR3d 444: §102.46
- Rachael C., In re (1991) 235 CA3d 1445, 1 CR2d 473: §§102.11, 102.113
- Randi R. v Superior Court (1998) 64 CA4th 67, 74 CR2d 770: §102.83
- Rashad B., In re (1999) 76 CA4th 442, 90 CR2d 462: §§102.111, 102.115
- Raymond C. v Superior Court (1997) 55 CA4th 159, 64 CR2d 33.: §102.80
- Rayna R. v Superior Court (1993) 20 CA4th 1398, 25 CR2d 259: §102.16
- Rebecca H., In re (1991) 227 CA3d 825, 278 CR 185: §§102.82, 102.117
- Rebekah R., In re (1994) 27 CA4th 1638, 33 CR2d 265: §§102.77, 102.80
- Renee S. v Superior Court (1999) 76 CA4th 187, 90 CR2d 134: §102.6
- Richard H., In re (1991) 234 CA3d 1351, 285 CR 917: §102.4
- Richard K., In re (1994) 25 CA4th 580, 30 CR2d 575: §102.30
- Richard S., In re (1991) 54 C3d 857, 2 CR2d 2: §102.24
- Rita L. v. Superior Court (2005) 128 CA4th 495, 27 CR3d 157: §102.15
- Robert A., In re (1992) 4 CA4th 174, 5 CR2d 438: §102.51
- Robert L., In re (1993) 21 CA4th 1057, 24 CR2d 654: §102.55
- Robert L. v Superior Court (1996) 45 CA4th 619, 53 CR2d 41: §102.72
- Robin N., In re (1992) 7 CA4th 1140, 9 CR2d 512: §§102.15, 102.94
- Robin V. v Superior Court (1995) 33 CA4th 1158, 39 CR2d 743: §102.74
- Roderick U., In re (1993) 14 CA4th 1543, 18 CR2d 555: §102.24
- Rodger H., In re (1991) 228 CA3d 1174, 279 CR 406: §§102.33, 102.57
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- Tabitha W., In re (2006) 143 CA4th 811, CR3d 565: §102.111
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- Vincent C., In re (1997) 53 CA4th 1347, 62 CR2d 224: §102.13
- Wanda B. v. Superior Court (1996) 41 CA4th 1391, 49 CR2d 175: §102.113
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