

CALIFORNIA JUDGES BENCHGUIDES

Benchguide 103

**JUVENILE DEPENDENCY REVIEW
HEARINGS**

[REVISED 2013]



**ADMINISTRATIVE OFFICE
OF THE COURTS**

JUDICIAL AND COURT OPERATIONS
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CENTER FOR JUDICIARY EDUCATION AND RESEARCH

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I. [§103.1] SCOPE OF BENCHGUIDE

This benchguide provides a procedural overview of dependency review hearings under Welf & I C §§366, 366.21, 366.22, 366.25, 366.3, and 364, and Cal Rules of Ct 5.710–5.740. Review hearings may also be held for nonminor dependents. See Welf & I C §§303, 366, 366.3, and 366.31.

Generally, review hearings are held to ensure periodic review of the child’s status, the necessity for and appropriateness of the child’s placement, and the extent of compliance with the case plan for the child. Welf & I C §366(a). Review hearings in dependency proceedings are mandated by both state (Welf & I C §§364–366.3) and federal law (Pub Law 96–272; 42 USC §§670 et seq). This benchguide includes procedural checklists for review hearings, a brief summary of the applicable law, and spoken forms. Placement options, visitation, reunification services, and other dispositional alternatives are discussed in CALIFORNIA JUDGES BENCHGUIDE 102: *JUVENILE DEPENDENCY DISPOSITION HEARING* (CAL CJER). Selection and implementation hearings (.26 hearings) held under Welf & I C §366.26 are discussed in CALIFORNIA JUDGES BENCHGUIDE 104: *DEPENDENCY SELECTION AND IMPLEMENTATION HEARING* (CAL CJER).

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. Depending on the context, the agency is sometimes referred to as the “county welfare department.” See, e.g., Welf & I C §391(b).

II. PROCEDURAL CHECKLISTS

A. [§103.2] General Conduct of Review Hearing

This is a general checklist that may be used for any type of review hearing. For a review hearing in a case in which the child has not been removed, see §103.3. For checklists to follow when the child was removed, see §§103.4–103.7. For a postpermanency planning review hearing, see the checklist in §103.8.

(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 §103.18.

(2) *Call the case.* In many counties, the social worker serving as court officer or deputy county counsel calls the case and announces the appearances. Some judicial officers will first call the entire calendar to determine which cases are ready and in what order they will be taken.

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

- If the child 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 10 years of age or older and 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).
- *If requested by a party, determine whether anyone other than a party should be admitted.* Welf & I C §§346, 349; Cal Rules of Ct 5.530(a)–(b), 5.534(e)–(f).
- *Exclude all persons from the court except parents, legal guardians, the child, anyone granted status as a de facto parent, counsel, any representative of an Indian child's tribe, any court-appointed special advocate, or anyone found by the court to have a direct and legitimate interest in the particular case or the work of the court.* Welf & I C §§345, 346, 349, 356.5.
- *If this is a first appearance for parents or guardians, ask them to designate a mailing address for the court.*
- *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). Judicial Council form JV-140, Notification of Mailing Address, should be provided to the party.

The steps above concerning notice and some of those that follow (including appointment of counsel) will usually have been taken at earlier hearings and will not have to be repeated at the review hearings.

- JUDICIAL TIP: Judges should ensure that the clerk places the addresses and the advisement into the minute order and that DSS gets the order. Some judges also give the parent or guardian an opportunity to correct the mailing address at each hearing. Judicial Council form JV-140 must be used and provided to parents and guardians.

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

- *Determine whether the parent or guardian received actual notice of the hearing.* See Welf & I C §§293, 366.21(b); Cal Rules of Ct 5.708(b), 5.710(a).

- JUDICIAL TIP: Parties will have received actual notice if they were present at a previous hearing at which the review hearing was set. If there was actual notice, the court should make such a finding on the record.

- *If not, determine whether due diligence efforts to serve were made.* Service by first class mail to the parent's or guardian's last known address is sufficient if made at least 15 days but not more than 30 days before the hearing. Welf & I C §§293(c), 366.21(b).
- *If notice has not been received by the parent or guardian, service was not attempted in accordance with law, or an affidavit documenting reasonable and adequate unsuccessful search efforts for the parent or guardian is not presented to the court, continue the case for a reasonable time in order to permit service*
- *Notice is not required for parents of a nonminor dependent.* Welf & I C §293(b).

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

(6) *If a parent is present for the first time, inquire whether the child has American Indian heritage and, if so, take steps to ensure that proper notice is given and provisions of the Indian Child Welfare Act (ICWA) (25 USC §§1901 et seq) were followed.* See Welf & I C §§224.2, 292–294 for notice requirements and discussion in §103.17. See also discussion of ICWA in CALIFORNIA JUDGES BENCHGUIDE 100: *JUVENILE DEPENDENCY INITIAL OR DETENTION HEARING* §§100.48–100.51 (CAL CJER).

- JUDICIAL TIP: The court and DSS have a continuing duty to inquire whether a parent has Indian heritage, even when the parent was incarcerated and did not appear at the hearings and when there was nothing in the record to indicate Indian heritage. *In re J.N.* (2006) 138 CA4th 450, 461–462, 41 CR3d 494.

(7) *Advise any unrepresented parent or legal 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 previously retained or appointed to represent more than one parent or legal 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 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 for any incarcerated parents who desire counsel and cannot afford one. Welf & I C §317(a); Cal Rules of Ct 5.534(g)–(h). Counsel will usually have been appointed for the parents and the child at an earlier hearing.

(8) *If the child is not represented by counsel, appoint an attorney for the child unless there are findings as to why the child would not benefit from appointment of counsel.* If the court

makes such a finding, it must appoint a Court-Appointed Special Advocate (CASA) volunteer to serve as the Child Abuse Prevention and Treatment Act (CAPTA) (42 USC §§5101 et seq) guardian ad litem to represent the child. Welf & I C §§317, 326.5; Cal Rules of Ct 5.534(g)–(h), 5.660, 5.662. See discussion in §103.21.

(9) *Advise the parties of their rights at this stage of the proceedings as specified in Cal Rules of Ct 5.534(k), by either of the following:*

- *Obtain a waiver from this advisement requirement.* The judge should ask the attorneys if they have explained these rights to their clients. Some judges then ask the parties to confirm that their attorneys have explained these rights to them, that they understand these rights, and that they waive formal advisement of them.
- *Read these rights to the parties and confirm that they understand their rights.* See discussion in §103.26.
- *Advise a nonminor dependent of his or her rights, which include all the legal rights of anyone over 18 years of age (Welf & I C §303(d), (e)), in addition to the right to seek termination of jurisdiction, as well as the right to seek resumption of jurisdiction once it has been terminated (Welf & I C §§366(a)(1)(F), 366.31, 366.32).* See discussion in §§103.12, 103.26, 103.55, and 103.6–103.6.

(10) *Deal with issues concerning parentage as may be necessary or appropriate.*

(11) *Receive documentary evidence produced by DSS as follows:*

- *Read and consider the reports prepared by DSS, including any attachment to the reports and any recommendations for court orders made by DSS contained in the reports.*
- *State on the record that the reports have been read and considered, and that the court considered all admissible and relevant evidence.* See Welf & I C §366.21(c); Cal Rules of Ct 5.708(c) (review hearings generally); Welf & I C §366.21(e) (six-month review); Welf & I C §366.21(f) (12-month permanency hearing); Welf & I C §366.22(a) (18-month permanency review); Welf & I C §366.25(a) (24-month subsequent permanency review hearing); and Cal Rules of Ct 5.740(a)(1), (b) (postpermanency planning review); and discussion in §103.27.

(12) *Read and consider the report of any CASA, the case plan submitted for this hearing, and any report submitted by the child's caregiver under Welf & I C §366.21(d).* Cal Rules of Ct 5.708(c)(3) (six-month review); Cal Rules of Ct 5.708(c)(3) (12-month permanency hearing); Cal Rules of Ct 5.708(c)(3) (18-month permanency review); Welf & I C §366.25(a)(1); Cal Rules of Ct 5.708(c)(3) (24-month subsequent permanency review hearing), and 5.740(a)–(b) (post-permanency planning review).

(13) *If one or more parties request that the child's testimony be taken, consider granting this request and, if so, under what circumstances.* See discussion in §§103.29–103.32.

(14) *If appropriate, receive testimony from the child.*

(15) *Receive other evidence, including testimony from the parents, the guardians, the social worker, and others with pertinent knowledge, as appropriate.* See Cal Rules of Ct 5.708(c), (d) (review hearings generally) and Cal Rules of Ct 5.740(a)–(b) (postpermanency planning review).

(16) *Make findings and orders as appropriate.* See checklists in §§103.3–103.8 for findings and orders required in particular review hearings.

➤ JUDICIAL TIPS:

- Case plans must also describe services to be provided to achieve legal permanency for the child (see Welf & I C §16501.1(f)(10)) should reunification efforts fail. If the report does not discuss the alternative plan, the court must inquire about the services and require an amendment to the report to be submitted within a specific time. It is therefore important for the court to make a finding as to whether concurrent permanency planning services for the child have been provided in all situations in which reunification services were ordered, and to make such orders as may be appropriate or needed to effect such services. See, *e.g.*, Welf & I C §§366.21(e), 16501.1(f)(10); see Cal Rules of Ct 5.708(e)(2)(B), (C).
- In an ICWA case, in addition to the “reasonable efforts” finding required by state law, the court must also find “active efforts” to meet the standards of ICWA, especially if it is terminating services and setting a .26 hearing. *In re Michael G.* (1998) 63 CA4th 700, 713-714, 74 CR2d 642; Welf & I C §361.7(a); Cal Rules of Ct 5.484(c).

(17) *Rule on any additional requests, including any request for restraining orders under Welf & I C §213.5 and/or §340.5, as may be appropriate.*

(18) *If the review hearing is the last one before the child turns 18, ensure that the transitional plan includes means to reach one or more of the criteria of Welf & I C §11403(b) and inform the child of the benefits of continuing dependency as well as the right to seek termination of dependency jurisdiction.* Welf & I C §366(a)(1)(F); see Judicial Council form JV-460, Attachment: Additional Findings and Orders for Child Approaching Majority.

(19) *Schedule future hearings as necessary.* See Welf & I C §§366(a) (status of children in foster care to be reviewed at least every six months), 366.21, 366.22 (review hearings generally), and 366.3(a), (d), and Cal Rules of Ct 5.740(a)-(b) (postpermanency planning reviews). See also Cal Rules of Ct 5.710(a) (six-month review), 5.715(a) (12-month permanency hearing), 5.720(a) (18-month permanency review), and 5.722(a) (24-month subsequent permanency review hearing).

➤ JUDICIAL TIPS:

- The date of removal should be known to all parties at each hearing. Therefore, it is good practice to require that the removal date be stamped prominently on the file, together with the 12- and 18-month dates. See §103.14 for definition of these dates. Inclusion of the 6-month date is particularly important if the child was under three or a member of a sibling group in which one sibling was under three at the time of removal. This should serve as a reminder of the limited time for reunification and will reduce the temptation to go beyond the statutory time.
- The court should advise the parents of these dates at each hearing or should obtain counsel’s agreement to do so.

B. [§103.3] Checklist: When Child Is in Parent’s or Guardian’s Custody

(1) *Review the social worker’s report, the report of any court-appointed child advocate, and other evidence presented by the social worker, parent, guardian, or child.* See Welf & I C §364(c); Cal Rules of Ct 5.706(c), (d).

(2) *Terminate dependency jurisdiction unless DSS establishes by a preponderance of the evidence that conditions still exist that would justify initial assumption of jurisdiction under Welf & I C §300, or that such conditions are likely to exist if supervision is withdrawn.* Welf & I C §364(c); Cal Rules of Ct 5.706(e)(1). Failure of the parent or guardian to participate regularly in any court-ordered treatment program is prima facie evidence that the conditions that justified initial assumption of jurisdiction still exist and that continued supervision is necessary. Welf & I C §364(c); Cal Rules of Ct 5.706(e)(1).

(3) *Determine whether continued supervision is necessary.*

- JUDICIAL TIP: If the parent seeks termination of jurisdiction and DSS contests it, the usual practice is to set the hearing as a contested hearing. DSS has the burden of proving by a preponderance of the evidence that continued jurisdiction is necessary. Welf & I C §364(c); Cal Rules of Ct 5.706(e)(1).

(4) *If jurisdiction is retained, schedule a further review hearing for a specified date not more than six months from the time of the hearing.* Welf & I C §364(d); Cal Rules of Ct 5.706(a), (e)(2).

➤ JUDICIAL TIPS:

- If the court decides that dependency jurisdiction should be terminated, it may make additional orders pertaining to custody and visitation. These orders may specify which parent has legal and/or physical custody, what visitation rights reside in the noncustodial parent, and other related matters pertaining to custody and visitation. See Welf & I C §362.4. The court must use Judicial Council forms JV-200, Custody Order—Juvenile, and JV-205, Visitation Order—Juvenile, for visitation orders.
- If terminating jurisdiction and ordering custody and visitation, it is good practice to notify all those who claim to be fathers, if there are not yet paternity findings and orders.
- If DSS recommends termination of dependency, and a party, including the child, opposes it, the court may wish to take offers of proof on the issue. The court may then terminate dependency, continue dependency with appropriate orders, or set the matter for hearing at which the opposing party bears the burden of proof.
- If both parents have completed their case plans and neither poses a risk, the court may consider sending them to mediation to work out their respective responsibilities.

C. When Child Declared Dependent and Is Removed

1. [§103.4] Checklist: Six-Month Review Hearing

The purposes of the six-month hearing are (1) to terminate jurisdiction if there are no longer grounds to continue, (2) to return the child unless there is a substantial risk of detriment, (3) to review the case plan and concurrent reunification and permanency services, and (4) to move expeditiously toward return of the child or to an alternative permanent plan (see §103.14). Occasionally a court will set an informal nonstatutory review of the child's case 60 or 90 days after disposition to be able to meet these goals more quickly. For possible findings and orders, see generally §§103.33–103.37 and JV-430 –JV-433.

(1) *Review the social worker's report, the report of any court-appointed child advocate, and other evidence.*

(2) *If the child has been removed, and unless the court has previously ordered that reunification services must not be provided for that parent under Welf & I C §361.5, consider the efforts and progress demonstrated by the parent or legal guardian and the extent to which the parent cooperated and made use of reunification services provided, taking into account barriers to accessing those services or to maintaining contact with the child that were caused by the parent's incarceration, institutionalization, detention by the United States Department of Homeland Security, or deportation. Welf & I C §§366.215, 366.21(e); see Cal Rules of Ct 5.708(d), (e). See §103.61.*

(3) *After considering the admissible and relevant evidence, order the return of the child to the physical custody of his or her parents or legal guardians, or find by a preponderance of the evidence that returning the child would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being, and order continued out-of-home placement. Welf & I C §366.21(e); Cal Rules of Ct 5.708(d)(1), 5.710(b)(1).*

DSS bears the burden of establishing the existence of a substantial risk of detriment by a preponderance of the evidence. Evidence of a parent or guardian's failure to participate regularly and make substantive progress in court-ordered treatment programs, unless successfully rebutted, is sufficient to merit a finding that continued supervision is necessary and that return would be detrimental, thus justifying the continued removal of the child from the custody of the parents or guardians. Welf & I C §366.21(e); Cal Rules of Ct 5.708(d), 5.710(b)(1). See §103.34.

☛ JUDICIAL TIPS:

- At this stage in the proceedings, if the child is to be returned home, some courts make orders for a "transition" plan that structures the return into a gradual process, starting with more lenient visitation during the day, then overnight visitation, and eventually actual return to parental custody.
- It is important to make all the review findings even if the court and DSS agree that permanent return home is imminent.

(4) *Make findings specified in Welf & I C §366(a) as appropriate concerning (Welf & I C §§366(a), 366.21(e); Cal Rules of Ct 5.708(f), (h), (i)–(j)):*

- *The continuing necessity for and appropriateness of the child's placement ("The child's placement is necessary and appropriate," or "Out of home placement is necessary and the child's current placement is appropriate.") See 42 USC §675(5)(B));*
- *The 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 to a safe home and in completing any steps to finalize permanent placement;*
- *The extent of progress made by each parent or legal guardian receiving services toward alleviating or mitigating the causes necessitating placement in foster care;*
- *The likely date by which the child may be safely returned to and maintained in the home or placed for adoption or in some other permanent living arrangement;*
- *That the services set forth in the case plan include those needed to assist a child who is 16 years of age or older in making the transition from foster care to independent living (42 USC §675(5)(C));*

- *Whether there should be limitations on the right of the parent or guardian to make educational decisions for the child;*
- *The extent of the child’s and parents’ involvement in developing the case plan;*
- *If the child has been placed out of state, whether that placement continues to be appropriate; and*
- *Whether the child has siblings under the court’s jurisdiction, and if so:*
 - *The nature of the relationship with the siblings;*
 - *The appropriateness of developing and maintaining sibling relationships;*
 - *If siblings are not placed together, the reason for that placement, and efforts, if any, to correct it;*
 - *The frequency and nature of sibling visitation;*
 - *The impact of sibling relationship on placement and permanent planning; and*
 - *The continuing need to suspend sibling interaction, if applicable.*
- *If the review hearing is the last one before the child turns 18, ensure that the transitional plan includes means to reach one or more of the criteria of Welf & I C §11403(b) and inform the child of the benefits of continuing dependency as well as the right to seek termination of dependency jurisdiction. Welf & I C §366(a)(1)(F).*

(5) *If appropriate, make findings by clear and convincing evidence of one or more of the following circumstances (Welf & I C §366.21(e); Cal Rules of Ct 5.710(c)(1)):*

- *The child was removed initially under Welf & I C §300(g), and the whereabouts of the parent are still unknown;*
- *The parent has failed to contact and visit the child;*
- *The parent has been convicted of a felony indicating parental unfitness;*
- *The parent is deceased;*
- *The child was under three or a member of a sibling group in which one child was under three when initially removed from the home and the parent has failed to participate regularly and make substantive progress in the court-ordered treatment plan.*

(6) *If any of the findings in step (5) above is made, terminate reunification services for that parent, and schedule a .26 hearing within 120 days unless one of the following circumstances applies: services are continuing for the other parent; reasonable services were neither offered nor provided; or, for a child under three years of age or a member of a sibling group in which one child was under three at removal, there is a substantial probability that the child will be returned within six months or within 12 months of the date the child entered foster care, whichever is sooner. Welf & I C §366.21(e); Cal Rules of Ct 5.708(l)–(n), 5.710(b)(3), (c), (d). This date is defined as the earliest of the jurisdiction hearing or 60 days from the date of initial removal from the home. Welf & I C §361.49.*

To find a substantial probability of return within six months for a child under three years of age at the time of removal, the court must make findings indicating that the parents are motivated and capable of solving the problems that led to removal. See Cal Rules of Ct 5.710(c)(1)(D) and the discussion in §103.37. If there is a stipulation, the court may also terminate reunification services after finding that one of the conditions of Welf & I C §361.5(b)(2)–(15) or (e)(1) (basis

for no reunification services at disposition) has arisen in the six months after the disposition hearing. If there is no stipulation, a Welf & I C §388 petition for modification of disposition orders is required before terminating services. Welf & I C §361.5(a)(2); see Welf & I C §388.

A .26 hearing should be scheduled if reunification services have been denied or terminated for all living parents. Under Cal Rules of Ct 5.705, a court must not set a .26 hearing as to only one parent unless the other parent is dead or that parent's rights have been terminated or he or she has relinquished custody of the child to DSS. Cal Rules of Ct 5.708(l). Similarly, no .26 hearing may be set once the child turns 18 even if he or she remains a dependent. Welf & I C §366.21(g)(2), (3).

- **JUDICIAL TIP:** At this and other hearings, some courts set a hearing 30–45 days before the scheduled .26 hearing is to take place to ascertain whether service was sufficient. If service is found to be lacking, there will often be time to remedy this within the 120-day period.

(7) *If setting a .26 hearing, including when tribal customary adoption is recommended, order an assessment under Welf & I C §366.21(i)(1) concerning search efforts to locate absent parents or legal guardians, efforts to locate prospective adoptive parents, prospects for adoption, review of the child's contacts with his her parents or legal guardians and extended family since the time of placement, and an evaluation of the child.* Welf & I C §366.21(i)(1); Cal Rules of Ct 5.708(n)(4).

(8) *Advise the parent or guardian of the writ remedy for review of the orders and make sure the parent or guardian receives the Notice of Intent to File Writ Petition and Request for Record, Rule (JV-820) and Petition for Extraordinary Writ (JV 825).* See Cal Rules of Ct 8.450, 8.452. See also Welf & I C §366.26(l); Cal Rules of Ct 5.590(b). If the parents or guardians are not present, the court should ensure that they receive this advice, with proof of notice to go in the file.

(9) *In determining whether to set a .26 hearing for one or more members of a sibling group when one member of that group was under three years of age at removal, continue or terminate services for the other members of the group based on the considerations in Welf & I C §366.21(e) and Cal Rules of Ct 5.710(d), such as whether the siblings were removed as a group, the strength of the bond, the siblings' ages, and the likelihood of providing a permanent home for all the siblings.*

(10) *Order the parents to return on the date set for the .26 hearing.*

(11) *If the child had been placed under court supervision with a previously noncustodial parent under Welf & I C §361.2, determine whether supervision is still necessary.* In an appropriate case, court supervision may be terminated and custody transferred permanently to the previously noncustodial parent as provided in Welf & I C §361.2(a). Welf & I C §366.21(e); Cal Rules of Ct 5.710(b)(2), 5.708(k). Judicial Council form JV-200, Custody Order, should be used. For orders determining custody, see Cal Rules of Ct 5.700.

(12) *If the child is not ordered to return to the parents or legal guardians and a .26 hearing has not been ordered:*

- *Determine whether reasonable reunification services have been provided or offered to the parents or guardians and state what those services are;*

- JUDICIAL TIP: One practice recommended when the judge finds that the services have not been adequate is to announce, in an appropriate case, that the court will make a “no reasonable efforts” finding unless specified services are provided within the next day or two. For a discussion of the “art of the no reasonable efforts finding,” see Edwards, *Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980*, 45 *Juvenile and Family Court Journal* (No. 3) 17–19 (1994).
- *Order that reunification services be initiated, continued, or modified; or*
- *Inform the parent or legal guardian, if present, that if the child cannot be returned home by the 12-month permanency hearing, a proceeding for termination of parental rights under Welf & I C §366.26 may be instituted. Welf & I C §366.21(g).*
- JUDICIAL TIP: Some judges order DSS to notify absent parents or guardians that a .26 hearing may be set and to place that notice on the record.
- *Make other findings and orders as appropriate.*

(13) *Unless reunification services have been terminated for all parents and a .26 hearing has been ordered, set 12-month permanency hearing to be held within 12 months from the date the child entered foster care (see Welf & I C §361.49 for the definition of that date) and inform the parents or guardians, if present, of the date of the next hearing and of their right to be present and represented by counsel at that hearing. Welf & I C §§366(a), 366.21(a); Cal Rules of Ct 5.715(a), 5.710(b)(4). This hearing must be held within 12 months from the date the child entered foster care (see Welf & I C §361.49) and no later than 18 months from the date of the initial removal. Cal Rules of Ct 5.715(a).*

2. [§103.5] Checklist: 12-Month Permanency Hearing

The purposes of the 12-month permanency hearing are: (1) to return the child unless there is a substantial risk of detriment, (2) to review the case plan and concurrent reunification and permanency planning services, or (3) to terminate services and facilitate an alternative permanent plan unless either there is a substantial probability that the child can be returned within 18 months from the date the child was originally removed from the physical custody of the parent or legal guardian or reasonable services have not been provided or offered. See §103.14 and discussion in §§103.38–103.43. For all required findings and orders, see JV-435–JV-438. For the county to be eligible for Title IV-E federal foster care funding, courts must select and identify a permanent plan at this hearing.

(1) *Review the social worker’s report, the report of any CASA volunteer, the case plan submitted for this hearing, any report submitted by the caregiver under Welf & I C §366.21(d), and other evidence and, unless the court has previously ordered that reunification services must not be provided under Welf & I C §361.5 for that parent, consider the efforts and progress demonstrated by the parent or guardian and the extent to which the parent cooperated and made use of reunification services, taking into account barriers to accessing those services or to maintaining contact with the child that were caused by the parent’s incarceration, institutionalization, detention, or deportation. Welf & I C §366.21(f); Cal Rules of Ct 5.708(d), 5.715(b). See §103.61.*

(2) *After considering the admissible and relevant evidence, order the immediate return of the child to the physical custody of the parent or guardian or find by a preponderance of the*

evidence that returning the child would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being and order continued out-of-home placement. Welf & I C §366.21(f); Cal Rules of Ct 5.708(d), 5.715(b)(1). The court may order the child to return home immediately or by a definite time within six months (but not more than 18 months from the date of removal) if more reunification services are necessary. See Welf & I C §366.21(g)(1).

DSS bears the burden of establishing the existence of a substantial risk of detriment by a preponderance of the evidence. Evidence of a parent or guardian's failure to make substantive progress and participate regularly in court-ordered treatment programs, unless successfully rebutted, is sufficient to merit a finding that continued supervision is necessary and that return would be detrimental, thus justifying the continued removal of the child from the custody of the parents or guardians. Welf & I C §366.21(f); Cal Rules of Ct 5.708(d)(2).

(3) *Make findings specified in Welf & I C §366(a) as appropriate concerning (Welf & I C §§366(a), 366.21(e); Cal Rules of Ct 5.708(f), (h), (i)–(j)):*

- *The continuing necessity for and appropriateness of the child's placement ("The child's placement is necessary and appropriate," or "Out of home placement is necessary and the child's current placement is appropriate") (see 42 USC §675(5)(B));*
- *The 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 to a safe home and in completing any steps to finalize permanent placement;*
- *The extent of progress made by each parent or legal guardian receiving services toward alleviating or mitigating the causes necessitating placement in foster care;*
- *The likely date by which the child may be safely returned to and maintained in the home or placed for adoption or in some other permanent living arrangement;*
- *That the services set forth in the case plan include those needed to assist the child or nonminor dependent in making the transition from foster care to independent living;*
- *Whether there should be limitations on the right of the parent or guardian to make educational decisions for the child;*
- *If the child has been placed out of state, whether that placement continues to be appropriate; and*
- *Whether the child has siblings under the court's jurisdiction, and if so:*
 - *The nature of the relationship with the siblings;*
 - *The appropriateness of developing and maintaining sibling relationships;*
 - *If siblings are not placed together, the reason for that placement, and efforts, if any, to correct it;*
 - *The frequency and nature of sibling visitation;*
 - *The impact of sibling relationship on placement and permanent planning; and*
 - *The continuing need to suspend sibling interaction, if applicable.*

(4) *Determine whether reasonable reunification services have been provided or offered to the parents or guardians. See Welf & I C §366.21(f); Cal Rules of Ct 5.708(e), 5.715(b)(2).*

(5) *If the child is not returned to the custody of a parent or guardian, specify in-state and out-of-state placement options. In the case of an Indian child, the court must consider whether (i) the county adoption agency has consulted the child's tribe about tribal customary adoption; (ii) the child's tribe concurs with tribal customary adoption; and (iii) tribal customary adoption is an appropriate permanent plan for the child. State the factual basis for the conclusion that return would be detrimental, and proceed as set forth in steps (6) through (12).* Welf & I C §366.21(f); Cal Rules of Ct 5.708(d)(2), (3), (5), 5.715(b)(4), (5).

(6) *Terminate reunification services and*

- *Set a .26 hearing within 120 days if the child should not be placed in foster care, unless the child is a nonminor dependent (Welf & I C §366.21(g)(4), (5). or*
- *On a finding by clear and convincing evidence that the child is not a proper subject for adoption and there is no one willing or available to assume legal guardianship, order the child to remain in foster care, set a specific permanency goal, and set a review hearing within six months. Welf & I C §366.21(g); Cal Rules of Ct 5.715(b)(4)(C). A recommendation by DSS when it is acting as an adoption agency or by a county adoption agency that adoption is not in the best interests of the child may be a compelling reason for the court's decision if supported by the evidence. Welf & I C §366.21(g)(5).*
- *Determine a permanent plan, which might include:*
 - *Permanent placement with a fit and willing relative (the court should provide the relative's name and select a goal such as kinship adoption, guardianship, transition to independent living with identification of caring adult to serve as a lifelong connection), or*
 - *Adoption, or*
 - *Legal guardianship (the court should specify the specific goal, such as dismissal of dependency or adoption), or*
 - *Remaining in a planned, permanent living arrangement if the youth is a nonminor dependent who is otherwise eligible under Welf & I C §11403 (Welf & I C §366.21(g)(5)).*

[Or]

(7) *Continue reunification services and set an 18-month permanency review to be held no later than 18 months from the original removal of the child from the physical custody of the parent or guardian if it is found that (Welf & I C §366.21(g); Cal Rules of Ct 5.715(b)(4)(A)):*

- *Within 18 months of the original removal of the child from the custody of the parent or guardian, there is a substantial probability of return and that the child will be safely maintained in the home, or*
- *Reasonable services were not provided or offered.*

In order to find a substantial probability of return and that the child will be safely maintained in the home, the court must find all the following (Welf & I C §366.21(g)):

- That the parent or legal guardian has consistently and regularly contacted and visited the child,
- That the parent or legal guardian has made significant progress in resolving the problems that led to the child's removal, and

- That the parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child’s safety, protection, physical and emotional well-being, and special needs.

A finding of substantial probability that the child will be returned home by the next review hearing is a compelling reason for the determination that setting a .26 hearing is not in the child’s best interests. Welf & I C §366.21(g)(1).

(8) *If setting an 18-month review hearing, inform the parent or guardian that if the child cannot be returned home by the next hearing, a .26 hearing may be held.* Welf & I C §366.21(g)(1); Cal Rules of Ct 5.715(b)(4)(A).

(9) *If a .26 hearing is ordered, and the parent or guardian is present,*

- *Order the parent or guardian to return for the .26 hearing.* See Welf & I C §366.21(g); Cal Rules of Ct 5.715(b)(4)(B), 5.708(n).
- *Advise the parent or guardian of the writ remedy for review of the orders, and make sure the parent or guardian receives the Notice of Intent to File Writ Petition and Request for Record (JV-820) and Petition for Extraordinary Writ (JV-825).* See Cal Rules of Ct 5.590, 8.450, 8.452.

(10) *If a .26 hearing is ordered, direct DSS to prepare an assessment under Welf & I C §366.21(i)(1), and order the termination of reunification services to the parent or guardian.* Cal Rules of Ct 5.708(n)(1), (4), 5.590(b), 5.715(b)(4)(B).

➤ **JUDICIAL TIP:** Many judges order DSS to notify absent parents or guardians in writing and to file a proof of service.

(11) *If a .26 hearing is ordered and the parent is absent, inquire as to whether the parents are known and if DSS has used due diligence in attempting to locate the parent.* The court should then make findings based on that inquiry. See Welf & I C §294(f)–(g). See discussion in CALIFORNIA JUDGES BENCHGUIDE 104: *DEPENDENCY SELECTION AND IMPLEMENTATION HEARING*, §§104.18–104.26 (CAL CJER).

(12) *If a .26 hearing is ordered, order continued visitation between the child and the parent or legal guardian unless it is found that visitation would be detrimental to the child, and make orders to facilitate the maintenance of relationships between the child and people who are important in the child’s life, consistent with the child’s best interest.* Welf & I C §366.21(h); Cal Rules of Ct 5.708(n)(2), (3), 5.715(b)(4). The court may adjust both the level and the frequency of visitation.

➤ **JUDICIAL TIPS:**

- If the parents have had notice, the judge may set the hearing early in the 120-day period, subject to the time requirements of Welf & I C §294 (notice must be completed at least 45 days before hearing) and the need for DSS to prepare a full report. If a contested hearing is expected, the scheduling should permit time for it.
- Some judges set a hearing 30–45 days before the scheduled .26 hearing is to take place to ascertain whether service was sufficient. If service is found to be lacking, there will often be time to remedy this within the 120-day period.

(13) *If reunification services are continued, advise the parent or legal guardian, if present, of the date of the 18-month hearing and that if the child cannot be returned at the 18-month permanency review hearing, an alternative permanent plan must be developed. See Welf & I C §366.21(g); Cal Rules of Ct 5.715(b)(4)(A).*

(14) *If reunification services are terminated to the parent or legal guardian, 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 §366.21(h).*

3. [§103.6] Checklist: 18-Month Permanency Review Hearing

The purposes of the 18-month hearing are: (1) to return the child unless there would be a substantial risk of detriment, or (2) to terminate reunification services and facilitate a permanent plan (see §103.14). See generally discussion in §§103.44–103.49. The hearing is to be held 18 months from the initial removal. Welf & I C §366.22(a). For all possible findings and orders, see JV-440–JV-443.

(1) *Review the social worker's report, the report of any court-appointed child advocate, and other evidence and, unless the court has previously ordered that reunification services must not be provided under Welf & I C §361.5, consider the efforts and progress demonstrated by the parent or legal guardian and the extent to which the parent cooperated and made use of reunification services provided. See Welf & I C §366.22(a); Cal Rules of Ct 5.708(d), (e), 5.720(b)(1). See §103.61.*

(2) *Order the child returned to the physical custody of the parents or guardians or find by a preponderance of the evidence that returning the child would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. Welf & I C §366.22(a); Cal Rules of Ct 5.708(d)(1), 5.720(b)(1).*

DSS bears the burden of establishing the existence of a substantial risk of detriment by the standard of preponderance of the evidence. Evidence of a parent's or legal guardian's failure to participate regularly and make substantive progress in court-ordered treatment programs, unless successfully rebutted, is sufficient to merit a finding that continued supervision is necessary and that return would be detrimental, thus justifying the continued removal of the child from the custody of parents or legal guardians. Welf & I C §366.22(a); Cal Rules of Ct 5.708(d)(1), 5.720(b)(1).

(3) *Order six more months of services and continue the hearing to a 24-month subsequent permanency hearing if the best interests of the child would be met by providing additional services to a parent or guardian who had been recently discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security and had been making significant and consistent progress in establishing a safe home for the child or to one who had been making significant and consistent progress in a drug treatment program. Welf & I C §366.22(b); Cal Rules of Ct 5.720(b)(3).*

(4) *If the child is not returned to the custody of a parent or legal guardian and a 24-month hearing would not be appropriate, state for the record both in-state and out-of-state placement options and specify the factual basis for the conclusion that return would be detrimental, develop a permanent plan for the child, terminate reunification services. See Cal Rules of Ct 5.708(d), 5.720(b). See §103.5, step 6, for findings relating to formulating a permanent plan. The court should also determine:*

- *Whether reasonable reunification services have been provided or offered to the parents or guardians during the time since the previous hearing, taking into account barriers to accessing those services or to maintaining contact with the child that arose from the parent's incarceration or institutionalization.* Welf & I C §366.22(a); Cal Rules of Ct 5.708(d), (e). See discussion on failure to find that reasonable services were provided in §103.47.
- *The continuing necessity for and appropriateness of the child's placement,*
- *The 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 to a safe home and in completing any steps to finalize permanent placement.*
- *Plans for sibling interaction.*
- *The extent of progress made by each parent or guardian receiving services toward alleviating or mitigating the causes necessitating placement in foster care.* Welf & I C §§366(a)(1)(E), 366.22(b).
- *That the services set forth in the case plan include those needed to assist the child or nonminor dependent in making the transition from foster care to independent living.*
- *Whether there should be limitations on the right of the parent or guardian to make educational decisions for the child (Welf & I C §366(a)(1)(C)).*
- *If the child has been placed out of state, whether that placement continues to be appropriate (Welf & I C §366(c)).*
- *In the case of an Indian child, whether DSS has consulted the tribe about tribal customary adoption, whether the tribe concurs with this proposed plan, and whether this plan would be an appropriate permanent plan for the child (Cal Rules of Ct 5.720(b)(4)).*
- *In the case of a nonminor dependent, order him or her to remain in a planned, permanent living arrangement if the youth is otherwise eligible under Welf & I C §11403. Welf & I C §366.22(a).*

(5) *Unless the child is a dependent nonminor (Welf & I C §366.22(a)) or it is otherwise inappropriate, order that a .26 hearing be held within 120 days to determine whether the most appropriate alternative permanent plan for the child is adoption, guardianship, foster care, or tribal customary adoption for an Indian child.* Welf & I C §§366.24, 366.22(a); Cal Rules of Ct 5.708(l)-(o), 5.720(b)(3)(C), and

- *Order DSS (or supervising agency or the county adoption agency) to prepare an assessment.* Welf & I C §366.22(c); Cal Rules of Ct 5.708(n)(4).
- *Terminate services and, if it is found by clear and convincing evidence that the child is not a proper subject for adoption and there is no one available to assume guardianship, order the child to remain in foster care.* Cal Rules of Ct 5.720(b)(3)(B). The court may order ongoing counseling or treatment, visitation, and any other appropriate services for the child or caretaker. Welf & I C §366.22(a).
- *Order continued visitation between the child and the parent or legal guardian unless it is found by a preponderance of the evidence that visitation would be detrimental to the*

child. Welf & I C §366.22(a); Cal Rules of Ct 5.708(n)(2). The court may adjust both the level and the frequency of visitation, if warranted by the circumstances.

- JUDICIAL TIP: Frequently, parents request an increase in visitation pending the .26 hearing in order to better prepare to prove the beneficial relationship exception of Welf & I C §366.26(c)(1)(B)(i), while DSS often requests a decrease in visitation so as to better prepare the child for the alternative permanent plan which may be selected at the .26 hearing. Many judges feel that it is a better practice to deny both requests and simply to continue existing visitation orders pending the .26 hearing, unless there has been a significant change of circumstances. In these circumstances, it is advisable for the court to make it clear that the continued visitation is not for the purposes of reunification.

(6) *When a .26 hearing is ordered and the parent or guardian is present:*

- *Order the parent or guardian to return for the .26 hearing.*
- *Advise the parent or guardian of the writ remedy for review of the orders, and make sure the parent or guardian receives the Notice of Intent to File Writ Petition and Request for Record, Rule (JV-820) and Petition for Extraordinary Writ (JV-825). See Cal Rules of Ct 8.450, 8.452, 5.590(b).*
- *Direct DSS to prepare an assessment under Welf & I C §366.21(i)(1), and order the termination of reunification services to the parent or guardian.*

(7) *If the parent is absent, consider making an inquiry as to whether DSS has used due diligence in attempting to locate the parent.* If a finding of due diligence is made, DSS need only submit an order for publication or other substituted service. See Welf & I C §294(f).

4. [§103.7] Checklist: 24-Month Subsequent Permanency Review Hearing

The purposes of the 24-month hearing are (1) to return the child unless there would be a substantial risk of detriment, or (2) to terminate reunification services and facilitate a permanent plan (see §103.14). See generally discussion in §103.50. The hearing is to be held 24 months from the initial removal. Welf & I C §366.25(a)(1). For all possible findings and orders, see JV-455–JV-457.

(1) *Review the social worker’s report, the report of any court-appointed child advocate, and other evidence of parent’s or guardian’s progress in court-ordered treatment programs, as well as the parent’s or guardian’s relevant criminal history subsequent to the removal.* Welf & I C §366.25(a)(1); Cal Rules of Ct 5.708(c).

(2) *Order the child returned to the physical custody of the parents or guardians or find by a preponderance of the evidence that returning the child would create a substantial risk of detriment to the child’s safety, protection, or physical or emotional well-being.* Welf & I C §366.25(a)(1); Cal Rules of Ct 5.708(d), 5.722(b)(1). *Consider the parent’s or guardian’s efforts and/or progress and the extent to which he or she made use of services.* Welf & I C §366.25(a)(1); Cal Rules of Ct 5.708(d)(2), (3). DSS bears the burden of establishing the existence of a substantial risk of detriment by the standard of preponderance of the evidence. Welf & I C §366.25(a)(1); Cal Rules of Ct 5.708(d)(1), 5.722(b)(1). Evidence of a parent’s or legal guardian’s failure to participate regularly and make substantive progress in court-ordered treatment programs, unless successfully rebutted, is sufficient to merit a finding that continued

supervision is necessary and that return would be detrimental, thus justifying the continued removal of the child. Welf & I C §366.25(a)(1); Cal Rules of Ct 5.708(d)(2).

(3) *Whether or not the child is returned to the custody of a parent or legal guardian, state for the record the factual basis for the conclusion that return would be detrimental. Welf & I C §366.25(a)(2); Cal Rules of Ct 5.708(d)(5). If the child is not returned, specify for the record both in-state and out-of-state placement options and, if the child has been placed out of state, determine whether that placement continues to be appropriate and in the best interests of the child. Welf & I C §366.25(a)(2); Cal Rules of Ct 5.722(b)(3).*

(4) *In the case of an Indian child, determine whether DSS has consulted the tribe about tribal customary adoption, whether the tribe concurs with this proposed plan, and whether this plan would be an appropriate permanent plan for the child (Cal Rules of Ct 5.722(b)(3)).*

(5) *In the case of a nonminor dependent, order that the youth, if otherwise eligible under Welf & I C §11403, remain in a planned, permanent living arrangement. Welf & I C §366.25(a)(3).*

(6) *If the child is not returned, order a .26 hearing to be held within 120 days unless finding a compelling reason that such a hearing would not be in the best interests of the child (child is not proper subject of adoption, or, in the case of an Indian child, tribal customary adoption, and no one will assume legal guardianship), and (Welf & I C §366.25(a)(3); Cal Rules of Ct 5.722(b)(2)(B), 5.708(l)-(o)):*

- *Terminate reunification services.*
- *Determine whether reasonable reunification services have been provided or offered to the parents or guardians during the time since the previous hearing. Cal Rules of Ct 5.708(e), (m).*
- *Order DSS to prepare an assessment. Welf & I C §366.25(b)(1); Cal Rules of Ct 5.708(n)(4).*
- *When child who is 10 years of age or older is to remain in foster care, make orders to facilitate maintenance of relationships between the child and others who are important to the child. Cal Rules of Ct 5.708(n)(3).*
- *Order continued visitation between the child and the parent or legal guardian unless it is found that visitation would be detrimental to the child. Cal Rules of Ct 5.708(n)(2).*
- *Make Title IV-E findings as appropriate. See Cal Rules of Ct 5.708(i) (see §103.5, steps (3)–(5)).*

The court may not order a .26 hearing, however, for a nonminor dependent, unless the nonminor dependent is an Indian child and tribal customary adoption is recommended as the permanent plan. Welf & I C §366.25(a)(3).

(7) *When a .26 hearing is ordered and the parent or guardian is present (Cal Rules of Ct 5.708(n), 5.722(b)(2)(B)):*

- *Order the parent or guardian to return for the .26 hearing.*
- *Advise the parent or guardian of the writ remedy for review of the orders, and make sure the parent or guardian receives the Notice of Intent to File Writ Petition and Request for Record (JV-820) and Petition for Extraordinary Writ (JV-825). See Cal Rules of Ct 8.450, 8.452, 5.590.*

(8) *If the parent is absent, consider making an inquiry as to whether DSS has used due diligence in attempting to locate the parent. If a finding of due diligence is made, DSS need only submit an order for publication or other substituted service. See Welf & I C §294(f).*

5. [§103.8] Checklist: Postpermanency Planning Review Hearing

The purpose of the postpermanency planning review hearing is to ensure that all permanency planning options are considered (Welf & I C §366.3(h)) and that adoption, tribal customary adoption (in the case of an Indian child), or legal guardianship is completed as expeditiously as possible (Welf & I C §366.3(a)). See discussion in §103.51 and Judicial Council forms JV-445–JV-446.

(1) *If the child, nonminor, or a nonminor dependent has been adopted or when a tribal customary adoption order has been granted full faith and credit, and the petition for adoption has been granted since the last review hearing, terminate juvenile court jurisdiction over the child, nonminor, or nonminor dependent. Welf & I C §366.3(a); Cal Rules of Ct 5.740(a)(2). Following a termination of parental rights, the former parent is not a party to, and is not entitled to receive notice of, any subsequent proceedings regarding the child. Welf & I C §366.3(a). This is true even if the former parent has appealed the termination order. With the limited exception of the situation in which the child has not been adopted within three years after the termination of parental rights, once an order terminating parental rights has been made, the juvenile court has no power to set aside, change, or modify the order. Welf & I C §366.26(i); Fam C §7894; see *David B. v Superior Court* (1994) 21 CA4th 1010, 1018, 1020, 26 CR2d 586 (parents have no right to challenge juvenile court jurisdiction for lack of notice when order terminating parental rights is final before challenge is made).*

(2) *If parental rights were terminated, but adoption has not occurred, inquire as to the reasons for delay and consider whether any specific orders are necessary or helpful to expedite the adoption process.*

(3) *If a legal guardianship of the child has been established but dependency had been continued, consider whether to*

- *Continue dependency jurisdiction over the child, or*
- *Terminate dependency jurisdiction. The court continues to maintain jurisdiction only over the guardianship. Welf & I C §§366.3(a), 366.4; Cal Rules of Ct 5.740(a)(3), (c).*

➤ **JUDICIAL TIP:** It is not often that dependency jurisdiction should be continued when a guardianship has been established. Because the court may retain jurisdiction over the child as a ward of the guardianship, the court has continuing authority to address any problems that may arise during the course of the guardianship without the necessity of maintaining dependency jurisdiction. However, dependency may be continued in an appropriate case to permit the guardian to have access to services such as counseling that are necessary to a successful guardianship.

If the guardians live out-of-state and the child is subject to the Interstate Compact on Placement of Children (ICPC) (Fam C §§7900–7910), it may be difficult to obtain permission to terminate jurisdiction.

(4) *If a guardian is appointed and dependency is continued (parental rights not terminated), continue to include the parent in the notice of review hearings.*

(5) *If the child is in foster care:*

- *Determine whether the parents of the child received notice of the hearing.* See Welf & I C §§295(a), 366.3(f). Notice of the hearing must be given as specified in Welf & I C §295. Cal Rules of Ct 5.740(a)(4).
- *Read and consider the report submitted by DSS.* Welf & I C §366.3(e); Cal Rules of Ct 5.740(b).

(6) *Specify the permanent plan, which may include:*

- *Adoption, or*
- *Legal guardianship (the court must select a goal, such as dismissal of dependency or adoption), or*
- *Permanent placement with a fit and willing relative (the court must provide the relative's name and select a goal, e.g., kinship adoption, guardianship, transition to independent living with identification of caring adult to serve as a lifelong connection).*

Note: The court must state that the plan is appropriate and is ordered as the permanent plan. The court must also specify the likely date by which DSS would finalize the permanent plan and the likely date by which the child's permanent goal would be achieved.

(7) *Consider and make findings regarding the following factors (Welf & I C §366.3(e)):*

- *The progress being made to provide a permanent home for the child;*
- *The continuing necessity for and appropriateness of the child's placement;*
- *Identification of individuals, other than siblings, who are important to a child who is 10 years of age or older and who has been in out-of-home placement for six months or longer, and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child;*
- *The continuing appropriateness and extent of compliance with the permanent plan for the child, including efforts to maintain relationships with those people who are important to a child who is 10 years of age or older and who is in out-of-home placement for six months or longer, as well as efforts to identify a prospective adoptive parent or legal guardian;*
- *The extent of DSS compliance with the case plan in making reasonable efforts either to return the child to a safe home or to complete plans for permanent placement (the reviewing body may determine that a second period of reunification services is in the best interests of the child);*
- *Whether there should be limitations on the right of the parent or guardian to make educational or developmental services decisions for the child;*
- *The adequacy of services provided to the child, including such documents as the birth certificate, relevant information including family and placement history, and services for a child who has reached the age of majority (see Welf & I C §391; Cal Rules of Ct 5.740(d));*
- *The parents' progress toward alleviating the causes that required foster care;*

- *The likely date by which the child may be safely returned to and maintained in the home, placed for adoption or in some other permanent living situation, or, in the case of an Indian child in consultation with the child’s tribe, placed for tribal customary adoption;*
- *Whether the child has siblings under the court’s jurisdiction, and if so:*
 - The nature of the relationship with the siblings,
 - The appropriateness of developing and maintaining sibling relationships,
 - If siblings are not placed together, the reason for that placement, and efforts, if any, to correct it,
 - The frequency and nature of sibling visitation, and
 - The impact of sibling relationship on placement and permanent planning;
- *The services needed to assist a child who is 16 years of age or older (or for a nonminor dependent) to make the transition from foster care to independent living (see Welf & I C §366.3(d)(10));*
- *Order continued long-term care for the child or nonminor dependent. If a nonminor dependent is in long-term foster care, the court may continue or terminate jurisdiction under Welf & I C §391. Welf & I C §366.3. See discussion in §§103.55 and 103.65;*
- *Order the matter set for a new .26 hearing if it has been 12 months since the permanent plan of foster care was ordered and there is no compelling reason shown not to set a .26 hearing. Welf & I C §366.3(h).*

(8) *If the parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the child, order that further reunification services be provided for a period not more than six months, and family maintenance services for an additional six months. Welf & I C §366.3(f); Cal Rules of Ct 5.740(b)(7).*

- **JUDICIAL TIP:** An order reinstating reunification services has the effect of removing the child’s case from permanency planning and returning the case to a reunification mode. When such an order is made, the court may wish to simultaneously schedule a review and permanency hearing to follow in six months. At such a hearing, the court must determine whether reunification is possible at that time and, if it is not, the original alternative permanent plan may be reinstated or a new one developed.

To check on the progress of parents and give them encouragement, some judges ask parents to return at two-month intervals.

(9) *Determine whether reasonable efforts to make and finalize a permanent placement have been made. See Welf & I C §366.3(d)–(g).*

(10) *If parental rights had been terminated, advise any interested parties that they may not appeal an order retaining or changing the placement unless the writ petition was filed in a timely manner, the writ petition substantively addressed the issues to be challenged on appeal, and the appellate court summarily denied the petition or otherwise failed to decide the case on the merits. Welf & I C §366.28(b).*

(11) *Set a further review hearing as necessary and/or appropriate. The court must continue to review the case at least every six months, or more often than that if an earlier review would be*

in the best interests of the child or nonminor dependent. Welf & I C §366.3(a), (d), (k); Cal Rules of Ct 5.740(a)–(b).

III. APPLICABLE LAW

A. [§103.9] General Background

Review hearings must be held periodically throughout the course of a child’s, nonminor’s, or nonminor dependent’s dependency, generally at intervals of no more than six months. Welf & I C §366(a); Cal Rules of Ct 5.708(a). They are held under Welf & I C §364 and Cal Rules of Ct 5.706 for children who remain at home during the dependency, under Welf & I C §§366–366.25 and Cal Rules of Ct 5.708–5.722 for out-of-home cases before the adoption of a permanent plan (the reunification and concurrent services period), as well as under Welf & I C §366.3 and Cal Rules of Ct 5.740 (postpermanency planning period). Review hearings are held to ensure periodic review of the child’s status, the necessity for, and appropriateness of, the child’s placement, and the extent of compliance with the case plan for the child. Welf & I C §366(a).

If the child, nonminor, or nonminor dependent is in foster care, the child’s status must also be reviewed at least every six months. Welf & I C §366.3(d). See §103.51. For the definition of a “nonminor dependent,” see CALIFORNIA JUDGES BENCHGUIDE 100: *JUVENILE DEPENDENCY INITIAL OR DETENTION HEARING* §100.18 (CAL CJER).

1. [§103.10] Federal and State Law Applicable to Review Hearings

The judge must make specified findings to render a county eligible for Title IV-E federal foster care funding. See, *e.g.*, 45 CFR §1356.21(b)(2)(ii). These requirements are set out in Cal Rules of Ct 5.708(i). Under federal law, a judicial or administrative review of each dependent child’s case must be held no less than every six months (42 USC §675(5)(B)), and a permanency hearing must be held no later than 12 months from the date the child entered foster care and not less than every 12 months thereafter as long as the child is in out-of-home placement as a dependent child (42 USC §675(5)(C)). Federal law also requires that when a child has been in foster care for 15 out of 22 of the most recent months, a petition for termination of parental rights be filed (42 USC §675(5)(E)) and that foster parents be provided with notice and an opportunity to be heard in any hearing held with respect to the child (42 USC §675(5)(G)). See generally discussion in Edwards, *Improving Implementation of the Federal Adoption Assistance and Child Welfare Act of 1980*, 45 *Juvenile and Family Court J* (1994). For a county to be eligible for Title IV-E federal foster care funding, courts must comply with federal law. The juvenile court statutory scheme has been amended to conform with the federal Adoptions and Safe Families Act (AFSA) (42 USC §§670 et seq). *In re Christina A.* (2001) 91 CA4th 1153, 1159, 111 CR2d 310. See Appendixes I–IV.

- **JUDICIAL TIP:** Although California statutes continue to refer to foster care as a permanent plan, such a reference does not comply with federal law. To provide the specificity needed to ensure that reviews are meaningful, instead of foster care placement, the court should designate placement with a fit and willing relative or, if that is not possible, identify the placement by name and specify the goal of the placement.

California law requires that the status of every dependent child in foster care be reviewed by the juvenile court at least every six months, as calculated from the date of the original dispositional hearing. See Welf & I C §366(a). Even after a permanent plan of adoption,

including tribal customary adoption, or legal guardianship has been ordered for a child under Welf & I C §366.26, or a permanent plan of guardianship has been ordered under Welf & I C §360 or §366.26, the court must retain jurisdiction over the child and must review the child's case every six months to ensure that the adoption or guardianship is completed as expeditiously as possible. Welf & I C §366.3(a). Postpermanency hearings may be conducted earlier than every six months if the court determines that an earlier review would be in the best interests of the child. Welf & I C §366.3(k). This extra review will only rarely be required with respect to guardianship cases because guardians are supposed to be appointed and letters of guardianship issued at the .26 hearing itself.

2. [§103.11] Common Issues

Issues that frequently arise at review hearings held during the reunification period (and, therefore, before the establishment of a permanent plan) include:

- The parents' progress, or lack of progress, in complying with the reunification plan;
- Whether reasonable reunification services have been provided or offered to the parents;
- Whether "active efforts" have been made to provide remedial services and rehabilitative programs to the parent in an ICWA case;
- Whether the concurrent permanency planning services provided for the child have been reasonable;
- Whether visitation has been adequate;
- Requests for authorization for medical treatment for the child;
- Requests for authorization of funding for therapy or other services for the child;
- Whether an Indian child should be adopted under a tribal customary adoption without termination of parental rights (see Welf & I C §366.24); if this type of adoption is recommended, the assessment must include an analysis of whether it would be detrimental and whether the Indian child cannot or should not be returned to the home of the Indian parent or custodian. See Welf & I C §§366.21(i)(1)(H), 366.22(c)(1)(G), 366.25(b)(1)(G).
- Requests to change the child's placement; and
- Whether court-mandated reunification services should be continued or terminated.

An issue of primary importance concerns whether the child may safely be returned to the parents' custody. If return is not yet possible, but reunification services are to be continued, the court may need to resolve issues regarding the need for any changes in the reunification plan or in existing visitation orders and will need to reconsider the suitability of the child's current placement. For discussion of when a petition for modification is required to resolve these issues, see §103.16.

At a postpermanency planning review hearing, the appropriateness of the child's placement is almost certain to be an important concern. Other common issues at these hearings, like those that arise at the reunification phase, are requests for authorization for medical treatment for the child, requests for authorization of funding for therapy or other services for the child, determination of whether reasonable efforts to make and finalize a permanent placement have been made (see Welf & I C §366.3(d)–(g)), and, occasionally, requests for a change in the child's permanent plan (*e.g.*, from a plan of foster care to one of guardianship or adoption). The focus of

these hearings is more likely to be solely on the child's well-being, rather than on the child-parent relationship, which is often an important issue in the review hearings held during the reunification period.

For a nonminor dependent, the main issue is preparation for independent living. See discussion in §§103.12, 103.55, and §103.65.

3. [§103.12] Obligations of Court

The court must make a clear written record at review hearings to facilitate meaningful judicial review. See *In re Julie M.* (1999) 69 CA4th 41, 52, 81 CR2d 354 (the court had altered the visitation order at the six-month review but did not describe the mother's conduct to which it was reacting). Regardless of the type of review hearing, the court should view it as an important opportunity to be apprised of the child's current circumstances and to make necessary and appropriate orders to protect the child and promote his or her best interests.

If the review hearing is the last one before the child turns 18, the court must (1) ensure that the transitional plan includes means to reach one or more of the criteria of Welf & I C §11403(b); (2) inform the child of the benefits of continuing dependency, while also informing the child of the right to seek termination of dependency jurisdiction; and (3) advise the child of the right to resume dependency jurisdiction under Welf & I C §388(e). Welf & I C §366(a)(1)(F); see Judicial Council form JV-460, Attachment: Additional Findings and Orders for Child Approaching Majority. And at the review hearing closest to and before a dependent's 18th birthday and every subsequent hearing, DSS must inform the court regarding efforts toward assembling required documents and providing assistance for transition to independent living. Welf & I C §391(f).

4. [§103.13] Requirements for Periodic Review

The status of every dependent child and nonminor dependent in foster care must be reviewed periodically by the juvenile court at least every six months, from the date of the original dispositional hearing. Welf & I C §366(a); Cal Rules of Ct 5.708(a). As long as the child remains a dependent of the juvenile court, the court must hold regular review hearings, whether or not there are pending appeals and even if the child has not been removed from the home. *In re Natasha A.* (1996) 42 CA4th 28, 35, 38–39, 49 CR2d 332. This scheme of periodic review hearings affords parents repeated opportunities to challenge detriment findings, which in turn helps diminish erroneous fact-finding. *Blanca P. v Superior Court* (1996) 45 CA4th 1738, 1757, 53 CR2d 687.

Review hearings must also be held every six months if a permanent plan of adoption or legal guardianship has been ordered under Welf & I C §360 or §366.26 and dependency is continued pending implementation of the plan. Welf & I C §366.3(a). Similarly, there may be a number of six-month reviews if the child remains at home as a dependent. See Welf & I C §364(d). Twelve-month permanency hearings and 18-month permanency reviews apply only to children who have been removed from parental custody and for whom reunification services have been ordered or who are in foster care. If a permanent plan of foster care has been ordered or legal guardianship with continuing dependency has been established, the child's status must also be reviewed at least every six months. Although the review may be conducted by either the juvenile court or by an appropriate local agency, the court *must* conduct the review if any of the following circumstances exist (Welf & I C §366.3(d)):

- When the child, parents, or legal guardian request it,
- 12 months have elapsed since a .26 hearing has been held,
- 12 months have elapsed since an order was made that the child remain in foster care, or
- 12 months have elapsed since a review was conducted by the court.

The reference to recurrent “six-month” hearings illustrates an intention to give parents time to benefit from the services during each period before the review. *In re Candace P.* (1994) 24 CA4th 1128, 1132–1133, 30 CR2d 1. Although the time between reviews should not be substantially shorter than six months, the statute was intended to ensure that the hearings are not scheduled for *longer* than six months between hearings; therefore a five-month lapse before a review hearing was not error. *In re Candace P., supra*, 24 CA4th at 1132.

5. [§103.14] Review Hearings Chart: Child Removed at Disposition

6-Month Review	12-Month Permanency Hearing	18-Month Permanency Review Hearing	24-Month Subsequent Permanency Review Hearing
<p>Purpose</p> <p>(1) To return the child unless there is a substantial risk of detriment;</p> <p>(2) To review the case plan, reunification services, and concurrent planning services; and</p> <p>(3) If the child is not returned at this hearing, to move expeditiously toward permanent plan of return to parent or alternative permanent plan.</p>	<p>Purpose</p> <p>(1) To return the child unless there is a substantial risk of detriment;</p> <p>(2) To review the case plan, reunification services, and concurrent permanency planning services; and</p> <p>(3) To terminate reunification services and, if the child is not returned to the parent, facilitate an alternative permanent plan unless reasonable services have not been offered or provided, or there is a substantial probability of return within 18 months from date of removal from home.</p>	<p>Purpose</p> <p>(1) To return the child, unless there is a substantial risk of detriment; and</p> <p>(2) To review the case plan, reunification services, and concurrent planning services when the parent had recently been discharged from incarceration or institutionalization; or</p> <p>(3) To terminate reunification services and, if the child is not returned, to facilitate an alternative permanent plan.</p>	<p>Purpose</p> <p>(1) To return the child, unless there is a substantial risk of detriment; or</p> <p>(2) To terminate reunification services and, if the child is not returned, to facilitate an alternative permanent plan.</p>
<p>Time Limits</p> <p>Hearing must be set within six months of disposition for all dependent children, but not more than six months of the date the child entered foster care (see Welf & I C §361.49) for children who are removed from parental custody. See Welf & I C §§366(a), 366.21(e); Cal Rules of Ct 5.502(9), 5.710(a).</p>	<p>Time Limits</p> <p>Hearing must be set within 12 months from the date the child entered foster care as defined in Welf & I C §361.49; see Welf & I C §366.21(f); Cal Rules of Ct 5.502(9), 5.715(a).</p>	<p>Time Limits</p> <p>Hearing must be set within 18 months from date of initial removal from physical custody of parent or legal guardian. Welf & I C §366.21(g); Cal Rules of Ct 5.502(18), 5.720(a).</p>	<p>Time Limits</p> <p>Hearing must be set within 24 months from date of initial removal from physical custody of parent or legal guardian. Welf & I C §366.25(a)(1); Cal Rules of Ct 5.502(18), 5.722(a).</p>
<p>Possible Findings and Orders</p> <p>(1) Child is returned home and dependency continued/not continued. Welf & I C §366.21(e); Cal Rules of Ct 5.710(b)(1). If dependency is continued, court sets review in six months. Welf & I C §364(d); Cal Rules of Ct 5.710(b)(4). or</p>	<p>Possible Findings and Orders</p> <p>(1) Child is returned home and dependency continued/not continued. Welf & I C §366.21(f); Cal Rules of Ct 5.715(b)(1). If dependency is continued, court sets review in six months. Welf & I C §364(d). or</p> <p>(2) Continued removal is necessary because of substantial risk of detriment to child's safety, protection, or physical and</p>	<p>Possible Findings and Orders</p> <p>(1) Child is returned home and dependency continued/not continued. Welf & I C §366.22(a); Cal Rules of Ct 5.720(b)(1). If dependency is continued, court sets review in six months. Welf & I C §364(d). or</p> <p>(2) Continued removal is necessary because of sub-</p>	<p>Possible Findings and Orders</p> <p>(1) Child is returned home. Welf & I C §366.25(a)(1); Cal Rules of Ct 5.722(b)(1); or</p> <p>(2) Continued removal is necessary because of substantial risk of detriment to child's safety, protection, or physical and emotional well-being. Welf & I C §366.25(a)(1); Cal Rules of Ct 5.722(b)(1). Court must</p>

6-Month Review	12-Month Permanency Hearing	18-Month Permanency Review Hearing	24-Month Subsequent Permanency Review Hearing
<p>(2) Continued removal is necessary because of substantial risk of detriment to child’s safety, protection, or physical and emotional well-being. Welf & I C §366.21(e); Cal Rules of Ct 5.710(b). Court must specify factual basis for conclusion that return would be detrimental (preponderance).</p> <p>or</p> <p>(3) .26 hearing is scheduled if certain findings are made by clear and convincing evidence. See Welf & I C §366.21(e); Cal Rules of Ct 5.710(c). See also Welf & I C §361.5. Services are terminated and assessment is ordered. Welf & I C §366.21(h)–(i).</p> <p>or</p> <p>(4) Court continues, modifies, or initiates services and schedules 12-month permanency hearing. Welf & I C §366.21(e); Cal Rules of Ct 5.710(b)(4).</p> <p>(5) Reasonable reunification services have/have not been offered/provided. Welf & I C §366.21(e); Cal Rules of Ct 5.708(e) (preponderance).</p>	<p>emotional well-being. Welf & I C §366.21(f); Cal Rules of Ct 5.715(b). Court must specify factual basis for conclusion that return would be detrimental. Cal Rules of Ct 5.708(d)(5) (preponderance).</p> <p>And</p> <p>(3) Order a .26 hearing to be held within 120 days of initial removal. Welf & I C §366.21(g)(2); Cal Rules of Ct 5.715(b)(4)(B).</p> <p>or</p> <p>(4) Order foster care if clear and convincing evidence that child not a proper subject for adoption and no guardian available. Welf & I C §366.21(g)(3); Cal Rules of Ct 5.715(b)(4)(C).</p> <p>or</p> <p>(5) Continue case for 18-month permanency review hearing if there is substantial probability that the child can be returned. Welf & I C §366.21(g)(1); Cal Rules of Ct 5.715(b)(4)(A).</p> <p>(6) Reasonable reunification services have/have not been offered/provided. Welf & I C §366.21(f) (preponderance).</p>	<p>stantial risk of detriment to child’s safety, protection, or physical and emotional well-being. Welf & I C §366.22(a); Cal Rules of Ct 5.720(b). Court must specify factual basis for conclusion that return would be detrimental (preponderance).</p> <p>and</p> <p>(3) Reasonable reunification services have/have not been offered/provided. Welf & I C §366.22(a) (preponderance).</p> <p>or</p> <p>(4) If the child is not returned home, a .26 hearing is scheduled within 120 days to determine whether adoption, guardianship, or foster care is the most appropriate plan. Welf & I C §366.22(a); Cal Rules of Ct 5.720(b)(3)(C).</p> <p>(5) Only if child is not a proper subject for adoption and there is no one to serve as guardian (clear and convincing) should the matter not be set for a .26 hearing. The child shall remain in foster care. Welf & I C §§366.22(a), 366.3; Cal Rules of Ct 5.720(b)(3)(B).</p>	<p>specify factual basis for conclusion that return would be detrimental (preponderance);</p> <p>and</p> <p>(3) Reasonable reunification services have/have not been offered/provided. Welf & I C §366.25(a)(3) (preponderance);</p> <p>or</p> <p>(4) If the child is not returned home, a .26 hearing is scheduled within 120 days to determine whether adoption, tribal customary adoption, guardianship, or foster care is the most appropriate plan. Welf & I C §366.25(a)(3); Cal Rules of Ct 5.722(b)(2)(B).</p>

6-Month Review**12-Month Permanency
Hearing****18-Month Permanency
Review Hearing****24-Month Subsequent
Permanency Review
Hearing****Advisements to Parties**

If the child cannot be returned at the 12-month permanency hearing, the court must (unless there are unusual circumstances) terminate reunification services and formulate an alternative permanent plan that may include termination of parental rights. Welf & I C §366.21(e).

6. [§103.15] Need for Contested Hearing

Generally, parents who request a contested review hearing during the concurrent services phase of the dependency (reunification and concurrent permanency planning) are entitled to such a hearing. *In re Johnny M.* (1991) 229 CA3d 181, 190, 279 CR 693 (pre-1989 dependency case involved a combined review and permanency planning hearing under former Welf & I C §366.25). A contested hearing is particularly valuable when there are adverse witnesses and when the review hearing is the final opportunity to reestablish custody. *Ingrid E. v Superior Court* (1999) 75 CA4th 751, 753, 758–759, 89 CR2d 407. A court may not require an offer of proof as a condition to obtaining a contested hearing. *In re James Q.* (2000) 81 CA4th 255, 266, 96 CR2d 595. The failure to permit a contested 18-month hearing may require reversal of a judgment terminating parental rights. See *In re Rubin P.* (1991) 2 CA4th 306, 311–312, 3 CR2d 301.

However, one court has held that a parent is not entitled to a contested review hearing in order to show substantial probability of return, but must seek modification under Welf & I C §388 when reunification services had not been ordered for her at disposition. *Kimberly H. v Superior Court* (2000) 83 CA4th 67, 69–70, 99 CR2d 344. See discussion in §103.16. See also *Andrea L. v Superior Court* (1998) 64 CA4th 1377, 1387, 75 CR2d 851 (error in not permitting contested permanency planning hearing was harmless when court accepted all aspects of the mother’s offer of proof and still found no basis for changing its prior orders).

7. [§103.16] Need for Supplemental Petitions or Petitions for Modification

A court may change the permanent plan at a postpermanency planning review hearing in the absence of a petition for modification. *San Diego County Dep’t of Social Servs. v Superior Court* (1996) 13 C4th 882, 887–890, 55 CR2d 396. Indeed, the court is obligated to proceed under the assumption that long-term foster care is not appropriate and to consider more permanent types of placements at this stage in the proceedings. 13 C4th at 888. However, in between postpermanency planning review hearings, as with review hearings held during the reunification phase of the case, a Welf & I C §388 petition is a vehicle for dealing with altered circumstances requiring changes in the child’s plan. See Welf & I C §388. A Welf & I C §388 petition is also the vehicle for requesting sibling visitation or obtaining orders requiring sibling considerations in making placements and permanent planning orders. Welf & I C §388(b). Moreover, if DSS seeks early termination of reunification services within six months of the disposition hearing or before the 12-month permanency hearing, the court must proceed according to Welf & I C §388(c). Welf & I C §361.5(a)(2).

Some examples of changes in orders that are authorized by review hearing statutes (and that therefore do not require supplemental petitions under Welf & I C §387 or petitions for modification under Welf & I C §388) are:

- Terminating dependency when the child had not been removed from or has been returned to parental custody. Welf & I C §364(c). See also Cal Rules of Ct 5.706(e)(1), 5.710(b)(1).
- Ordering the child’s return to parental custody when reunification services are still being provided. See, e.g., Welf & I C §§366.21(e)–(f), 366.22(a).
- Ordering reunification services or the child’s return to parental custody when the child has a plan of foster care and the parent establishes that return of the child or the

resumption of services is in the child's best interest. See *Welf & I C §366.3(f), (h)*; *Maricela C. v Superior Court* (1998) 66 CA4th 1138, 1147, 78 CR2d 488.

- Terminating supervision when the child is placed with a noncustodial parent. See *Welf & I C §§361.2(b)(1), 366.21(e)*; Cal Rules of Ct 5.708(k)(3).
- Scheduling a .26 hearing. See, e.g., *Welf & I C §§366.21(e)* (when reunification services are terminated), 366.3(h) (at postpermanency planning review hearing). See also *San Diego County Dep't of Social Servs. v Superior Court, supra*, 13 C4th at 887-892 (at postpermanency planning review hearing).
- Making such orders as are necessary to expedite the permanent placement and adoption of the child if parental rights have been terminated as well as terminating dependency jurisdiction once the adoption of the child has been finalized. See *Welf & I C §366.3(a), (f)* (postpermanency planning review hearing).
- Terminating dependency jurisdiction in cases in which a legal guardianship has been established. See *Welf & I C §366.3(a)* (postpermanency planning review hearing).

➤ **JUDICIAL TIP:** It is generally advisable to require DSS to prepare a complete review report, ensure that copies are provided timely to all parties (see *Welf & I C §§366.21(c), 364(b)*), and if there is a contest, proceed to hold a contested review hearing. If this procedure is followed, most issues should be resolvable at regular review hearings. However, if there are valid objections concerning lack of notice or the court determines that the changes involve new allegations that were not part of the original petition, the party seeking the changes should be required to file a *Welf & I C §388* petition.

When the parent files a *Welf & I C §388* petition, he or she must show by a preponderance of the evidence that there are changed circumstances under which modification of previous orders or a change in placement is in the best interest of the child. *In re Michael D.* (1996) 51 CA4th 1074, 1078, 59 CR2d 575 (court properly granted mother's motion to end legal guardianship and have child returned home after she demonstrated that she ended relationship with abusive boyfriend, stopped using drugs, started parenting classes, and submitted to drug testing). See also *In re Elizabeth M.* (1997) 52 CA4th 318, 323, 60 CR2d 557 (court properly denied mother's petition without a hearing because she failed to make a prima facie showing of changed circumstances); *In re Sylvia R.* (1997) 55 CA4th 559, 562, 64 CR2d 93 (prosecutor's dismissal of spousal abuse charges against father did not constitute changed circumstances).

A parent for whom reunification services were terminated is not entitled to a contested review hearing in order to show changed circumstances leading to a substantial probability of return; he or she must file a *Welf & I C §388* petition. *Kimberly H. v Superior Court* (2000) 83 CA4th 67, 69-70, 99 CR2d 344.

B. Conducting Review Hearings

1. [§103.17] Notifying Parents, Guardians, and Counsel

Notice of the review hearing must be given to the following people:

- Mother and any presumed father or father receiving services;
- Legal guardian;
- Child if 10 years of age or older or nonminor dependent;

- Any known sibling of the child who is the subject of the hearing if that sibling either is the subject of a dependency proceeding or has been adjudged to be a dependent child of the court. If the sibling is 10 years of age or older, notice is to be given to the sibling, the sibling's caregiver, and the sibling's attorney. If the child is under 10 years of age, notice is to be given to the sibling's caregiver, and the sibling's attorney;
- Each attorney of record not present when the hearing was set;
- Indian custodian and tribe if the court has reason to know that an Indian child is involved. If the tribe is not known, the Bureau of Indian Affairs must be notified; and
- Foster parents or others with physical custody of the child if the child has been removed from the custody of the parent or guardian.

Welf & I C §§292(a), (f) (review hearings held under Welf & I C §364; child not removed), 293(a), (g) (review hearings held under Welf & I C §§366.21 and 366.22), 295(a), (g) (postpermanency planning hearings held under Welf & I C §366.3), 224.2(a) (Indian child). Notice is not required for a parent whose parental rights have been terminated, nor for a parent of a nonminor dependent. Welf & I C §§292(b), 293(b), 295(b).

The notice must include information on the nature of the hearing and recommendations by DSS for change in the child's status. Welf & I C §§292(d), 293(d). In addition to this information, for a postpermanency planning hearing held under Welf & I C §366.3, the notice must also contain information on any recommendations involving holding a new .26 hearing. Welf & I C §295(d). If a new .26 hearing will be sought at a postpermanency planning hearing, the notice must also advise the child and parents of the right to be present; the court must also notify any alleged fathers of the hearing. Welf & I C §295(a)(8).

The notice must also advise the child and parents or legal guardians of the rights to be present, to counsel, and to present evidence. Welf & I C §§292(d), 293(d). Moreover, parents or guardians must be notified that if they fail to appear, the court may proceed in their absence. Welf & I C §§292(d), 293(d). Notice to the current caregiver, including a foster parent or others with physical custody of the child, must state that the person notified may attend all hearings or submit written information to the court. Welf & I C §293(f).

Service by first class mail or by certified mail to the recipient's last known address is sufficient if made at least 15 days, but not more than 30 days, before the hearing. Welf & I C §293(c), (e); see also Welf & I C §§292(c), (e) and 295(c), (e). Notice of six-month review that was sent by first-class mail to a father in Mexico is adequate under Welf & I C §293 when the father was aware of the juvenile court proceedings and had previously participated in them. *In re Jennifer O.* (2010) 184 CA4th 539, 548, 108 CR3d 846.

If the parent or guardian has not received notice and service was not made or attempted in accordance with the law, the case should be continued for a reasonable time in order to permit service. See Welf & I C §352; Cal Rules of Ct 5.550(a) (continuances generally). Failing to provide a parent with the statutorily required notice of a .26 hearing is a structural defect that requires automatic reversal and is not subject to a harmless error analysis. *In re Jasmine G.* (2005) 127 CA4th 1109, 1116, 26 CR3d 394. The California Supreme Court, however, has cautioned against using the structural error doctrine in juvenile dependency cases, preferring a harmless error analysis. *In re James F.* (2008) 42 C4th 901, 914–915, 70 CR3d 358 (due process error not structural); *In re A.D.* (2011) 196 CA4th 1319, 1327, 127 CR3d 519 (harmless error analysis applied to failure to give notice of review hearing and to provide copy of social service agency report).

For proceedings involving an Indian child, the notice must include the information that the custodian and tribe may intervene at any point and that the parent, tribe, or custodian may, on request, have up to an additional 20 days to prepare for the proceedings. Welf & I C §§224.2(a), 292(f), 293(g), 295(g). If notice has been given to the Bureau of Indian Affairs, that agency must have 15 days after receipt to notify the parent or Indian custodian and tribe. Welf & I C §§224.2, 292(f), 293(g), 295(g). When notification is adequate but the Indian parent does not appear, the court's attempts to reach the parent may constitute "active efforts" under the ICWA. *In re William G.* (2001) 89 CA4th 423, 428, 107 CR2d 436 (court learned that child had Indian heritage only after the reunification period had ended, but parent had been notified of the availability of services and did not respond).

2. [§103.18] Judicial Officers

Review hearings, like other juvenile court hearings, may be conducted by referees who 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 and are entitled to hear dependency cases as a matter of right (*i.e.*, without a stipulation) (Welf & I C §248(a)), except that the presiding judge of the juvenile court may require that certain referee orders be approved by a juvenile court judge before becoming effective (Welf & I C §251). Any orders by a referee requiring removal of a child from the physical custody of the person entitled to custody must be approved by a judge within two days in order to become effective. Welf & I C §249; Cal Rules of Ct 5.540(b)(1). Nevertheless, a referee who has received a stipulation as a temporary judge under Cal Const art VI, §21, 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 nor 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.

The superior court is not required to designate commissioners as juvenile court referees and, in some jurisdictions, commissioners serve as temporary judges by express or implied stipulation. 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.

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. See Welf & I C §248(b); Cal Rules of Ct 5.538(a)(2). A child, parent, guardian, or DSS may apply for a rehearing at any time up to ten days after the service of a written order. Welf & I C §252; Cal Rules of Ct 5.542(a). Also, a judge of the juvenile court may, on his or her own motion, order a rehearing within 20 judicial days after the hearing at which the referee made the order. Welf & I C §253.

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 and 253).

If the proceedings before the referee were recorded by a court reporter, the judge may grant or deny the application for rehearing after reviewing the transcript. Welf & I C §252; Cal Rules of Ct 5.542(c). If there was no official report of the proceedings or if the judge fails to rule on the application within 20 days of receiving it (maximum of 45 days with an extension), the application for rehearing must be granted as a matter of right. Welf & I C §252; Cal Rules of Ct 5.542(b)–(c). Rehearings of matters heard before a referee are conducted de novo before a juvenile court judge. Welf & I C §254; Cal Rules of Ct 5.542(e). See discussion of rehearings in §103.64.

3. [§103.19] Right to Counsel

At a review hearing, as at any other hearing, the court must advise an unrepresented parent or guardian of the right to be represented by an attorney and the right of the parent or guardian, if indigent, to have an attorney appointed if the child is placed, or recommended to be placed, outside the home. Welf & I C §317; Cal Rules of Ct 5.534(g)–(h). Each party who is represented by appointed counsel is statutorily entitled to competent counsel. Welf & I C §317.5(a). As to minimum standards for attorneys practicing dependency law, and issues regarding effective assistance of counsel, see CALIFORNIA JUDGES BENCHGUIDE 100: *JUVENILE DEPENDENCY INITIAL OR DETENTION HEARING* §100.23 (CAL CJER).

Once counsel is appointed, he or she must represent the client in all proceedings (see Welf & I C §317(d)), including writ proceedings in the appellate court (*Rayna R. v Superior Court* (1993) 20 CA4th 1398, 1404–1405, 25 CR2d 259) and all subsequent proceedings (*In re Tanya H.* (1993) 17 CA4th 825, 827, 833 n7, 21 CR2d 503), unless the attorney is relieved for good cause or the parents demonstrate that they no longer desire further legal representation (*Janet O. v Superior Court* (1996) 42 CA4th 1058, 1065, 50 CR2d 57). Although the court should monitor the bills of appointed counsel, the court may not by local policy interfere with the statutory right of the parent to continued representation (Welf & I C §317(d)) by requiring that all counsel be relieved of the appointment after the first postpermanency planning review hearing, unless there is a showing of good cause. *In re Tanya H., supra*, 17 CA4th at 830–832. There is good cause within the meaning of Welf & I C §317(d) to relieve counsel at postpermanency planning hearings when the children are in adoptive placements and no legal issues remain. *In re Jesse C.* (1999) 71 CA4th 1481, 1491, 84 CR2d 609.

a. [§103.20] Parents or Guardians

Generally, the court may appoint counsel for an indigent parent or guardian if that person desires counsel. Welf & I C §317(a). If the child is being removed from the home or the petitioning agency is recommending removal, the court *must* appoint counsel for an indigent parent or guardian who wants to be represented by counsel. Welf & I C §317(b); see also *In re Ebony W.* (1996) 47 CA4th 1643, 1647, 55 CR2d 337 (indigent mother who was voluntarily absent from the proceedings and never communicated a desire to be represented was not denied due process when juvenile court failed to appoint counsel). Counsel need not be appointed, however, for the parent of a nonminor dependent. Welf & I C §317(d).

An alleged father, who is generally entitled to notice of hearings if known (see Welf & I C §§290.1–295), is not entitled to appointed counsel unless he appears in court; he is also not

entitled to services unless he establishes that he is the presumed father of the child. See *In re Zacharia D.* (1993) 6 C4th 435, 448, 451–452, 24 CR2d 751.

A parent may waive the right to counsel at a review hearing (or other dependency hearing), whether that right is statutory under Welf & I C §317 or of constitutional origin. *In re Gilberto M.* (1992) 6 CA4th 1194, 1200, 8 CR2d 285 (waiver occurs when parent does not object to proceeding in absence of counsel).

After counsel has been appointed, the court may permit withdrawal only for cause or if substitute counsel is appointed. Welf & I C §317(d); *In re Ronald R.* (1995) 37 CA4th 1186, 1196, 44 CR2d 22 (court erred in allowing mother’s counsel to withdraw at the six-month hearing without appointing substitute counsel); *Janet O. v Superior Court* (1996) 42 CA4th 1058, 1065–1066, 50 CR2d 57 (juvenile court may, on notice, relieve counsel previously appointed for a parent when the parent manifests no further desire for legal representation).

A parent in a dependency proceeding who chooses self-representation is not necessarily entitled to full *Faretta* warnings. *In re Brian R.* (1991) 2 CA4th 904, 921–922, 3 CR2d 768.

If the parents desire to have the same attorney represent them and there is a potential conflict between the parents, the court should not allow the same attorney to represent both parents without the informed written consent of both parents. Cal Rules of Prof Cond 3–310(C)(1).

- **JUDICIAL TIP:** The better practice in juvenile court is to make parents aware of the dangers and disadvantages of self-representation and, when counsel represents both parents, to warn the parents about the possible dangers of dual representation.

b. [§103.21] Child

If, at any given review hearing, the court has previously declined to appoint counsel for the child, based on a finding that there would be no benefit to the child from having counsel appointed, the court should reevaluate these issues and determine anew whether appointment of counsel, or separate counsel, for the child is indicated. If the court continues to find that the child would not benefit from appointment of counsel, it must state on the record its reasons for that finding and appoint a CASA volunteer to serve as the Child Abuse Prevention and Treatment Act (CAPTA) (42 USC §§5101 et seq) guardian ad litem to represent the child. Welf & I C §§317(c), 326.5; Cal Rules of Ct 5.660(b)(3), (f). If the court does not find that there is “no benefit” from counsel, it must appoint an attorney to represent the child. Welf & I C §317(c).

Following appointment, the child’s attorney must represent the child’s interests at all subsequent hearings, including review hearings, until relieved by the court. Welf & I C §317(d)–(e). See CALIFORNIA JUDGES BENCHGUIDE 100: *JUVENILE DEPENDENCY INITIAL OR DETENTION HEARING* §§100.18–100.22 (CAL CJER) regarding appointment of counsel for the child. In representing the child’s interests, the child’s attorney must make investigations on the child’s behalf, examine and cross-examine witnesses appropriately, interview any child client who is four years of age or older, and make recommendations to the court concerning the child’s welfare. Welf & I C §317(e). Because counsel for children must interview their clients to ascertain their wishes, one case has held that the judge may generally assume that an attorney who advocates for a certain disposition has previously consulted the child regarding that disposition. See *In re Jesse B.* (1992) 8 CA4th 845, 853, 10 CR2d 516. However, judges should be wary of making such an assumption.

The attorney represents the child's *legal* interests and is not required to perform the duties of the social worker or to perform services that are unrelated to the child's legal representation. Welf & I C §317(e); Cal Rules of Ct 5.660(d)(4); *In re Robert A.* (1992) 4 CA4th 174, 192, 5 CR2d 438. However, in assessing how to handle the litigation, the child's attorney as well as the social worker (or other guardian ad litem) must be notified of changes in the child's life including changes in placement. See *In re Robert A.*, *supra*.

The attorney is required to investigate any possible rights or interests to be protected or pursued on behalf of the child, and to report to the court for appropriate instructions. Welf & I C §317(e); Cal Rules of Ct 5.660(g)(2). Because the child's attorney has an obligation to represent the child's interests, the attorney may have to present a position to the court that runs counter to the positions of both the parents and DSS. See *Allen M. v Superior Court* (1992) 6 CA4th 1069, 1075, 8 CR2d 259.

Either the child or child's counsel, with the child's informed consent if he or she is found by the court to be sufficiently mature or old enough to consent, may invoke the psychotherapist-client, physician-patient, and clergyman-penitent privilege; if the child invokes the privilege, counsel may not waive it, but if counsel invokes the privilege, the child may waive it. Welf & I C §317(f). Consent must be presumed, subject to rebuttal by clear and convincing evidence for a child older than 12 years of age. Welf & I C §317(f). Counsel is the holder of the privilege if the court finds that the child is not old or mature enough to consent to the invocation of the privilege. Welf & I C §317(f). 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 the release of very circumscribed information so that it can make reasoned decisions regarding the child's welfare. *In re Mark L.* (2001) 94 CA4th 573, 584, 114 CR2d 499.

Separate counsel for each dependent child in a family need not be appointed unless there is an actual conflict of interest. *In re Candida S.* (1992) 7 CA4th 1240, 1252, 9 CR2d 521. However, because Welf & I C §317.5 makes children parties to the action, it may be better to appoint separate counsel even if there is a *potential* conflict of interest. See Cal Rules of Prof Cond 3–310(C)(1).

- **JUDICIAL TIP:** Because of increased attention given to sibling relationships throughout the dependency process, particularly the Welf & I C §366.26(c)(1)(B)(v) exception to the termination of parental rights because of substantial interference with a sibling relationship, courts should be alert to conflicts between siblings or groups of siblings that develop during the review process.

c. [§103.22] Conflicts of Interest

Counsel for the child may be a public defender, district attorney, or other member of the bar, provided that he or she does not represent another person or agency whose interests conflict with those of the child. Welf & I C §317(c). The district attorney's office may pursue criminal charges against the parent while representing the child. Welf & I C §317(c) (not an automatic conflict of interest). Finally, the district attorney may also represent children in some instances in which the office had previously prosecuted the parents as long as it does not represent another party or agency whose interest conflicts with the child's. *In re Albert B.* (1989) 215 CA3d 361, 382, 263 CR 694. However, in any of these cases, the court must consider the facts of the case to determine if there is an actual conflict. See also *Castro v Los Angeles County Bd. of Supervisors*

(1991) 232 CA3d 1432, 1441–1445, 284 CR 154 (members of publicly funded, nonprofit group of lawyers that contracts with county for representation in dependency cases may properly represent parties with adverse interests in such proceedings unless *actual* conflict is shown).

Appointment of counsel for dependent siblings is governed by Cal Rules of Ct 5.660(c)(1). See discussion in CALIFORNIA JUDGES BENCHGUIDE 100: *JUVENILE DEPENDENCY INITIAL OR DETENTION HEARING* §100.20 (CAL CJER). The court has broad discretion in determining the need for separate counsel for children and may appoint separate counsel even in the absence of a conflict. *Los Angeles County Dep’t of Children & Family Servs. v Superior Court* (1996) 51 CA4th 1257, 1263–1264, 59 CR2d 613.

- JUDICIAL TIP: When counsel represents both parents, the court may wish to advise the parents of possible pitfalls, including conflict of interest, as the case develops.

d. [§103.23] Attorneys’ Fees

The juvenile court may set compensation for appointed counsel for the child unless the attorney is a district attorney, public defender, or other public attorney (Welf & I C §317(c)), although the court may assess attorneys’ fees against parents represented by a public attorney if they are able to afford the fees.

In the absence of a contractual obligation to pay a particular fee, the court may modify its payment to an appointed attorney during the pendency of a dependency case, despite the attorney’s obligation to see the case through until the end. *Amarawansa v Superior Court* (1996) 49 CA4th 1251, 1259–1260, 57 CR2d 249.

4. [§103.24] Conduct of Hearing

As with any juvenile court hearing, a review hearing must be closed to the public, heard at a special or separate session of court, and granted precedence on the calendar. See Welf & I C §§345–346. The hearing must be conducted in an informal, nonadversarial manner, unless there is a contested issue of law or fact. See Welf & I C §350(a)(1); Cal Rules of Ct 5.534(b). The court must control the proceedings with a view to expeditious determination of the facts and to obtaining maximum cooperation of the child and the persons interested in the child’s welfare. Welf & I C §350(a)(1); Cal Rules of Ct 5.534(a).

The proceedings must be transcribed by a court reporter if the hearing is conducted by a judge or by a referee acting as a temporary judge. Welf & I C §347; Cal Rules of Ct 5.532(a). If the hearing is before 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).

a. [§103.25] Who May Be Present

At any juvenile court hearing, the minor child or nonminor dependent and the child’s or nonminor dependent’s attorney are entitled to be present. Welf & I C §349; Cal Rules of Ct 5.534(p)(1); Welf & I C §303(d), (e) (nonminor dependent has full adult rights). If the child is 10 years of age or older and is not present, the court must determine whether he or she was properly notified of the right to attend the hearing and given an opportunity to attend and inquire why the child is not present. Welf & I C §349; Cal Rules of Ct 5.534(p)(2). If the child was not properly notified of the right to be present at the 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); Cal Rules of Ct 5.534(p)(2). See Judicial Council form JV-281, Notice of Hearing—Nonminor Dependent Review Hearing, and form JV-281, Proof of Service—Nonminor.

In addition, Welf & I C §§224.2(a), 292(a), (f) 293(a), (g), and Cal Rules of Ct 5.530(b) permit the following persons to be present:

- (1) Parents or guardians, or if none can be found or none reside within the state, any adult relatives residing within the county, or if none, any adult relatives residing nearest the court;
- (2) De facto parents who may be foster parents or other caregivers;
- (3) Any known sibling if 10 years of age or older, the sibling’s caregiver, and the sibling’s attorney if the sibling is the subject of a dependency proceeding or has been adjudged a dependent child, unless that child’s case is scheduled for the same court on the same day
- (4) Indian custodians and guardians or a representative of the Indian child’s tribe (see Cal Rules of Ct 5.534(i));
- (5) Counsel for parent, de facto parent, guardian, or adult relative, Indian custodian, or tribe;
- (6) County counsel or district attorney;
- (7) Social worker;
- (8) Court clerk;
- (9) Court reporter;
- (10) Bailiff, at the court’s discretion;
- (11) Court-appointed special advocate (CASA);
- (12) Interpreters as needed;
- (13) Foster parents, current caregivers, preadoptive parents, nonrelative extended family members, or relative caregivers; and
- (14) Any others entitled to notice under Welf & I C §§290.1 and 290.2.

The court may also permit any of the child’s relatives to be present at the review hearing on a sufficient showing and to submit information about the child using form JV-285. See Cal Rules of Ct 5.534(f). In addition to the participants mentioned above, the court may allow a support person for the child. See Welf & I C §326.5. See also Welf & I C §§100–110, 356.5 (setting forth the requirements governing the appointment and duties of a person appointed as a CASA volunteer); Cal Rules of Ct 5.655 (program guidelines for CASAs); Cal Rules of Ct, Standards of J Admin 5.40 (implementing the statutory requirements).

If ICWA applies, the tribe is entitled to intervene as a party at any stage of the dependency proceeding and can be represented by counsel or by any other authorized representative. See Welf & I C §§224.2(a)(5)(G), 224.4; Cal Rules of Ct 5.534(i). If the tribe does not intervene as a party, the court may still allow a person affiliated with the tribe or a representative of a program operated by an Indian organization to participate in the proceedings. Cal Rules of Ct 5.534(i)(2).

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. Welf & I C §346. 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. 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 the parent, a de facto parent, guardian, or relative of the child. Welf & I C §345; Cal Rules of Ct 5.530(a). A stepparent who is accused of a crime must be excluded from the proceedings.

b. [§103.26] Advisement of Rights

At review hearings, the court may wish to advise the parties of their rights under Cal Rules of Ct 5.534. This is ordinarily not done at a review hearing unless it is the parents' first appearance or special issues (such as new allegations) have arisen. If the court does make advisements concerning rights, it should advise any unrepresented parent or guardian of the right to retain counsel and of the right to court-appointed counsel if the parent is financially unable to afford counsel. Cal Rules of Ct 5.534(g)–(h). As to appointment of counsel for an unrepresented parent or guardian, see discussion in §103.20.

The court may also advise the party of the following rights in addition to the right to counsel (Cal Rules of Ct 5.534(k)):

- (1) The right to confront and cross-examine the persons who prepared reports or documents submitted to the court by the petitioning agency, and the witnesses called to testify at the hearing;
- (2) The right to use the process of the court to bring in witnesses;
- (3) The right to present evidence in court; and
- (4) Any right to assert the privilege against self-incrimination.

Although Welf & I C §311(b) and Cal Rules of Ct 5.534(k)(1) speak of a privilege against self-incrimination, this privilege can rarely be asserted because of the immunity parents receive in dependency proceedings. See Welf & I C §355.1(f). See also *In re Candida S.* (1992) 7 CA4th 1240, 1249–1251, 9 CR2d 521 (court not required to advise represented parent about immunity), citing *In re Lamonica H.* (1990) 220 CA3d 634, 649–650, 270 CR 60, and *In re Jessica B.* (1989) 207 CA3d 504, 517–521, 254 CR 883 (parents were required to admit abuse as part of the reunification plan without impairing the privilege against self-incrimination); Cal Rules of Ct 5.546(e) (requiring the parent or guardian to disclose relevant information), 5.548(d) (granting immunity for other witnesses).

➡ **JUDICIAL TIP:** The requirement of an advisement may be met by either of the following:

- Reading these rights to the parties and confirming that they understand their rights.
- Obtaining a personal waiver from this advisement requirement. To do this, the judge should ask the attorneys if they have explained these rights to their respective clients and ask the parties to confirm that their attorneys have explained these rights to them, that they understand these rights, and that they waive formal reading of their rights.

In addition to the rights set out above, the court must advise a nonminor dependent that he or she has all the legal rights of anyone over 18 years of age. Welf & I C §303(d), (e). The nonminor dependent has the right to seek termination of jurisdiction, as well as to petition to resume jurisdiction once it has been terminated. Welf & I C §366(a)(1)(F). See §§103.12, 103.55, and §§103.65–103.66 for the court's obligations with respect to a nonminor dependent.

c. [§103.27] Receipt of Documentary Evidence

At all review hearings, the court is required to read and consider the case plan submitted for the hearing, as well as reports submitted by the social worker and by any court-appointed special advocate for the child. See Welf & I C §§366.1; Cal Rules of Ct 5.708(c)(1) (required content of reports); Welf & I C §366.21(c); Cal Rules of Ct 5.708(c) (review hearings generally); Welf & I

C §366.21(e) (six-month review); Welf & I C §366.21(f) (12-month review); Welf & I C §366.22(c) (18-month review); Welf & I C §366.25 (24-month review); Welf & I C §366.3(g); Cal Rules of Ct 5.740 (postpermanency planning review). The reports must be given to the parents ten days before the hearing. Welf & I C §366.21(c). This 10-day requirement is mandatory. *Judith P. v Superior Court* (2002) 102 CA4th 535, 553, 558, 126 CR2d 14 (review hearing orders overturned when parents only received the report when they attended the hearing).

The court must also consider the criminal history of the parent or guardian subsequent to the child's removal, insofar as that history is substantially related to the child's welfare or to the parent's ability to exercise custody (Welf & I C §§366.21(e), (f), 366.22(a)) and any "Caregiver Information Form" (JV-290) (Welf & I C §§366.21(d), 366.23).

When a child has been removed from parental custody, the social worker must provide a summary of his or her report to any CASA, foster parents, relative caregivers, certified foster parents who have been approved for adoption, or foster family agency with physical custody of the child at least ten days before the hearing. Welf & I C §366.21(c).

The statutory requirements of Welf & I C §355, regarding the right to cross-examine the social worker, do not apply at review hearings. See *In re Jeanette V.* (1998) 68 CA4th 811, 816, 80 CR2d 534. Indeed, social study reports are admissible at review hearings without the preparer being available for cross-examination. See *In re Matthew P.* (1999) 71 CA4th 841, 849 n3, 84 CR2d 269.

At review hearings, general principles of due process apply, which may include the right of the parent to call the social worker for cross-examination or otherwise challenge the material in the report. See *In re Jeanette V., supra*

In the case of an Indian child when a tribal customary adoption is recommended (see Welf & I C §366.24), the assessment must include an analysis of whether tribal customary adoption would be detrimental and whether the Indian child cannot or should not be returned to the home of the Indian parent or custodian (see Welf & I C §§366.21(i)(1)(H), 366.22(c)(1)(G), 366.25(b)(1)(G)).

Before each review hearing, the social worker must obtain and include all the information necessary to maintain the accuracy of form JV-225, Your Child's Health and Education. Cal Rules of Ct 5.668(c).

Parties and counsel, including counsel for the child and the CASA, are to be provided with copies of the DSS report at least ten calendar days before the hearing. Cal Rules of Ct 5.708(c)(2). The summary of recommendations must be given to the relative caregivers or foster parents. Cal Rules of Ct 5.708(c)(2).

- **JUDICIAL TIP:** If a party was not timely provided with a copy of the report, and the party requests a continuance and establishes that he or she has been prejudiced by the late receipt of the report, the court should continue the case for a reasonable time to allow the party to respond to the report.

d. [§103.28] Presentation of Other Evidence

At review hearings, the court may receive testimony and other admissible evidence that is relevant to the child's status, the continuing necessity for and appropriateness of the child's placement, the extent of compliance with the case plan including efforts to maintain relationships with important people in the child's life, plans for sibling interaction, limitations on parents' rights to make educational decisions, and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care. See Welf & I C

§366(a)(1). See also *In re Roger S.* (1992) 4 CA4th 25, 30, 5 CR2d 208 (court may hear testimony at review hearing). A parent is entitled to cross-examine adverse witnesses, including the social worker and psychologist. *Ingrid E. v Superior Court* (1999) 75 CA4th 751, 753, 758–759, 89 CR2d 407.

Psychological evaluations can serve as credible evidence to sustain a detriment finding as long as they are reasonably specific and objective. *Blanca P. v Superior Court* (1996) 45 CA4th 1738, 1750, 53 CR2d 687. Indeed, without evidence from psychologists, courts might sometimes be reduced to making arbitrary decisions. *In re Jasmon O.* (1994) 8 C4th 398, 430, 33 CR2d 85.

A parent's or guardian's failure to cooperate in the provision of services may be used as evidence in any review hearing. Evid C §1228.1(b).

e. [§103.29] Child's Testimony

If one or more parties request that the child's testimony be taken, the court should consider issues concerning whether the child should be required to testify and, if so, under what circumstances.

(1) [§103.30] When Child Should Not Testify

In appropriate cases, the court may refuse to permit a child to testify if it determines that testifying would cause psychological stress and injury, and the potential benefit derived would not outweigh the injury it would cause. *In re Jennifer J.* (1992) 8 CA4th 1080, 1086, 10 CR2d 813, distinguishing *In re Amy M.* (1991) 232 CA3d 849, 283 CR 788 (child's testimony could have assisted in resolving a disputed issue). Although nothing in statutory or case law specifically authorizes a court to exclude a child's testimony in order to avoid psychological harm, the court nevertheless has such power based on the overriding objective of the dependency hearing—to preserve and promote the best interests of the child. *In re Jennifer J., supra*, 8 CA4th at 1089 (judge must weigh whether testimony would materially affect issues to be resolved against potential psychological injury to child). See also Evid C §240(c) (defining unavailability due to emotional trauma). In other cases, the court may direct that the child's testimony be taken in chambers and outside the presence of the child's parents or guardians. Welf & I C §350(b); Cal Rules of Ct 5.534(c).

(2) [§103.31] Testimony in Chambers

If the court determines that the child should testify, he or she may testify in chambers outside the presence of the parents if the parents' counsel is present and any one of the following conditions exists (Welf & I C §350(b); Cal Rules of Ct 5.534(c)):

- The court determines that testimony in chambers is necessary to ensure truth-telling.
- The child is likely to be intimidated in the more formal courtroom setting.
- The child is frightened to testify in front of the parent or parents.

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

when the child does not expressly state a fear of testifying in open court. *In re Katrina L.*, *supra*, 200 CA3d at 1297–1298 (requirements of Welf & I C §350 were otherwise met).

The presence of parents' counsel is essential; it may be prejudicial error for the court to question the child in chambers with only a reporter present. See *In re Laura H.* (1992) 8 CA4th 1689, 1697, 11 CR2d 285. Mere acquiescence by the parent to such a procedure does not constitute a waiver of counsel; a waiver must be knowing and intelligent. *In re Laura H.*, *supra*, 8 CA4th at 1695. But see *In re Jamie R.* (2001) 90 CA4th 766, 771, 109 CR2d 123, disagreeing with *In re Laura H.*, *supra*, and holding that a parent who keeps silent and otherwise acquiesces in the child's being questioned in chambers, outside the counsel's presence, waives the statutory right to have counsel at the in-chambers proceeding (.26 hearing).

When a child testifies in chambers, the court must first administer an oath to the child or obtain a satisfactory promise from the child to tell the truth. See *In re Heather H.* (1988) 200 CA3d 91, 95–97, 246 CR 38 (failure to administer oath rendered testimony inadmissible). See also Evid C §710 (witnesses under ten years of age need only promise to tell the truth). When the child testifies in chambers, the testimony must be recorded and the parent or guardian may request the reporter to read back the testimony. See Cal Rules of Ct 5.534(c). For a discussion of handling child witnesses in court generally, see THE CHILD VICTIM WITNESS BENCH HANDBOOK (CJER 2009).

- **JUDICIAL TIP:** To accommodate the needs of the child witness, some judges remove their robes, which can be frightening symbols of formality to the child, and reduce the formality of the proceedings in other ways. See THE CHILD VICTIM WITNESS BENCH HANDBOOK §§1.19, 3.9 (CJER 2009). In addition, some judges conduct “in-chambers” proceedings in the courtroom without the parents because some chambers become too crowded and therefore too frightening for the child with so many people in attendance.

(3) [§103.32] Other Accommodations

When a child is unwilling to testify even at an in-chambers hearing because of the presence of so many adults (the judge, many attorneys, social worker, and court reporter), a court is entitled to use its inherent powers to carry out its duties and ensure the orderly administration of justice (derived from Cal Const art VI, §1) and may permit the testimony of the child by closed-circuit television even in the absence of any express statutory authority for this procedure. *In re Amber S.* (1993) 15 CA4th 1260, 1266, 19 CR2d 404 (court may use new procedure to protect best interests of child because parents' rights are at least as protected as they would have been under Welf & I C §350(b)).

C. Findings and Orders

1. [§103.33] Six-Month Review Hearings

Under Welf & I C §366.21(e), the court must hold a review hearing six months after the initial disposition hearing for all dependent children remaining at home but not more than six months after the date the child entered foster care (see Welf & I C §361.49) if the child has been removed. See Cal Rules of Ct 5.710(a). The six-month review hearing for a child who has been removed from the custody of a parent or guardian must be held within six months from the date of entry into foster care, rather than within six months from the date of the disposition hearing, despite language to the contrary in Welf & I C §§366(a)(1) and 366.21(e). *In re Christina A.* (2001) 91 CA4th 1153, 1163–1165, 111 CR2d 310.

The term “six-month review” applies to a child who remains at home (see Welf & I C §364), as well as to a child who is removed from the parents’ custody (see Welf & I C §366.21(e)). If the child remains at home as a dependent, there may be several six-month reviews. See Welf & I C §364(d).

At this hearing, the court must consider the case plan and must find that the child and parents were actively involved as appropriate in developing the plan or were not actively involved. Cal Rules of Ct 5.708(g). If the court finds that the child or parents were not actively involved, it must order DSS to involve them in the development of the case and permanent placement plans unless the court finds that the child or parents are unable, unwilling, or unavailable to participate. Cal Rules of Ct 5.708(g).

Similarly, in the case of an Indian child, the court must find that DSS consulted with the tribe and that the tribe was actively involved in the development of the case plan. Cal Rules of Ct 5.708(g)(5). If the court finds that there has not been active tribal involvement, it must order DSS to consult with the tribe unless the tribe is unable, unwilling, or unavailable to participate. Cal Rules of Ct 5.708(g)(6).

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 finds that the child did not have this opportunity, it must order DSS to provide the child with such an opportunity. Cal Rules of Ct 5.708(g)(7); Welf & I C §16501.1(f)(13).

If the six-month review hearing is the last one before the child turns 18, see the discussion in §103.12 for requirements concerning contents of the transitional plan and advisements required by Welf & I C §366(a)(1)(F).

See the checklist in §103.4 for the manner of conducting the six-month review hearings and the findings and orders the court is required to make at the hearing, as well as Judicial Council forms JV-430–JV-433. For required findings concerning the case plan and the child’s education, see Appendix V, Case Plan and Educational Findings and Orders—Dependency. See §§103.56–103.59 for requirements for setting a .26 hearing.

a. [§103.34] Options—In General

At the six-month review hearing, the court may terminate dependency of a child who has remained at home or, if proper findings support it, the court may continue dependency and services to the child and the family. Welf & I C §§364(c), 366.21(e); Cal Rules of Ct 5.706(e)(1). If the court finds that the parent is in total compliance with the case plan, has made a concerted effort to integrate insights gained in therapy into his or her daily life, and has been permitted to return to the home in which the child has been residing with the other parent, it must terminate jurisdiction under Welf & I C §364(c). *In re N.S.* (2002) 97 CA4th 167, 173, 118 CR2d 259.

If the child has been removed, the court may:

- Return the child and terminate dependency (Welf & I C §366.21(e); see Cal Rules of Ct 5.710(b)(1));
- Return the child and continue dependency with services to the child and family (Welf & I C §366.21(e); see Cal Rules of Ct 5.710(b)(1); see *Bridget A. v. Superior Court* (2007) 148 CA4th 285, 307–309, 55 CR3d 647);

- Place the child with the noncustodial parent and do either of the above (Welf & I C §366.21(e); see Cal Rules of Ct 5.710(b)(2), 5.708(k)); in such a case, the child’s caregiver may file a “Caregiver Information Form” with the court concerning the noncustodial parent (Welf & I C §366.23);
- Continue out-of-home placement with reunification services (Welf & I C §366.21(e)); or
- Terminate reunification services if previously ordered and schedule a .26 hearing (Welf & I C §366.21(e); Cal Rules of Ct 5.708(l)–(o), 5.710(b)(3), (c)).

A motion to terminate reunification services is not required at the six-month review hearing if the court finds the following by clear and convincing evidence that (Welf & I C §361.5(a)(2)):

- The child was initially removed under Welf & I C §300(g) and the whereabouts of the parent are still unknown,
- The parent has failed to contact and visit the child, or
- The parent has been convicted of a felony indicating parental unfitness.

Regardless of his or her immigration status, a relative caregiver must be informed about the permanency options of guardianship and adoption. Welf & I C §366.21(i)(2)(B). If a relative caregiver prefers legal guardianship over adoption for reasons that do not include unwillingness to assume legal or financial responsibility, the court must not remove the child from that caretaker solely in order to facilitate adoption. Welf & I C §366.21(i)(2)(A). The child who is placed with a relative caregiver who serves as the child’s legal guardian may be entitled to federal assistance under the kin-GAP program. See Welf & I C §360(a).

If the child has been in out-of-home placement, the court must, after considering the admissible and relevant evidence, order the child returned to the custody of the parents or guardians unless the DSS shows by a preponderance of the evidence that returning the child would create a substantial risk of detriment to the child’s safety, protection, or physical or emotional well-being. Welf & I C §366.21(e); Cal Rules of Ct 5.708(d)(1), 5.710(b)(1). Evidence of a parent or guardian’s failure to participate regularly and make substantive progress in court-ordered treatment programs, unless successfully rebutted, is sufficient to merit a finding that continued supervision is necessary and that return would be detrimental, thus justifying continued out-of-home placement. Welf & I C §366.21(e); Cal Rules of Ct 5.708(d)(2).

The substantial risk of detriment to returning a child need not be the same risk as that which necessitated the assumption of juvenile court jurisdiction; the court must focus on the risk to the safety, protection, or physical or emotional well-being of the child at the time of the review hearing. *In re Joseph B.* (1996) 42 CA4th 890, 899, 49 CR2d 900. In addition, even if the parent had corrected the problem that originally gave rise to court intervention, the court may conclude that reunification would create a substantial risk of detriment, perhaps because of a long history of abuse. *In re Joseph B.*, *supra*, 42 CA4th at 901. The lack of an ideal housing arrangement does not constitute evidence of a substantial risk of detriment to the child unless it is shown that the housing conditions pose a risk of harm to the child. *In re Yvonne W.* (2008) 165 CA4th 1394, 1401–1402, 81 CR3d 747 (mother’s living arrangement in long-term shelter did not create substantial risk of detriment).

- **JUDICIAL TIP:** If the evidence warrants, some judges make the finding of substantial risk of detriment by clear and convincing evidence.

A court must retain jurisdiction at a review hearing when a child, who is not a proper subject for adoption, has been placed in another country with a relative who is not a legal guardian, no matter how satisfactory that arrangement. In the absence of an adoption or legal guardianship, continued supervision is necessary because otherwise there is no one with legal custody of the child and no guarantee that the placement is permanent. *In re Rosalinda C.* (1993) 16 CA4th 273, 279, 20 CR2d 58.

b. [§103.35] Continuing Services

If the court decides that there would be a substantial risk of detriment if the child were returned (see §103.61) and does not terminate reunification services, it must order continuing services and set the matter for a permanency hearing not later than 12 months from the date the child entered foster care. See Welf & I C §§366.21(e)–(f), 361.49 (defining date child deemed to have entered foster care); see also Cal Rules of Ct 5.715(a) (12-month permanency hearing must be held no later than 18 months from the date of the initial removal). The court may modify the previously ordered reunification services as appropriate. Cal Rules of Ct 5.710(b)(4). The fact that the child had been returned home and then re-removed during the reunification period does not toll the time period. Welf & I C §361.5(a)(3).

Under Welf & I C §§361.5(a)(1) and 366.21(e), a court may discontinue services for one parent with respect to a child under three years of age at a six-month hearing even though it has not set a .26 hearing because the other parent is still receiving services. *In re Jesse W.* (2007) 157 CA4th 49, 62–65, 68 CR3d 435.

If the court orders that a child who is 10 years of age or older remain in foster care, it must determine whether DSS has made reasonable efforts to maintain the child's relationships with those who are important to him or her and may make orders to ensure that these relationships are maintained. Welf & I C §366.21(g); Cal Rules of Ct 5.708(i)(2). The court must also make further findings concerning the continuing necessity for and appropriateness of the child's placement, the extent of compliance with the case plan, plans for sibling interaction, limitations on parents' rights to make educational decisions and appointment of a responsible adult to make those decisions (see Cal Rules of Ct 5.534(j), 5.650, 5.651, 5.708(f), (i), (j)), and the extent of progress made toward alleviating or mitigating the causes necessitating placement in foster care. Welf & I C §§366(a)(1), 366.21(e). With respect to limitation on parents' educational rights, such a limitation is appropriate when the child had been in the dependency system for a while and the parents had never shown good judgment where the child was concerned. *In re R.W.* (2009) 172 CA4th 1268, 1277–1278, 91 CR3d 785.

If the child is not to be returned home and there are no grounds to set a .26 hearing, the court must (Welf & I C §366.21(e)):

- Determine whether reasonable reunification services have been provided or offered to the parents or guardians;
- Order that reunification services be initiated, continued, or modified; and
- Inform the parent or guardian that if the child cannot be returned home by the 12-month permanency hearing, a proceeding for termination of parental rights under Welf & I C §366.26 may be instituted.

The court must consider the efforts and progress demonstrated by the parent or legal guardian and the extent to which the parent cooperated and made use of reunification services

provided, taking into account barriers to accessing those services or to maintaining contact with the child that were caused by the parent's incarceration, institutionalization, detention by the United States Department of Homeland Security, or deportation. Welf & I C §366.21(e); Cal Rules of Ct 5.710(c)(1)(D)(ii). Services may not be reasonable if they are not provided during a parent's incarceration and there is no later opportunity to provide them because the parent is deported after release. See *In re Maria S.* (2000) 82 CA4th 1032, 1040, 98 CR2d 655.

The court must enter additional findings required by Welf & I C §366(a)(1) and (2) regarding the status of children in foster care and compliance with the case plan. Cal Rules of Ct 5.708(i). The court should also consider making findings and orders on whether reasonable concurrent planning efforts have been provided to achieve legal permanence for the child if efforts to reunify fail, including efforts to maintain relationships between the child and those who are important to him or her, consistent with the child's best interests. See Welf & I C §366.21(c), 16501.1(f)(10); see Cal Rules of Ct 5.708(e)(2)(B), (C), (i).

If the court orders the return of the child to his or her parent's custody following an out-of-home placement, it may retain dependency jurisdiction and order family maintenance services to ensure the safety and physical and emotional well-being of the child. See Welf & I C §366.21(e); Cal Rules of Ct 5.708(d)(1), (k), 5.710(b)(1); *Bridget A. v Superior Court* (2007) 148 CA4th 285, 307–309, 55 CR3d 647. But it is error to provide family maintenance services, rather than reunification services, to the parent from whose custody the children were removed. *In re Calvin P.* (2009) 178 CA4th 958, 964, 100 CR3d 654.

c. [§103.36] Setting a .26 Hearing

If the court finds by clear and convincing evidence that the child was removed initially under Welf & I C §300(g) and that the whereabouts of the parent are still unknown or the parent has failed for six months to contact and visit the child, or the parent is deceased, it may schedule a .26 hearing and order an assessment under Welf & I C §366.21(i)(1) (covering prospects for adoption, efforts to identify prospective adoptive parents, search efforts for absent parents, review of parent-child contacts, child's attachment to prospective relative guardian or adoptive parent, whether tribal customary adoption would be detrimental to an Indian child, and evaluation of child). Welf & I C §366.21(e); Cal Rules of Ct 5.710(c)(1)(A).

Welfare & Institutions Code §366.21(e) and Cal Rules of Ct 5.710(c)(1)(A) permit a court to terminate reunification services and set the matter for a .26 hearing if it finds by clear and convincing evidence that the parent has failed to contact or visit the child for six months after reunification services have begun, regardless of the reasons for initial removal of the child. *Sara M. v Superior Court* (2005) 36 C4th 998, 1015–1017, 32 CR3d 89. In such a case, there is nothing to be gained by continuing to offer services when a parent makes no effort to reunify with the child for six months and there are no extenuating circumstances. *In re Monique S.* (1993) 21 CA4th 677, 682, 25 CR2d 863. And the failure to visit, despite some telephone contact, may warrant termination of reunification services, despite the fact that the "contact and visit" of Welf & I C §366.21(e) was not provided for in former Cal Rules of Ct 5.710, which only requires contact. *S.W. v Superior Court* (2009) 174 CA4th 277, 282–283, 94 CR3d 49.

A parent is not entitled to a set minimum period of services if the court, in its discretion determines that continuing services are not in the child's best interests. *In re Aryanna C.* (2005) 132 CA4th 1234, 1243, 34 CR3d 288.

In addition, if the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, it may also terminate services, schedule a .26

hearing, and order an assessment under Welf & I C §366.21(e), (h)–(i); Cal Rules of Ct 5.708(n)(4), 5.710(c)(1)(B). Although the provisions for denying reunification at disposition do not directly apply to review hearings, services may be terminated and a .26 hearing may also be set if the conditions of Welf & I C §361.5(b) arise during the reunification period, providing that all parties have notice of these changed conditions by appropriate means including the filing of a petition for modification under Welf & I C §388(c). See Welf & I C §361.5(a)(2).

- **JUDICIAL TIP:** In an ICWA case when the evidence supports the findings required for setting a .26 hearing, the court should consider making these findings (that serious emotional or physical damage likely to occur if the child is continued in the parent’s custody, as well as that “active efforts” were made) when setting the .26 hearing. See 25 USC §1912(d)–(f). In this way, those findings will not have to be litigated at the .26 hearing. See *In re Matthew Z.* (2000) 80 CA4th 545, 554–555, 95 CR2d 343 (serious risk to physical health finding); *In re Michael G.* (1998) 63 CA4th 700, 713 n9, 74 CR2d 642 (“active efforts” finding should be made before scheduling the .26 hearing).

When setting a .26 hearing, the court must (Cal Rules of Ct 5.708(n)):

- Direct the preparation of an assessment under Welf & I C §366.21(i)(1);
- Order the termination of reunification services to the parent or guardian;
- Continue permitting visits with the parent or guardian unless detrimental to the child;
- Make other orders to enable the child to maintain relationships with individuals who are important to the child.

If the child is 10 years of age or older and has been in out-of-home placement for six months or more from the date the child entered foster care, the court (Welf & I C §366.21(g)(3); Cal Rules of Ct 5.708(n)(3)):

- Must determine whether DSS has identified people other than siblings who are important to the child and has made reasonable efforts to maintain relationships between the child and those people, consistent with the child’s best interests, and
- May make orders regarding the maintenance of those relationships.

If the court sets a .26 hearing at this point, it must advise the parent or guardian of the writ remedy for review of the orders and make sure the parent or guardian receives the appropriate Judicial Council forms (JV-820, Notice of Intent To File Writ Petition and Request for Record, and JV 825, Petition for Extraordinary Writ—Juvenile Dependency). See Cal Rules of Ct 8.450, 8.452. See also Welf & I C §366.26(l); Cal Rules of Ct 5.590.

At the six-month review, the court may not set a .26 hearing to consider the termination of parental rights of only one parent unless that parent is the sole surviving parent, the rights of the other parent have already been terminated, or the other parent has relinquished custody. Cal Rules of Ct 5.708(l). See discussion in §103.56.

d. [§103.37] Child Under Three Years of Age or Member of Sibling Group in Which One Sibling Under Three Years of Age at Removal

If the child was under three years of age or is a member of a sibling group in which one child was under three years of age at the date of initial removal and it is shown by clear and convincing evidence that the parent failed to make substantive progress or regularly participate in a court-ordered treatment plan, then the court may terminate services and schedule a .26

hearing within 120 days. Welf & I C §366.21(e); see Cal Rules of Ct 5.710(c)(1)(D). If only one parent is entitled to receive services in this situation, the court may terminate services for the other parent but must still not set a .26 hearing. See *In re Jesse W.* (2007) 157 CA4th 49, 62–65, 68 CR3d 435.

If the court determines that there is a substantial probability that the child may be returned to the home within six months or 12 months from the date the child entered foster care (whichever is sooner) (see Welf & I C §361.49) or that reasonable services were not provided or offered, the court must continue the case to the 12-month permanency hearing. Welf & I C §366.21(e); Cal Rules of Ct 5.502(9), 5.710(c)(1)(D). In considering the likelihood of reunification between a child under three years of age and a parent, under Welf & I C §366.21(e), the court at the six-month review need only consider the time up until the next review hearing, even if it is less than six months. *Tonya M. v Superior Court* (2007) 42 C4th 836, 843–846, 69 CR3d 96. To find a substantial probability of return within six months, the court must find all the following (Welf & I C §366.21(g)(1)(A)–(C); Cal Rules of Ct 5.710(c)(1)(D)):

- The parent or guardian has consistently and regularly visited the child;
- The parent or guardian has made major progress in solving the problems that led to removal; and
- The parent or guardian has shown the ability to complete the objectives of the treatment plan and to provide for the child’s safety, health, physical and emotional well-being, and special needs.

A court has discretion, however, to continue reunification services at the six-month hearing even when the factors listed above have not been met. *S.T. v Superior Court* (2009) 177 CA4th 1009, 1016, 99 CR3d 412.

In determining whether to schedule a .26 hearing for a child who is a member of a sibling group in which one child was under three years of age at the date of initial removal (see Welf & I C §361.5(a)(1)(C)), the court must review and consider DSS’s recommendations. Welf & I C §366.21(e). Among the factors the court may consider under Welf & I C §366.21(e) and Cal Rules of Ct 5.710(d) are:

- Whether the sibling group was removed from the home as a group,
- Strength of the sibling bond,
- Children’s ages,
- Suitability of keeping the siblings together,
- Detriment to the child if sibling ties are not maintained,
- Possibility of finding a permanent home for the sibling group,
- Whether the group is currently together in a preadoptive home or has a concurrent plan objective of legal permanency in the same home,
- Wishes of each child who is capable of having a meaningful response to the situation, and
- Best interest of each child.

In this context, “sibling” means a person related to each other as full or half-siblings. Welf & I C §361.5(a)(1)(C). The court must specify the factual basis of its finding that it is in the best interest of each child to schedule a .26 hearing within 120 days for some or all siblings. Welf & I C §366.21(e).

The failure to address: the strength and closeness of the sibling bond, the appropriateness of maintaining the siblings together, and other factors relating to siblings that are listed in Welf & I C §366.21(e), requires reversal of an order terminating reunification services and setting a .26 hearing. *Abraham L. v Superior Court* (2003) 112 CA4th 9, 14, 4 CR3d 709.

2. [§103.38] 12-Month Permanency Hearings

The court must hold a permanency hearing within 12 months of the date the child entered foster care. Welf & I C §§361.49, 366.21(f); Cal Rules of Ct 5.715(a). At the permanency hearing, the court must determine the permanent plan for the child, including an assessment of when and if the child will be returned home. Welf & I C §366.21(f). When the child cannot be returned home, the court must determine the extent of progress made toward alleviating or mitigating causes necessitating placement in foster care. Welf & I C §366(a)(1)(E). See also Cal Rules of Ct 5.708(c). (DSS must report on the services offered and progress made, including recommendations for court orders, description of concurrent efforts to achieve legal permanence should reunification efforts fail, and a factual discussion of the items listed in the Welf & I C §366.1 supplemental report).

At this hearing, the court must consider the case plan and must find that the child and parents (or Indian tribe, if applicable) were actively involved in developing the plan or were not actively involved. Cal Rules of Ct 5.708(g). If the court finds that the child or parents (or tribe) were not actively involved, it must order DSS to involve them in the development of the case and permanent placement plans unless the court finds that the child or parents are unable, unwilling, or unavailable to participate. Cal Rules of Ct 5.708(g).

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 finds that the child did not have this opportunity, it must order DSS to provide the child with such an opportunity. Cal Rules of Ct 5.708(g)(7); Welf & I C §16501.1(f)(13). If the 12-month permanency hearing is the last one before the child turns 18, see the discussion in §103.12 for requirements concerning contents of the transitional plan and advisements required by Welf & I C §366(a)(1)(F).

If the court orders the return of the child to his or her parent's custody following an out-of-home placement, it may retain dependency jurisdiction and order family maintenance services to ensure the safety and physical and emotional well-being of the child. *Bridget A. v. Superior Court* (2007) 148 CA4th 285, 310–311, 55 CR3d 647 (the court has authority to return the child home and order dependency services under Welf & I C §§202(a), 245.5 and 362(a)).

For procedures involved in a 12-month permanency hearing and the findings and orders the court is required to make at the hearing, see Cal Rules of Ct 5.708 and 5.715 and the checklist in §103.5 and Judicial Council forms JV-435–JV-438. For required findings concerning the case plan and the child's education, see Appendix V, Case Plan and Educational Findings and Orders—Dependency.

a. [§103.39] Return of Child

If the child had been in out-of-home placement, the court must, after considering the admissible and relevant evidence, order the return of the child to parental custody unless it finds by a preponderance of the evidence that return would create a substantial risk of detriment to the child's safety, protection, or physical or emotional well-being. Welf & I C §366.21(f); Cal Rules

of Ct 5.708(d)(1), 5.715(b)(1). Evidence of a parent’s or guardian’s failure to make substantive progress and participate regularly in court-ordered treatment programs, unless successfully rebutted, is sufficient to merit a finding that return would be detrimental, thus justifying the continued removal of the child from the custody of the parents or guardians. Welf & I C §366.21(f); Cal Rules of Ct 5.708(d)(2), 5.715(b)(1).

The court properly sets a 12-month permanency hearing to determine whether a child should be returned home 12 months from the date of the court’s jurisdictional finding under Welf & I C §366.21(f), even when the six-month review hearing is held more than six months after the date of the jurisdictional finding. *Jessica A. v Superior Court* (2004) 124 CA4th 636, 645, 21 CR3d 488.

If the child is not returned, the court must terminate reunification services and set a hearing under Welf & I C §366.26 unless it finds that there is a substantial probability of return within 18 months of the initial removal. Welf & I C §366.21(g); Cal Rules of Ct 5.708(l)–(o), 5.715(b)(4)(B). In order to find a substantial probability that the child will be returned home and safely maintained there, the court must find all the following:

- That the parent or legal guardian has consistently and regularly contacted and visited the child,
- That the parent or legal guardian has made significant progress in resolving the problems that led to the child’s removal, and
- That the parent or legal guardian has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child’s safety, protection, physical and emotional well-being, and special needs. Welf & I C §366.21(g)(1)(A)–(C); Cal Rules of Ct 5.715(b)(4)(A)(i).

Alternatively, the court must terminate services and set a permanency hearing if the 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, and the court determines either:

- That there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, or
- That reasonable services have not been provided to the parent or legal guardian. Welf & I C §366.21(g)(2).

To find a substantial probability of return, the court must make findings similar to those in subdivision (g)(1), except that it must take into account any particular barriers to a parent’s ability to maintain contact with his or her child due to the parent’s arrest and receipt of an immigration hold, detention by the United States Department of Homeland Security, or deportation. Welf & Inst C §366.21(g)(3).

The “substantial probability” of return provides a greater burden for the 12-month review (Welf & I C §366.21(g)(1)) than for the six-month review (Welf & I C §366.21(e)) in the following ways: (1) at the six-month review, the court has more discretion not to set a .26 hearing than at the 12-month review, and (2) the court may use any evidence it can to support the substantial probability of return at the six-month review, rather than the three factors provided in Welf & I C §366.21(g)(1) that must be found at the later review hearing. *M.V. v Superior Court* (2008) 167 CA4th 166, 180–181, 83 CR3d 864.

A finding of substantial probability that the child will be returned to the custody of the parent or guardian by the next review hearing is a compelling reason for determining that setting a .26 hearing is not in the child’s best interests. Welf & I C §366.21(g).

b. [§103.40] Other Options

If the court does not order the child's return, it may order

- Up to six more months of services and the holding of an 18-month permanency review hearing no later than 18 months from the initial removal of the child,
- The case be continued for up to six more months for a permanency review hearing if the 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, and the court determines either that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time, or that reasonable services have not been provided to the parent or legal guardian
- Foster care (if it finds by clear and convincing evidence that the child is not a proper subject for adoption and that there is no one willing to accept legal guardianship), or
- A .26 hearing to be held within 120 days (see §103.43) unless the child has turned 18, in which case the court may not set a .26 hearing (Welf & I C §366.21(g)(2), (3) (if there is clear and convincing evidence that reasonable reunification services have been provided or offered to the parent or guardian)).

➤ **JUDICIAL TIP:** To comply with the specificity required by federal law (and to aid in later reviewing the placement—see §103.13), the court should enter a placement order, identifying the placement by name and providing the goal of the placement, without calling it “long-term foster care.” See §103.5, step 6, for placement orders made with required specificity.

Welf & I C §366.21(g)(1), (4), (5). See also Cal Rules of Ct 5.715(b).

The court may order a nonminor dependent who is otherwise eligible under Welf & I C §11403 to remain in a planned, permanent living arrangement. Welf & I C §366.21(g)(5). If the court orders that a minor child remain in foster care, it must identify a specific permanency goal. Welf & I C §366.21(g)(5); Cal Rules of Ct 5.715(b)(4)(C)(ii). If the child is 10 years of age or older and has been in out-of-home-placement for six months or more, the court (Welf & I C §366.21(g)(5); Cal Rules of Ct 5.715(b)(4)(C)(v)):

- Must determine whether DSS has identified people other than siblings who are important to the child and has made reasonable efforts to maintain relationships between the child and those people, consistent with the child's best interests, and
- May make orders regarding the maintenance of those relationships.

If the child is not returned, the court must state for the record the in-state and out-of-state options for permanent placement. Welf & I C §366.21(f), (g); Cal Rules of Ct 5.715(b)(5). When the child has been placed out-of-state, the court must determine whether that placement continues to be appropriate and in the best interests of the child. Welf & I C §366.21(f), (g); Cal Rules of Ct 5.708(h). In the case of an Indian child, the court must consider whether (i) the county adoption agency has consulted the child's tribe about tribal customary adoption; (ii) the child's tribe concurs with tribal customary adoption; and (iii) tribal customary adoption is an appropriate permanent plan for the child. Cal Rules of Ct 5.715(b)(5).

c. [§103.41] Reasonable Services

The court must also determine whether reasonable reunification services have been provided or offered to the parents or guardians, taking into account barriers to accessing those services or to maintaining contact with the child that arose from the parent's incarceration, institutionalization, detention, or deportation, as well as whether services to aid in the transition between foster care and independent living were offered to children 16 years of age and older. Welf & I C §366.21(f); Cal Rules of Ct 5.708(d)(3)(C), 5.710(c)(1)(D)(ii), 5.715(b)(4)(A)(ii). Evidence of any of the following does not constitute a failure to offer or provide reasonable services (Welf & I C §366.21(l); Cal Rules of Ct 5.708(e)(2)):

- The child has been placed with a foster family eligible to adopt or in a preadoptive home.
- The case plan includes services to make and finalize a permanent plan for the child if efforts to reunify fail.
- Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

The court should also consider making findings and orders on whether reasonable concurrent planning efforts have been provided to achieve legal permanence for the child if efforts to reunify fail. See Welf & I C §16501.1(f)(10); see Cal Rules of Ct 5.708(e)(2)(B), (C). A finding that services were reasonable was reversed when the services were not provided during the parent's incarceration and the parent was deported immediately after being released from incarceration. See *In re Maria S.* (2000) 82 CA4th 1032, 1040, 98 CR2d 655.

In determining whether to extend services for an incarcerated or institutionalized parent, the court must consider the special circumstances of that parent, including barriers that the parent faces to accessing treatment programs and other services, as well as the parent's ability and good faith efforts to maintain contact with the child. Welf & I C §361.5(a)(3). The court must specify the factual basis for its conclusion that there is a substantial probability that the child will be returned within the extended time period. Welf & I C §361.5(a)(3). But there is no automatic extension of services because of a parent's incarceration. *A.H. v Superior Court* (2010) 182 CA4th 1050, 1060, 107 CR3d 78.

If the court orders that a child who is 10 years of age or older remain in foster care, it must determine whether DSS has made reasonable efforts to maintain the child's relationships with those who are important to him or her and may make orders to ensure that these relationships are maintained. Welf & I C §366.21(g).

In an ICWA case when setting a .26 hearing, the court should also determine whether "active efforts" have been made to provide remedial services and rehabilitative programs to prevent the breakup of the Indian family and whether those efforts have proved unsuccessful. See 25 USC §1912(d). If this finding is made by clear and convincing evidence at the hearing at which the .26 hearing is set, it will not have to be relitigated at the .26 hearing. See *In re Michael G.* (1998) 63 CA4th 700, 712, 713 n9, 74 CR2d 642.

d. [§103.42] Setting 18-Month Permanency Review Hearing

If the child cannot be returned home, the court may continue the case for up to six months (but not more than 18 months from the date on which the child was originally removed from the home) if it finds that reasonable reunification services were not offered or provided or if it finds

that there is a substantial probability that the child will be returned within the statutory period and safely maintained in the home. Welf & I C §366.21(g)(1); see Cal Rules of Ct 5.720(a).

If services are continued, the court must inform the parent or guardian, if present, that if the child cannot be returned to the physical custody of the parent or guardian by the 18-month permanency review hearing, reunification services will be terminated and a permanent plan will be developed at that hearing. Welf & I C §366.21(g)(1), (h).

e. [§103.43] Setting a .26 Hearing

If the court does not find a substantial probability that the child will be returned home within 18 months from removal, the court may order that a .26 hearing be held, but only if the court does not continue the case to a permanency review hearing. Welf & I C §366.21(g)(4); Cal Rules of Ct 5.715(b)(3)(C). When the court sets a .26 hearing, it must order the termination of reunification services to the parent or guardian and direct DSS to prepare an assessment under Welf & I C §366.21(i)(1). Welf & I C §366.21(h)–(i); Cal Rules of Ct 5.708(l)–(o), 5.715(b)(3)(C). When ordering a .26 hearing, the court must order visitation to continue unless this course of action would be detrimental to the child and must make appropriate orders enabling the child to maintain relationships with people who are important to him or her, consistent with the child’s best interests. Welf & I C §366.21(h); Cal Rules of Ct 5.708(n)(2), (3). The court must also advise the parent of the right to challenge this decision by means of extraordinary writ. See Welf & I C §366.26(l)(3)(A); Cal Rules of Ct 5.708(n)(6), 5.590. The court must ensure that the clerk sends notice of the requirement for writ review to all absent parties. See Welf & I C §366.26(l)(3)(A); *In re Cathina W.* (1998) 68 CA4th 716, 721–724, 80 CR2d 480. See discussion in §103.56.

- **JUDICIAL TIP:** It is important that parents are advised of the writ review requirement, either in court when setting the .26 hearing or by mail to absent parents, so that parents are fully apprised of their rights and cannot raise the lack of notice on appeal.

If reunification services are terminated to the parent or legal guardian, the court 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 §366.21(h).

When a parent participates in what he or she thinks are the required reunification services, however, and nothing is said at the six-month review to correct this misimpression, the court may not terminate reunification services at the 12-month review and set a .26 hearing based on this failure. *Amanda H. v Superior Court* (2008) 166 CA4th 1340, 1346, 1348, 83 CR3d 229.

A finding of substantial probability that the child will be returned home by the next review hearing is a compelling reason for the determination that setting a .26 hearing is not in the child’s best interests. Welf & I C §366.21(g)(1).

3. [§103.44] 18-Month Permanency Review Hearings

An 18-month permanency review hearing (no later than 18 months from the date the child was originally removed from the physical custody of the parent) must be held when the case was continued at the 12-month permanency hearing on grounds that at that time there had been a substantial probability that the child would be returned to the physical custody of the parent or guardian within 18 months from removal or that reasonable reunification services had not been provided. Welf & I C §§366.22(a), 366.21(g)(1). The 18-month permanency review hearing

represents a critical juncture in that the court must embrace or forsake family preservation at this point. *Mark N. v Superior Court* (1998) 60 CA4th 996, 1015, 70 CR2d 603.

At this hearing, the court must consider the case plan and must find that the child and parents (or tribe, if applicable) were actively involved in developing the plan or were not actively involved. Cal Rules of Ct 5.708(g). If the court finds that the child or parents (or tribe) were not actively involved, it must order DSS to involve them in the development of the case and permanent placement plans unless the court finds that the child or parents are unable, unwilling, or unavailable to participate Cal Rules of Ct 5.708(g).

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 finds that the child did not have this opportunity, it must order DSS to provide the child with such an opportunity. Cal Rules of Ct 5.708(g)(7)). If the 18-month hearing is the last one before the child turns 18, see the discussion in §103.12 for requirements concerning contents of the transitional plan and advisements required by Welf & I C §366(a)(1)(F).

A court may not require a father to provide an offer of proof before holding a contested 18-month review hearing. *David B. v Superior Court* (2006) 140 CA4th 772, 779–780, 44 CR3d 799. Procedures involved in 18-month permanency review hearings and the findings and orders the court is required to make are set out in Cal Rules of Ct 5.708 and 5.720 and the checklist in §103.6 and JV-440–JV-443. For required findings concerning the case plan and the child’s education, see Appendix V, Case Plan and Educational Findings and Orders—Dependency.

a. [§103.45] Options—In General

If the child has been in out-of-home placement, the court must order the return of the child to parental custody unless it finds by a preponderance of the evidence that return would create a substantial risk of detriment to the child’s safety, protection, or physical or emotional well-being. Welf & I C §366.22(a); Cal Rules of Ct 5.720(b)(1). If the court does not order return, it must order (Welf & I C §366.22(a); Cal Rules of Ct 5.720(b)(3)):

- Foster care if it finds by clear and convincing evidence that the child is not a proper subject for adoption and that there is no one willing to accept legal guardianship, or
- A .26 hearing to be held within 120 days (unless the child has turned 18 and is still a dependent. Welf & I C §366.22(a).

☛ **JUDICIAL TIP:** To comply with the specificity required by federal law (and to aid in later reviewing the placement—see §103.13), the court should enter a placement order, identifying the placement by name and providing the goal of the placement, without calling it “long-term foster care.”

If the child is not returned, the court must state for the record the in-state and out-of-state options for permanent placement. Welf & I C §366.22(a); Cal Rules of Ct 5.720(b)(4). When the child had been placed out of state, the court must determine whether that placement continues to be appropriate and in the best interests of the child. Welf & I C §366.22(a); Cal Rules of Ct 5.708(h). In the case of an Indian child, the court must consider whether (i) the county adoption agency has consulted the child’s tribe about tribal customary adoption; (ii) the child’s tribe concurs with tribal customary adoption; and (iii) tribal customary adoption is an appropriate permanent plan for the child. Cal Rules of Ct 5.720(b)(4).

If the court orders that the child remain in foster care, it must identify the foster care setting by name, as well as a specific permanency goal for the child. Cal Rules of Ct 5.720(b)(3)(B)(i). The court may order a nonminor dependent who is otherwise eligible under Welf & I C §11403 to remain in a planned, permanent living arrangement. Welf & I C §366.22(a).

Regardless of his or her immigration status, a relative caregiver must be informed about the permanency options of guardianship and adoption. Welf & I C §366.22(c)(2)(B), (e). If a relative caregiver prefers legal guardianship over adoption for reasons that do not include unwillingness to assume legal or financial responsibility, the court must not remove the child from that caretaker solely in order to facilitate adoption. Welf & I C §366.22(c)(2)(A). The child who is placed with a relative caregiver who serves as the child's legal guardian may be entitled to federal assistance under the Kin-GAP Program. See Welf & I C §360(a). If the proposed permanent plan is guardianship with an approved relative caregiver for a minor eligible for aid under the Kin-GAP Program, the caregiver must be informed about the terms and conditions of the program's negotiated agreement, and must execute the agreement before a .26 hearing. A copy of the executed agreement must be attached to the assessment. Welf & I C §366.22(c)(2)(B); see Welf & I C §11387.

If the court orders the return of the child to his or her parent's custody following an out-of-home placement, it may retain dependency jurisdiction and order family maintenance services to ensure the safety and physical and emotional well-being of the child. *Bridget A. v. Superior Court* (2007) 148 CA4th 285, 311–312, 55 CR3d 647. Moreover, Welf & I C §364 applies in this situation to permit the court to hold a further review hearing in six months for a child who was initially removed and subsequently returned to his or her parents. 148 CA4th at 313–316. If the court orders return of the child to one parent's custody, it may only reduce visitation with the other parent if that other parent is given notice and if the order is supported by evidence. See *In re Elizabeth M.* (2008) 158 CA4th 1551, 1559, 70 CR3d 746.

In the case of an Indian child, the court must determine whether: (1) DSS has consulted the tribe about tribal customary adoption, (2) the tribe concurs with this proposed plan, and (3) this type of adoption would be an appropriate permanent plan for the child. Cal Rules of Ct 5.720(b)(4).

b. [§103.46] Factors To Consider

At the hearing held under Welf & I C §366.22, a judge may consider (*Constance K. v Superior Court* (1998) 61 CA4th 689, 704–705, 71 CR2d 780):

- Whether changing custody will be detrimental because a positive, loving relationship with the foster family would be severed.
- Whether the parent maintains relationships with people who might harm the child.
- Instability in the home.
- The child's difficulties in dealing with others, such as stepparents.
- The parent's awareness of the child's needs.
- The parent's past conduct toward the child.

The judge should also consider the needs of the child with regard to maintaining contact with his or her siblings. See Welf & I C §366(a)(1)(D).

Living in a shelter does not automatically create a substantial risk of detriment to the child and therefore the court must return the child home at the 18-month hearing when the parent has otherwise substantially corrected the problems that led to dependency. *In re Yvonne W.* (2008) 165 CA4th 1394, 1401–1402, 81 CR3d 747. On the other hand, reunification services for an incarcerated father may be terminated at the 18-month hearing despite the fact that the father had regularly visited the child at the foster home and had a good relationship with the child when: (1) the father had been incarcerated for most of the child’s life and thus had never had custody, (2) visitation before the period of incarceration was inconsistent, and (3) the father did not participate in all the programs available to him during incarceration and only inconsistently attended those he did participate in. *V.C. v Superior Court* (2010) 188 CA4th 521, 528–529, 115 CR3d 354.

c. [§103.47] Reasonable Services

The court must also determine whether reasonable reunification services have been provided or offered to the parents or guardians, taking into account barriers to accessing those services or to maintaining contact with the child that arose from the parent’s incarceration or institutionalization. Welf & I C §366.22(a); Cal Rules of Ct 5.708(e). The court must also consider whether services to aid in the transition between foster care and independent living were offered to children 16 years of age and older. Welf & I C §366.22(a). If the court orders that a child who is 10 years of age or older remain in foster care, it must determine whether DSS has made reasonable efforts to maintain the child’s relationships with those who are important to him or her and may make orders to ensure that these relationships are maintained. Welf & I C §366.22(a); Cal Rules of Ct 5.720(b)(3)(B)(iv). The standard of proof at an 18-month review hearing required for a finding that DSS offered or provided reasonable services is preponderance of the evidence. *Katie V. v Superior Court* (2005) 130 CA4th 586, 596–597, 30 CR3d 320.

Evidence of any of the following does not constitute a failure to offer or provide reasonable services (Welf & I C §366.22(a); Cal Rules of Ct 5.708(e)(2)):

- The child has been placed either with a foster family eligible to adopt or in a preadoptive home.
- The case plan includes services to make and finalize a permanent placement for the child if efforts to reunify fail.
- Services to make and finalize a permanent placement for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

The standard is not whether the services provided are the best possible services, but whether they were reasonable under the circumstances. *In re Julie M.* (1999) 69 CA4th 41, 48, 81 CR2d 354 (six-month review).

The court should also consider making findings and orders on whether reasonable concurrent planning efforts have been provided to achieve legal permanence for the child if efforts to reunify fail. See Welf & I C §§366.22(a), 16501.1(f)(10); see Cal Rules of Ct 5.708(e)(2)(B), (C).

d. [§103.48] Extension of Services

The period for reunification services may be extended to 24 months if, at the 18-month permanency review hearing, it is shown that there is a substantial probability that the child will be returned and safely maintained in the home within that time period. Welf & I C §366.22(b). The court may grant this extension only if it determines by clear and convincing evidence that the child's best interest would be met by providing additional reunification services to a parent who had been recently discharged from incarceration, institutionalization, or the custody of the United States Department of Homeland Security and who had been making significant and consistent progress in establishing a safe home for the child, or to one who had been making significant and consistent progress in a drug treatment program. Welf & I C §366.22(b).

A return to the custody of the parent or guardian during this period of extension of services will not interrupt the running of the period. Welf & I C §361.5(a)(4).

To find a substantial probability of return, the court must find all of the following (Welf & I C §366.22(b)):

- The parent or guardian has consistently and regularly contacted and visited with the child.
- The parent or guardian has made significant and consistent progress in the previous 18 months in resolving problems that led to removal.
- The parent or guardian is able to complete the substance abuse treatment plan or complete a treatment plan post discharge from incarceration, institutionalization, or detention, or following deportation to his or her country of origin and his or her return to the United States.

A determination that the case should be continued on Welf & I C §366.22(b) grounds is a compelling reason for determining that a .26 hearing would not be in the best interests of the child. But the court must inform the parent or guardian that if the child cannot be returned by the subsequent permanency review hearing, a .26 proceeding may be instituted. Welf & I C §366.22(b).

In addition, case law has permitted this extension of services beyond the 18-month limitation. One court has held that the extension must be supported by substantial evidence that is reasonable in nature, credible, and of solid value. *In re Brequia Y.* (1997) 57 CA4th 1060, 1068-1069, 67 CR2d 389. In making its determination, the court should consider (*Mark N. v Superior Court* (1998) 60 CA4th 996, 1017, 70 CR2d 603):

- The failure to offer or provide reasonable services,
- The likelihood of success of further reunification services,
- Whether the child's need for prompt resolution of the situation outweighs the benefit gained by providing further reunification services, and
- Any other relevant factors.

The failure to find a therapist who would have been accessible to the foster parent or other caregiver may render the services unreasonable when visitation and other essential components of the reunification plan depend on the child receiving therapy before beginning joint therapy with the parent. See *In re Alvin R.* (2003) 108 CA4th 962, 972-973, 134 CR2d 210. In fact, if an extension of services are sought and counseling or other treatment services have been ordered,

the parent or guardian must be ordered to participate in those services in order for the court to be able to make the necessary finding of substantial probability of return. Welf & I C §361.5(a)(4).

The remedy for failure to provide reasonable reunification services is to order continued services, even if it means extending services beyond the 18-month hearing. *In re Alvin R.*, *supra*, 108 CA4th at 975.

When a child has been detained, returned to parental custody, and removed again, the 18-month period for services starts running at the time of the original detention, rather than at the subsequent loss of custody on a Welf & I C §387 petition. *In re N.M.* (2003) 108 CA4th 845, 855, 134 CR2d 187 (no exceptional circumstances to justify extending services beyond 18 months). When there had been a previous dependency case, however, a parent may not be precluded from receiving reunification services even when he or she had previously received 18 months of services in a prior proceeding that resulted in successful reunification *Rosa S. v Superior Court* (2002) 100 CA4th 1181, 1188, 122 CR2d 866.

A court may terminate one parent's reunification services at the 12-month hearing, while extending the other parent's services until the 18-month hearing, without setting a .26 hearing. *In re Alanna A.* (2005) 135 CA4th 555, 566, 37 CR3d 579.

For discussion of the need to make "active efforts" in an ICWA case, see §§103.36 and 103.41.

e. [§103.49] Setting a .26 Hearing

If a .26 hearing is scheduled, the court must direct DSS to prepare an assessment under Welf & I C §366.22(c), order the termination of reunification services to the parent, and continue visitation unless to do so would be detrimental to the child. See Welf & I C §366.22(a); Cal Rules of Ct 5.708(l)–(o), 5.720(b)(3)(C). When the court terminates reunification services at the 18-month hearing, the child is entitled to a .26 hearing at that time, unless it is proven by clear and convincing evidence that the child is not a proper subject for adoption and that there are no potential guardians. *In re John F.* (1994) 27 CA4th 1365, 1374, 33 CR2d 225. Even if the court finds by clear and convincing evidence that the child is not likely to be adopted and there is no one willing to accept legal guardianship, it is not *required* to bypass a .26 hearing and may still order one. *Victoria S. v Superior Court* (2004) 118 CA4th 729, 733, 13 CR3d 237.

In contrast, a court errs in setting a .26 hearing after 18 months of reunification services when the parent has complied with all requests made by the DSS in the parent's service plan, other than to move out of the parent's residence, and the DSS has failed to tell the parent that moving out of that residence is a prerequisite to obtaining custody. *David B. v Superior Court* (2004) 123 CA4th 768, 772–773, 793, 20 CR3d 336.

As with the other review hearings, if a .26 hearing is set at this stage, the court must advise the parents of their right to challenge the decision by extraordinary writ. See Welf & I C §366.26(l)(3)(A); Cal Rules of Ct 5.590(b). The court must ensure that the clerk sends notice of the requirement for writ review to all absent parties. See Welf & I C §366.26(l)(3)(A); *In re Cathina W.* (1998) 68 CA4th 716, 721–724, 80 CR2d 480. See discussion in §103.56.

4. [§103.50] Subsequent 24-Month Permanency Review Hearings

At the subsequent 24-month hearing, after considering the relevant and admissible evidence, the court must order the child to be returned home unless it finds by a preponderance of the evidence that a return home would create a substantial risk of detriment as established by DSS. Welf & I C §366.25(a)(1); Cal Rules of Ct 5.708(d)(1), 5.722(b)(1). At this hearing, the

court must consider the parent or guardian's criminal history after removal (see Welf & I C §16504.5(f)(1)) insofar as this history is related to the child's welfare or the parent or guardian's ability to assume custody. Welf & I C §366.25(a)(1); Cal Rules of Ct 5.708(d)(4).

If this hearing is the last one before the child turns 18, see the discussion in §103.12 for requirements concerning contents of the transitional plan and advisements required by Welf & I C §366(a)(1)(F).

In determining whether or not to order the child to return home, the court must consider the social worker's report and that of any CASA, as well as the parent's progress and the extent to which the parent made use of services. Welf & I C §366.25(a)(1); Cal Rules of Ct 5.708(c). The court must specify the factual basis for its decision whatever its decision is, but if the child is not returned home, the court must specify why return would be detrimental and state for the record all the options for permanent placement. Welf & I C §366.25(a)(2); Cal Rules of Ct 5.708(d), 5.722(b)(2). If the child had been placed out of state, the court must determine whether such placement continues to be appropriate and in the best interests of the child. Welf & I C §366.25(a)(2); Cal Rules of Ct 5.708(h).

The court must set a .26 hearing to be held within 120 days if the child is not returned home at this subsequent permanency review hearing unless it determines that such a hearing is not in the best interests of the child because the child is not a proper subject for adoption or, in the case of an Indian child, for tribal customary adoption (see Welf & I C §366.24), and there is no one willing to accept legal guardianship. Welf & I C §366.25(a)(3); Cal Rules of Ct 5.722(b)(2). In setting a .26 hearing, the court must direct the local or State DSS or the county adoption agency to prepare an assessment. Welf & I C §366.25(b)(1); Cal Rules of Ct 5.708(n)(4). In the case of an Indian child, this assessment must include the issue of whether a tribal customary adoption is recommended and if so, whether it would be detrimental to the child and whether the Indian child cannot or should not be returned to the home of the Indian parent or custodian. Welf & I C §366.25(b)(1)(G).

The court may not order a .26 hearing, however, for a nonminor dependent. Welf & I C §366.25(a)(3). If the nonminor dependent is in a planned permanent living arrangement, the court may order that the arrangement be continued if the child is otherwise eligible under Welf & I C §11403. Welf & I C §366.25(a)(3).

When ordering that a child who is 10 years of age or older remain in foster care, the court must make orders to facilitate the maintenance of relationships between the child and people who are important in the child's life, consistent with the child's best interest. Welf & I C §366.25(a)(3); Cal Rules of Ct 5.708(i)(2), 5.722(b)(2)(A)(iv).

In determining whether reasonable services were offered or provided, the following facts should not, in and of themselves, be considered a failure to offer or provide services (Welf & I C §366.25(b)(1); Cal Rules of Ct 5.708(e)(2)):

- The child has been placed with a foster family eligible to adopt or has been placed in a preadoptive home.
- The case plan includes services to make and finalize a permanent plan for the child if efforts to reunify fail.
- Services to make and finalize a permanent plan for the child, if efforts to reunify fail, are provided concurrently with services to reunify the family.

A relative caregiver must be given information regarding adoption and guardianship options, including long-term benefits and the consequences of each option. Welf & I C §366.25(b)(2)(B). If a relative caregiver prefers legal guardianship over adoption for reasons that do not include unwillingness to assume legal or financial responsibility, the court must not remove the child from that caretaker solely in order to facilitate adoption. Welf & I C §366.25(b)(2)(A). The child who is placed with a relative caregiver who serves as the child's legal guardian may be entitled to federal assistance under the kin-GAP program. See Welf & I C §360(a).

As with earlier hearings, in the case of an Indian child, the court must determine whether DSS has consulted the tribe about tribal customary adoption, whether the tribe concurs with this proposed plan, and whether this type of adoption would be an appropriate permanent plan for the child. Cal Rules of Ct 5.722(b)(3).

5. Postpermanency Planning Review Hearings

a. [§103.51] When Postpermanency Hearings Are Held

Once a permanent plan (adoption, tribal customary adoption, guardianship, or foster care) has been selected for a child or nonminor dependent, periodic reviews of the child's case must continue to be held every six months. Welf & I C §366.3(a), (d); Cal Rules of Ct 5.740(a)–(b). Hearings may be conducted earlier than every six months if the court determines that an earlier review would be in the best interests of the child. Welf & I C §366.3(k). Although the review may be conducted by either the juvenile court or by an appropriate local administrative panel, the court *must* conduct the review under any of the following circumstances (Welf & I C §366.3(d)):

- Parental rights have been terminated and the child is awaiting adoption;
- The child, nonminor dependent, parents, or guardian have requested a court hearing;
- 12 months have elapsed since a .26 hearing has been held;
- 12 months have elapsed since an order was made that the child remain in foster care under Welf & I C §366.21, §366.22, §366.25, §366.26, or §366.3(g) (see Welf & I C §366.21(g)(3)); or
- 12 months have elapsed since a review was conducted by the court.

If a postpermanency hearing is the last one before the child turns 18, see the discussion in §103.12 for requirements concerning contents of the transitional plan and advisements required by Welf & I C §366(a)(1)(F). A postpermanency hearing for a nonminor dependent must be conducted under Welf & I C §§366.3 and 16503 until dependency jurisdiction is terminated under Welf & I C §391. Welf & I C §366(f). The review should respect the nonminor dependent's status as a legal adult and must be focused on the goals and services set out in the transitional case plan, Welf & I C §366(f).

Rarely, if ever, are court hearings replaced by administrative reviews and most judges recommend against such a practice. A parent is not entitled to a *judicial* review hearing under Welf & I C §366.3(d), unless he or she requests it. *In re Dakota H.* (2005) 132 CA4th 212, 226, 33 CR3d 337. Nevertheless, a *court* must hold a hearing to review the permanent plan at least every 12 months. Welf & I C §366.3(d).

b. [§103.52] Determinations

At this hearing, the court must inquire into the progress being made to provide a permanent home and must consider the child's safety and determine (Welf & I C §366.3(e)):

- The continuing necessity for and appropriateness of the child's placement.
- Identification of individuals, other than siblings, who are important to a child who is 10 years of age or older and who is in out-of-home placement for six months or longer, and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child.
- The continuing appropriateness of and extent of compliance with the permanent plan, including efforts to maintain relationships with those people who are important to the child (when the child is 10 years of age or older and is in out-of-home placement for six months or longer) and efforts to identify a prospective adoptive parent or legal guardian.
- The extent of DSS compliance with the case plan either in making reasonable efforts to return the child to a safe home or to complete plans for permanent placement (the reviewing body may determine that a second period of reunification services is in the best interests of the child).
- Whether there should be limitations on the right of the parent or guardian to make educational or developmental services decisions for the child;
- The adequacy of services provided, including the progress in providing documents, information, and services for a child who has reached the age of majority (see Welf & I C §391).

➤ **JUDICIAL TIP:** If the child has reached the age of majority, DSS may or may not choose to seek termination of jurisdiction. The circumstances under which the court may deny a request to terminate jurisdiction are set out in Welf & I C §391(c)–(e)). At least ten calendar days before the hearing, DSS must file form JV-356 (Termination of Dependency Jurisdiction (Child Attaining Age of Majority)) and provide copies to the child, the parent or guardian, all counsel, and any CASA volunteer. Cal Rules of Ct 5.740(d).

- The parents' progress toward alleviating the causes that required foster care.
- The likely date by which the child may be safely returned to and maintained in the home, placed for adoption or in some other permanent living situation or, in the case of an Indian child in consultation with the child's tribe, placed for tribal customary adoption.
- Whether the child has siblings under jurisdiction and, if so:
 - The nature of the relationship with the siblings;
 - The appropriateness of developing and maintaining sibling relationships;
 - If siblings are not placed together, the reason for that placement, and efforts, if any, to correct it;
 - Frequency and nature of sibling visitation; and
 - Impact of sibling relationship on placement and permanent planning.

- The services needed to assist a child who is 16 years of age or older or a nonminor dependent to make the transition from foster care to independent living (see Welf & I C §366.21(f)).

➤ JUDICIAL TIP: In some counties, work toward independent living begins when children are 14 years of age.

At the postpermanency planning hearing, the court may terminate jurisdiction over a dependent who has been in the home of a relative guardian for six months. Welf & I C §366.3(a). When the court is asked to terminate a guardianship at a postpermanency hearing, it must base its determination on the best interests of the child, rather than on the presumption in favor of return as would be the case in the earlier review hearings. *In re Jacob P.* (2007) 157 CA4th 819, 829, 831, 68 CR3d 817. And it is the court, not DSS, that has ultimate responsibility for determining issues regarding reunification services under Welf & I C §366.3(b) when appointing a new guardian; the court must order reunification services after considering the DSS report only if it determines that the services are necessary and that keeping the child in the guardian's home is in the child's best interest. *In re Z.C.* (2009) 178 CA4th 1271, 1280–1281, 101 CR3d 49. Proceedings to terminate a guardianship must be held either in the court having jurisdiction over the guardianship under Welf & I C §366.4 or the court in which the child and guardian reside. Welf & I C §366.3(b).

c. [§103.53] Possible Orders

If parental rights have been terminated and the child has been ordered placed for adoption, the court must make appropriate orders to protect the child's stability and promote permanent placement and adoption after reviewing a report from DSS that covers the child's current physical, emotional, educational, and mental status, as well as the current placement, progress toward adoption including efforts to identify adoptive parents, and extent that the final adoption order should include provisions for postadoptive sibling contact under Welf & I C §366.29. Welf & I C §366.3(g). If the court makes an order retaining or changing the placement, the order may not be appealed unless the writ petition was filed in a timely manner, it substantively addressed the issues to be challenged on appeal, and the appellate court summarily denied the petition or otherwise failed to decide the case on the merits. Welf & I C §366.28(b). Unless the child is placed with a guardian or prospective adoptive parents, the report must also identify people who are important to the child and actions needed to maintain those relationships. Welf & I C §366.3(g)(3).

The court may not set a .26 hearing for a nonminor dependent, unless the nonminor dependent is an Indian child and tribal customary adoption is recommended as the permanent plan. The court may order that a nonminor dependent who is otherwise eligible under Welf & I C §11403 remain in a permanent living arrangement. Welf & I C §366.3(h), (i). If this hearing is the last one before the child turns 18, see the discussion in §103.12 for requirements concerning contents of the transitional plan and advisements required by Welf & I C §366(a)(1)(F).

At the request of the nonminor dependent who has an established relationship with an adult, determined to be the nonminor dependent's permanent connection, the court may order adoption of the nonminor dependent under Welf & I C §366.31(f). Welf & I C §366.3(i).

➤ JUDICIAL TIP: The court must evaluate whether adult adoption is available at every six month review. Nonminor dependent adoptions are eligible for AAP (Adoption Assistance Program) funding.

At the review held for a child in foster care and for whom 12 months have elapsed since the hearing took place in which the child was ordered into long-term foster care, the court must consider all permanency options, including the following (Welf & I C §366.3(h)):

- Returning the child home,
- Placing the child for adoption, including, in the case of an Indian child, a tribal customary adoption,
- Establishing a legal guardianship, or
- Placing the child in another planned permanent living arrangement if there are compelling reasons for finding that none of the options above is in the child's best interests.
- If the child is in a planned permanent living arrangement, the court must set a .26 hearing at this review hearing unless it finds by clear and convincing evidence that holding such a hearing is not in the best interest of the child. Welf & I C §366.3(h).

➤ **JUDICIAL TIP:** To comply with the specificity required by federal law (which will aid in later reviewing the placement—see §103.10), the court should enter a placement order, identifying the placement by name and providing the goal of the placement, without calling it “long-term foster care” or a “planned permanent living arrangement.”

If it is unlikely that the child will be adopted or that one of the conditions in Welf & I C §366.26(c)(1)(A) or (B) applies, this constitutes a compelling reason not to order a new .26 hearing. See Welf & I C §366.3(h). Under Welf & I C §366.26(c)(1)(A), the court must consider whether the child is living with a relative who is providing a stable home for the child and is willing to accept legal guardianship but who cannot or will not adopt, but not because that relative is unwilling to accept legal or financial responsibility. The conditions set out in Welf & I C §366.26(c)(1)(B) are that:

- The parent or guardian has maintained regular visitation and contact;
- The child is 12 years of age or older and objects to termination;
- The child is in residential treatment, adoption is unlikely or undesirable, and continuation of parental rights will not affect finding a permanent placement if parents are not able to resume custody;
- The child is living with a foster parent or Indian custodian who is not able or willing to adopt the child, but who is providing a stable home, and removal from the placement would be emotionally detrimental to the child. This exception does not apply to a child under six years of age living with a nonrelative or to a child who is part of a sibling group that should stay together and when at least one child is under six years of age;
- There would be substantial interference with the relationship between the child and his or her siblings; or
- The child is an Indian child and there is a compelling reason that termination of parental rights would not be in his or her best interest, including that (1) termination of parental rights would substantially interfere with the child's connection with the tribal community, or (2) the tribe has identified tribal customary adoption or some other planned permanent living arrangement for the child, such as guardianship.

If the court orders a .26 hearing at this postpermanency planning review hearing, it must order an assessment by local or state DSS or the adoption agency supervising the child and hold the hearing within 120 days of the 12-month hearing. Welf & I C §366.3(i).

For required findings and orders for the postpermanency planning hearing, see the checklist in §103.8 and forms JV-445 and JV-446. For required findings concerning the case plan and the child’s education, see Appendix V, Case Plan and Educational Findings and Orders—Dependency.

d. [§103.54] Holding a Contested Hearing

The court must grant a contested postpermanency planning status hearing under Welf & I C §366.3(e) to a parent of a child who is in long-term foster care and for whom DSS is recommending a reduction in visitation. *In re Kelly D.* (2000) 82 CA4th 433, 439–440, 98 CR2d 188. A parent who objects to the social worker’s report and requests an evidentiary hearing is thereby entitled to a contested postpermanency planning review, despite the fact that he or she did not tender a formal offer of proof. *In re Josiah S.* (2002) 102 CA4th 403, 417–418, 125 CR2d 413.

In a hearing held under Welf & I C §366.26(n) to remove a child from his or her caretakers (who are also prospective adoptive parents) following termination of parental rights, the court must permit these caretakers to fully participate in the hearing. *Wayne F. v Superior Court* (2006) 145 CA4th 1331, 1342–1343, 52 CR3d 519. The court must also notify a parent under Welf & I C §366.3(f) when modifying a previously established guardianship. *In re R.N.* (2009) 178 CA4th 557, 566, 100 CR3d 524.

The nature and substance of postpermanency planning review hearings, the manner of conducting them, and the findings and orders the court is required to make at such hearings are set out in Cal Rules of Ct 5.740 and in the checklist in §103.8.

6. [§103.55] Nonminor Dependent

Dependency jurisdiction is not automatically terminated for a child who turns 18. Welf & I C §§224.1(b) (Indian child), 303, 366, 366.31, 391. At review hearings, the court may dismiss or continue jurisdiction over a nonminor dependent who has a plan of long-term foster care that had been ordered at a review hearing. Welf & I C §366.32(a); see also Welf & I C §366.31(d) (continuing jurisdiction when plan includes family reunification services). The court may not terminate dependency jurisdiction over a nonminor dependent, however, without holding a hearing conducted according to Welf & I C §391. Welf & I C §391(a), (e); *In re Nadia G.* (2013) 216 CA4th 1110, 1118–1119, 1122, 157 CR3d 400. See discussion in §103.65. For the definition of a “nonminor dependent,” see CALIFORNIA JUDGES BENCHGUIDE 100: *JUVENILE DEPENDENCY INITIAL OR DETENTION HEARING* §100.18 (CAL CJER). For discussion of continuing jurisdiction over a nonminor dependent whose case plan includes family reunification services, see CALIFORNIA JUDGES BENCHGUIDE 102: *JUVENILE DEPENDENCY DISPOSITION HEARING* §102.64 (CAL CJER).

If the court continues jurisdiction, the court must order the development of a planned permanent living arrangement under a mutual agreement with DSS (see Welf & I C §11403(d)) or in supervised independent living consistent with the transitional plan. Welf & I C §366.32(b).

If the court terminates dependency jurisdiction, the nonminor must remain under the court’s jurisdiction until the age of 21. Welf & I C §§303(b), (c), 391(c), (d). During this time, the nonminor may petition the court to resume dependency jurisdiction under Welf & I C §388(e).

Welf & I C §§303(c), 366.32(c); see §103.6. See Judicial Council form JV-462, Findings and Orders After Nonminor Dependent Status Review Hearing.

Although a nonminor dependent generally has all the legal rights of anyone over 18 years of age (Welf & I C §§303(d), (e)), DSS has the same responsibilities toward that person as it has to other children and families (Welf & I C §303(e)).

7. [§103.56] Setting the Selection and Implementation (.26) Hearing

Except at a postpermanency planning review hearing, when the court orders that a hearing under Welf & I C §366.26 be held, it must order termination of reunification services to the parents or guardians and direct DSS to prepare an assessment. Welf & I C §§366.21(h), 366.22(a), (c); Cal Rules of Ct 5.708(n). The court must also continue to permit the parent to visit the child pending the hearing unless it finds that visitation would be detrimental to the child (Welf & I C §366.21(h)–(i)), but terms of the visitation may be modified from previous levels to fit the current situation. Unless there are exceptional circumstances that justify ordering long-term foster care, the child *must* receive a .26 hearing. *In re John F.* (1994) 27 CA4th 1365, 1374, 33 CR2d 225. When the court knows that more permanent options are not foreclosed, it does not have discretion to maintain the child in the uncertainty of foster care and deny the .26 hearing. 27 CA4th at 1377

In determining whether to grant visitation to the parents when setting a .26 hearing at a review hearing (see Welf & I C §§366(a)(1), 366.21(h), 366.22(a)), the court must use a “preponderance of the evidence” standard of proof. *In re Manolito L.* (2001) 90 CA4th 753, 761–762, 109 CR2d 282.

The court may not set a .26 hearing to consider the termination of parental rights of only one parent unless that parent is the sole surviving parent, the rights of the other parent have already been terminated, or the other parent has relinquished custody. Cal Rules of Ct 5.708(l).

Notice requirements for .26 hearings are set out in Welf & I C §294. This statute sets out detailed rules for notification even when the identity and the whereabouts of the parent are unknown. See Welf & I C §294(f)(7), (g). For an extensive discussion, see CALIFORNIA JUDGES BENCHGUIDE 104: *DEPENDENCY SELECTION AND IMPLEMENTATION HEARING*, §§104.20–104.28 (CAL CJER).

When ordering a .26 hearing, the court must order that no notice of the hearing be given to a parent who has relinquished the child for adoption or a father who has denied paternity by completing and submitting Judicial Council form JV-505, Statement Regarding Paternity. See Welf & I C §294(b); Cal Rules of Ct 5.708(n)(5)(B).

a. [§103.57] Advisements

In setting a .26 hearing, the court must advise the parents of the time and place of the proceedings, the right to counsel, the nature of the proceedings, the DSS recommendation, and the fact that the court will select and implement a permanent plan of adoption, legal guardianship, or foster care. Welf & I C §294(e). The court must advise the parents at that time that they may challenge this order with an application for extraordinary writ. See Welf & I C §366.26(l)(3)(A); Cal Rules of Ct 5.590(b). The court must ensure that the clerk sends notice of the requirement for writ review to all absent parties. See Welf & I C §366.26(l)(3)(A); *In re Cathina W.* (1998) 68 CA4th 716, 721–724, 80 CR2d 480. However, the court must order that no notice of the hearing be provided to a parent who has relinquished the child for adoption when

the relinquishment has been accepted and filed with notice under Fam C §8700 (Welf & I C §294(b)(1)), nor to a parent whose rights have been terminated or to an alleged father who has denied paternity and has executed a waiver of the right to notice of further proceedings (Welf & I C §294(b)(2), (3)).

Many courts will also advise the parents that if changed circumstances arise, they may file a petition for modification under Welf & I C §388.

b. [§103.58] Petition for Modification

The filing of a Welf & I C §388 petition may suspend or halt the process of moving toward a permanent plan. Once a court grants a Welf & I C §388 petition showing changed circumstances, including the possibility that the parent *would* be able to care for the child, it must not then proceed to a .26 hearing and terminate parental rights. *In re Sean E.* (1992) 3 CA4th 1594, 1599, 5 CR2d 193. It may be a denial of due process to proceed to a .26 hearing without holding a new Welf & I C §388 hearing when there is a showing of changed circumstances. *In re Hashem H.* (1996) 45 CA4th 1791, 1801, 53 CR2d 294. When a parent makes a showing of being able to reunify with the child, it may be a denial of due process for a court to deny a petition for modification without a full hearing, even when the process is so far along as to be past the 12-month permanency hearing at which services were terminated. *In re Jeremy W.* (1992) 3 CA4th 1407, 1416, 5 CR2d 148.

- JUDICIAL TIP: If a Welf & I C §388 petition is filed after a .26 hearing is set, the court may consolidate the Welf & I C §388 hearing with the .26 hearing as long as the petition is decided first. See *In re Jeremy W.*, *supra*, 3 CA4th at 1416 n14. However, if the hearings are consolidated, the court should ensure that there is a clear record of separate findings and orders in case there is an appeal.

When an order denying a parent's petition for modification under Welf & I C §388 is integrally related to the order setting the .26 hearing, the parent must seek review of that order by extraordinary writ rather than by appeal. *In re Charmice G.* (1998) 66 CA4th 659, 671, 78 CR2d 212.

c. [§103.59] Delay in Setting .26 Hearing

A court might be required to delay the setting of a .26 hearing if the parents can show that reunification services could not have been completed during the time allotted. See *In re Michael R.* (1992) 5 CA4th 687, 695, 7 CR2d 139 (.26 hearing was set at 12 months and mother filed a motion for continuance under Welf & I C §352 so that she could complete a drug rehabilitation program and then presumably file a petition for modification).

- JUDICIAL TIP: The court should not grant a continuance if the parent has deliberately delayed entry into a court-ordered program or is responsible in any significant way for the delay in completion of services.

The court must not just summarily deny the motion for the continuance without exercising its discretion in the process. *In re Michael R.*, *supra*. One court has held that Welf & I C §352 provides an emergency escape in those rare instances in which the court determines that the best interest of the child would be served by continuing the 18-month hearing. *In re Elizabeth R.* (1995) 35 CA4th 1774, 1798–1799, 42 CR2d 200; but see *Los Angeles County Dep't of Children & Family Servs. v Superior Court* (1997) 60 CA4th 1088, 1091–1093, 70 CR2d 658 (extending

services beyond 18-month date found to be an abuse of discretion and beyond court's jurisdiction). See discussion in §103.48.

When DSS delays in preparing assessments of children who are not proper subjects for adoption by the public at large but only by a particular family because assessment of that family is time-consuming, the failure to hold a .26 hearing thwarts the goal of the dependency system, *i.e.*, for prompt resolution of custody status and a stable home environment. *In re John F.* (1994) 27 CA4th 1365, 1377, 33 CR2d 225. Even if the home study is not completed by the .26 hearing, the child need not necessarily be removed from foster caretakers who have not yet been approved for adoption. 27 CA4th at 1378. If the study is not completed within the 120-day period, other options include a continuance under Welf & I C §352, relative placement under Welf & I C §366.26(k), or guardianship. 27 CA4th at 1379.

7. [§103.60] Placement

If the child had been removed from parental custody at disposition, 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(b); *In re Robert A.* (1992) 4 CA4th 174, 189, 5 CR2d 438. 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. Once the child is freed, the child is placed with DSS for adoptive placement, and unless DSS's placement decision is patently absurd or unquestionably not in the child's best interests, the court may not interfere with the placement. *Los Angeles County Dep't of Children & Family Servs. v Superior Court* (1998) 62 CA4th 1, 9-12, 72 CR2d 369; *Department of Social Servs. v Superior Court* (1997) 58 CA4th 721, 734, 68 CR2d 239.

At a review hearing, the child may be returned home, placed with the noncustodial parent, or changed from one out-of-home placement to another, including placement with a nonrelative extended family member (see Welf & I C §362.7). At any review hearing, DSS may consider placement with a relative who had not been found to be unsuitable and who will fulfill the requirements of the reunification or permanent plan. Welf & I C §361.3(d). In making a decision to place the child 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, relative's, and child's wishes. Welf & I C §361.3(a)(2).
- Provisions of Fam C §§7950-7952 with respect 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 and any other adult living in the home. Welf & I C §361.3(a)(5).
- Nature and duration of the relationship between the child and the relative. Welf & I C §361.3(a)(6).
- Desire of the relative to care for the child and to provide legal permanency for the child if reunification is unsuccessful. Welf & I C §361.3(a)(6).

- Whether the relative can
 - Provide a safe, secure, and 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 all elements of the case plan;
 - Provide legal permanence for the child if reunification fails; and
 - Arrange for appropriate and safe child care. Welf & I C §361.3(a)(7).
- The safety of the relative’s home. Welf & I C §361.3(a)(8).
- Whether the relative has established and maintained a relationship with the child. Welf & I C §361.3(d).

When placement with a relative has been considered and denied, the court must state reasons on the record for this denial. Welf & I C §361.3(e).

The requirement that a court give preferential consideration to a relative when making a placement decision under Welf & I C §361.3(a) applies even after the dispositional phase is completed; nothing in Welf & I C §361.3(d) limits this requirement. *In re Joseph T., Jr.* (2008) 163 CA4th 787, 793–795, 77 CR3d 806. The relative placement preference of Welf & I C §361.3 also applies when a new placement becomes necessary after reunification services are terminated but before parental rights are terminated. *Cesar V. v Superior Court* (2001) 91 CA4th 1023, 1032, 111 CR2d 243.

Nevertheless, this preferential consideration that applies in the early stages of a proceeding may recede over time. See *In re Daniel D.* (1994) 24 CA4th 1823, 1834, 30 CR2d 245. A court may reasonably conclude that once a child is stabilized in foster care, it is in the child’s best interests to continue in that placement rather than to place the child in a relative placement that could subject the child to future instability. 24 CA4th at 1835.

The court may place the child with a noncustodial parent at a review hearing, or, if the placement had previously been with the noncustodial parent under court supervision, the court may terminate supervision and transfer custody permanently to the previously noncustodial parent as provided in Welf & I C §361.2(a), (b)(1). See Welf & I C §366.21(e); Cal Rules of Ct 5.710(b)(2), 5.708(k) (six-month hearing). When a child is removed and then placed with one parent during the reunification period, the court must use Welf & I C §364, rather than Welf & I C §366.21, in determining whether reunification services to the other parent are to be terminated. *In re Gabriel L.* (2009) 172 CA4th 644, 650–651, 91 CR3d 193. The court’s discretion to order services is the same when the child is placed with the noncustodial parent as it is when the child is removed from both parents during the reunification period and then returned to one of them. *In re Gabriel L., supra*, 172 CA4th at 651.

If the placement is out of state, the court must consider whether this placement continues to be the most appropriate and in the child’s best interest. Cal Rules of Ct 5.708(h). When the child had been placed with the previously noncustodial parent under Welf & I C §361.2(b) and both parents had been provided services, the custody decision at the 12- or 18-month hearing must be based on the best interests of the child. *In re Nicholas H.* (2003) 112 CA4th 251, 268, 5 CR3d

261. Thus, the child may remain with the noncustodial parent even if the court finds that the child may safely be returned to the previously custodial parent. *In re Nicholas H.*, *supra*. However, Welf & I C §361.2 is not applicable to a biological but not presumed father and, in any case, is applicable only when the child is first removed from the custodial parent's home. *In re Zacharia D.* (1993) 6 C4th 435, 453–454, 24 CR2d 751 (biological father waited until 18-month hearing to assert his status as a father).

Sometimes, however, an alleged father may be a potentially valuable resource for the child if he can establish his paternity. Judicial Council form JV-505 may be used to bring the issue to the court's attention. If the court declares the alleged father to be the biological father, Judicial Council form JV-501 must be completed and signed, with a copy forwarded to the district attorney. When the court places the child with a biological father, the father may subsequently become a presumed father by virtue of that placement. See *In re Zacharia D.*, *supra*, 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). Moreover, when an unwed father comes forward as soon as he learns of the baby's existence (even if it is some months into the dependency process) and demonstrates a full commitment to financial, emotional, and other kinds of support, he is entitled to presumed father status and must be permitted to take a paternity test. *In re Baby Boy V.* (2006) 140 CA4th 1108, 1117–1118, 45 CR3d 198.

Only a presumed father (see Fam C §§7600–7614) is entitled to custody of his child. See Welf & I C §361.2. However, the court may place a child with a biological father after considering the child's best interests and that placement will, in effect, change the status of the father to that of a presumed father. See *In re Zacharia D.*, *supra*, 6 C4th at 449 (once the biological father receives the child into his home and holds the child out as his own, he may become the child's presumed father).

When the child is an Indian child, the court may deviate from the ICWA preference standards of Welf & I C §361.31 and Cal Rules of Ct 5.484(b) if placing the child with a non-Indian member of his or her extended family. *In re Liliana S.* (2004) 115 CA4th 585, 590, 10 CR3d 553.

8. [§103.61] The Decision-Making Process: Assessing Progress Toward Reunification

In determining whether to return the child home, the court must review the report of the social worker and the report and recommendations of any CASA, and consider the following factors (Welf & I C §§366.21(e)–(f), 366.22(a)):

- The efforts and progress of the parents towards reunification.
- Whether reasonable services were offered or provided to the parents. Welf & I C §366.21(e); Cal Rules of Ct 5.708(d)(3), (e) (review hearings generally), 5.710(b)(1) (six-month review hearing); Welf & I C §366.21(f); Cal Rules of Ct 5.715(b)(1), (2) (12-month permanency hearing); Welf & I C §366.22(a); Cal Rules of Ct 5.720(b)(1) (18-month permanency review hearing).

The following factors should not, in and of themselves, be considered a failure to provide or offer reasonable services (Welf & I C §§366.21(l) (six-month review), 366.21(f) (12-month permanency review), 366.22(a)(1)–(3) (18-month review)):

- Evidence that the child has been placed in a preadoptive home or in a foster home that is eligible to adopt,
- Evidence that the case plan includes services to make and finalize a permanent placement with the foster/preadoptive home, or
- The fact that services to make and finalize a permanent plan are being offered concurrently with reunification services.

It is important for a judicial officer to evaluate the parents' *progress* in the utilization of reunification services, not just their participation. See *Welf & I C §366.21(e)-(f)*; *In re Dustin R.* (1997) 54 CA4th 1131, 1142-1143, 63 CR2d 269 (simply complying with the plan by attending counseling sessions and participating in visitation is not sufficient if parents gain only a limited awareness of their children's physical and emotional needs). For example, a court may not penalize a parent who had complied with all reunification efforts except one that DSS had never mentioned. See *David B. v Superior Court* (2004) 123 CA4th 768, 772-773, 793, 20 CR3d 336. Similarly, a court may not terminate reunification services because of a parent's failed drug test caused by a single ingestion of a prescription painkiller for a headache. *Rita L. v Superior Court* (2005) 128 CA4th 495, 505-506, 27 CR3d 157.

Judicial officers sometimes require the social worker or even a counselor to evaluate actual progress (as long as the counselor does not breach confidentiality) and may require a report from service providers on the effectiveness of the particular program for the parent. Some judicial officers require the parent to demonstrate the learned behavior to the social worker or to respond to a hypothetical situation designed to showcase the learning that should have occurred. In some counties, parents are graded in parenting classes.

Parenting programs vary. When the program is presented in a lecture format, the completion certificate may be little more than an attendance certificate; other parenting programs may require the parent to play an active role and may issue a completion certificate only if it is determined that the parent actually learned something. Judges should encourage their local DSS to distinguish among types of programs and utilize those that are more meaningful.

Judicial officers should make sure that social workers and attorneys are providing them with needed information concerning the parents' progress and that they are able to evaluate that information. Some judges meet with representatives from their local DSS to encourage them to provide the court with detailed information as to what particular programs actually require and to encourage social workers to talk to parenting class instructors regarding the level and quality of the parent's participation.

Although attendance at Alcoholics or Narcotics Anonymous is a positive step for alcohol and drug abusers, neither attendance nor abstinence means that the person is actually in recovery. Judicial officers should encourage the social worker to question the parents about their progress in substance abuse programs within the limits of confidentiality that may be an integral part of the program. Generally, parents will agree to release information regarding their participation in 12-step programs.

If the parent has a sponsor who has accepted the sponsorship knowing that he or she may be questioned for information relating to a dependency proceeding and is willing to talk, the social worker may be encouraged to talk with the sponsor regarding the parents' progress and sincerity. This investigation into the progress parents are making in their recovery may reveal a great deal about whether they pose a continuing danger to their children.

The question of whether it would be detrimental to return a child to the custody of the parents involves a balancing of the evidence. Social workers carry out this process through what they call “risk assessment.” Many either consciously or subconsciously perform this task under one of a number of risk assessment models. See Doueck, English, DePanfilis & Moote, *Decision-Making in Child Protective Services: A Comparison of Selected Risk-Assessment Systems*, Vol. LXXII, No. 5 Child Welfare 441 (1993). While the validity of such models has been questioned (see Wald & Woolverton, *Risk Assessment: The Emperor’s New Clothes?* Vol. LXIX, No. 6 Child Welfare 483, 485–486 (1990)), these models can be valuable tools for the social worker when combined with professional skill and judgment (see *Resource Handbook, California Risk Assessment Curriculum for Child Welfare Services*, The Child Welfare Training Project, p 10 (Cal State Univ—Fresno, 1991) (cited here as Resource Handbook).

The judicial officer may benefit from having some knowledge of the risk assessment process used by the county DSS. A primary difference between the social worker’s risk assessment and the judicial officer’s determination of detriment in returning the child to parental custody is that the social worker can conduct the investigation for additional information and form an expert opinion regarding the level of risk, while the court can consider, evaluate, and weigh only the evidence presented to it. Whether it is called risk assessment or a judicial determination of detriment, however, the decision-making process in this regard is essentially a balancing process.

As noted in the Resource Handbook at p 24,

Assessment of risk is an evaluation of a constellation of child, caretaker and family factors that serve to identify the level of risk in a family. . . . It is important that all documented assessments be based on factual behaviors, statements or professional opinions that can be substantiated by case documentation or contact with collateral sources. . . . To arrive at an overall assessment of risk, there must be:

- A review of the most critical areas of risk;
- An examination of family strengths, and a weighing of their interaction with critical risk factors; and then
- A consideration of available service resources.

In deciding whether it would be detrimental to return the child, a psychological evaluation may serve as credible evidence to sustain a finding of detriment if it is reasonably specific and objective. *Blanca P. v Superior Court* (1996) 45 CA4th 1738, 1750, 53 CR2d 687. Indeed, the California Supreme Court has noted that, without evidence from psychologists, in many cases the juvenile court might be forced to make arbitrary decisions. *In re Jasmon O.* (1994) 8 C4th 398, 430, 33 CR2d 85.

The judicial officer must evaluate the evidence for substantial risk of detriment very carefully. Findings that (1) a parent left young children alone in a motel room while she went to work, on a single occasion and (2) 10 percent of drug tests were missed, diluted, or positive were insufficient for a finding of a substantial risk of detriment in a case in which the drug use did not seem to affect the mother’s parenting skills, nor did the mother ever seem to be under the influence of drugs. *Jennifer A. v Superior Court* (2004) 117 CA4th 1322, 1346, 12 CR3d 572.

D. [§103.62] Service of Findings and Orders

Written findings and orders must be personally served by the clerk or served by first class mail within three judicial days of their issuance on the petitioning agency, the child or child's counsel, and the parent or guardian or parent's or guardian's counsel. Welf & I C §248.5. In some counties, attorneys who appear regularly in juvenile court agree to accept service on behalf of the client in a separate mailbox located in the clerk's office.

E. [§103.63] Continuances

A continuance may be granted on request of counsel for the parent, child, or petitioning agency if it would not be contrary to the child's best interests. Welf & I C §352. 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).

A grant of a continuance must be based on good cause, which is *not* shown by (Welf & I C §352(a)):

- Stipulation between counsel,
- Convenience of parties,
- A pending criminal prosecution, or
- A pending family law case.

The failure of an alleged father to return a certified mail receipt is not necessarily good cause to continue a review hearing. See Welf & I C §316.2(c).

To request a continuance, written notice must be filed at least two court days before the date set for hearing. Welf & I C §352(a). 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).

In any case, the continuance should last only for the period of time shown necessary by the evidence. Welf & I C §352(a). See also *In re Emily L.* (1989) 212 CA3d 734, 742–743, 260 CR 810 (pauses in the proceedings prolong the uncertainty for the child and make it more difficult for prospective adoptive parents to make a commitment to the child); *In re Edward C.* (1981) 126 CA3d 193, 207, 178 CR 694 (court has discretion to deny a request for a continuance to deal with a new factual allegation in the petition when the parents had been told of the basic allegations a few weeks before hearing).

If the court has determined that the child was not properly notified of the right to attend the hearing or given an opportunity to attend, the court may grant a continuance if the child is 10 years of age or older and is not present. See Welf & I C §349(d); Cal Rules of Ct 5.534(p)(2). In such an instance, 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).

It is not an abuse of discretion to deny a request for a stay under the Servicemembers Civil Relief Act (SCRA) (50 App USC §§501–596) because of the parent's service in the military, if the parent's military service does not adversely affect his or her participation in the dependency proceeding generally, and does not adversely affect his or her ability to reunify with the child specifically, especially when the parent has essentially received reunification services for the entire period required by law. *George P. v Superior Court* (2005) 127 CA4th 216, 225–226, 24 CR3d 919.

F. [§103.64] Rehearing of Proceedings Before Referees

At any time before the expiration of ten days after the child, parent, or guardian is served with the written findings and orders of a referee, the child, parent, guardian, or DSS may apply for a rehearing before a juvenile court judge. Welf & I C §252; Cal Rules of Ct 5.542(a). The application may be directed toward the entire order or a specified part and must contain the reasons for the request. Welf & I C §252; Cal Rules of Ct 5.542(a).

In addition, a juvenile court judge, on his or her own motion, may order a rehearing of any case heard by a referee within 20 judicial days of the hearing before the referee. Welf & I C §253; Cal Rules of Ct 5.542(d). See also *In re Clifford C.* (1997) 15 C4th 1085, 1093, 64 CR2d 873 (when a judge's approval of a referee's order is required, court may order a rehearing until ten calendar days from service of referee's order or 20 judicial days after hearing, whichever is later). See *In re Winnetka V.* (1980) 28 C3d 587, 591-593, 169 CR 713 (delinquency case in which Supreme Court held that judge's own motion for rehearing may be preceded, and even prompted, by a request from district attorney). All rehearings of proceedings heard by referees must be conducted de novo. Welf & I C §254; Cal Rules of Ct 5.542(e).

A rehearing must be granted if the proceedings held before a referee were not recorded by an authorized reporting procedure such as a court reporter. Welf & I C §252; Cal Rules of Ct 5.542(b). If the proceedings had been recorded, the juvenile court judge may grant or deny the request for a rehearing on the basis of the transcript, provided that if the request is not denied within 20 calendar days following its receipt (or within 45 calendar days if the court extends the time for good cause), it will be deemed granted. Welf & I C §252; Cal Rules of Ct 5.542(c).

Unless there is a timely challenge, the orders of the referee will become final. See *In re Carina C.* (1990) 218 CA3d 617, 623, 267 CR 205.

G. Terminating, Continuing, or Resuming Jurisdiction

1. [§103.65] Terminating or Continuing Jurisdiction

Jurisdiction over a dependent child does not automatically end when the child reaches the age of majority. Welf & I C §391(a). See discussion in §103.52. To terminate jurisdiction over a nonminor, the court must hold a hearing as described in Welf & I C §391. If the nonminor dependent is subject to a foster care placement order, the hearing must also conform to Cal Rules of Ct 5.555. Cal Rules of Ct 5.555(a)(1).

At this hearing, DSS must ensure that the dependent nonminor is present in court unless he or she does not wish to be present and elects a telephonic appearance or cannot be found. Welf & I C §391(b)(1).

- **JUDICIAL TIP:** Nonminor dependents (NMDs) hold all their legal rights (medical, dental, educational, etc.) and the DSS has less influence on the young adult lives of NMDs. Consider requiring the NMD to appear in court in person or by phone to monitor their compliance with extended foster care eligibility requirements.

DSS must submit a report focusing on the nonminor's best interests concerning his or her transition to independent living. Welf & I C §391(b)(2)-(3); see also Cal Rules of Ct 5.555(c)(1). The DSS report must include selected documents that the nonminor dependent is entitled to have and relevant information such as assistance in applying to college or finding employment. Welf & I C §391(e). If the nonminor does not want jurisdiction to continue, the report must address how the nonminor was advised of his or her options, including the benefits of remaining in foster

care and the right to reenter foster care and to petition to resume jurisdiction before the age of 21. Welf & I C §391(b)(4). If the hearing is subject to rule 5.555, the social worker must file with the report a completed form JV-365, Termination of Juvenile Court Jurisdiction—Nonminor. Cal Rules of Ct 5.555(c)(2). The social worker must also file the most recent Transitional Independent Living Plan (TILP) and a completed 90-day transition plan. Cal Rules of Ct 5.555(c)(3); *In re Nadia G.* (2013) 216 CA4th 1110, 1121–1123, 1122, 157 CR3d 400.

At the conclusion of the hearing, the court must continue dependency jurisdiction unless it finds that the nonminor does not wish to remain subject to dependency jurisdiction, or that the nonminor is not participating in a reasonable and appropriate transitional independent case plan. Welf & I C §391(c)(1). The court must find that the nonminor was informed of his or her options and the right to petition to reenter foster care and complete a voluntary reenter agreement, and has an opportunity to confer with counsel. Welf & I C §391(c)(2); see also Cal Rules of Ct 5.555(d)(1) (findings when subject to rule 5.555). Even if the court terminates dependency jurisdiction, it must nevertheless maintain jurisdiction over the nonminor until the age of 21 so that he or she can petition to resume dependency jurisdiction under Welf & I C §388(e). Welf & I C §§303(b), (c), 391(c), (d). Other requirements for the court order are set forth in Cal Rules of Ct 5.555(d)(2).

A court may be justified in terminating jurisdiction over a child who is over 18 years of age and who has given every indication that he or she rejects the assistance of the dependency system even if there is evidence that he or she still needs the services of the system. *In re Holly H.* (2002) 104 CA4th 1324, 1337, 128 CR2d 907. Moreover, when there is no showing that custody with either parent presented a risk to the children and the parents have entered into an agreement governing custody and visitation, the juvenile court must terminate jurisdiction (children under 18; court had assumed jurisdiction because mother's former boyfriend had abused one of the children). *In re Alexandria M.* (2007) 156 CA4th 1088, 1096–1097, 68 CR3d 10.

When the court appoints a guardian who is moving to another state, while ordering continued visitation with an in-state parent, the court must retain jurisdiction and hold periodic reviews to oversee visitation. *In re K.D.* (2004) 124 CA4th 1013, 1019, 21 CR3d 711.

2. [§103.66] Resuming Dependency Jurisdiction

A nonminor who attained 18 years of age while subject to an order for foster care placement but did not turn 20 years of age as of January 1, 2013, or 21 years of age as of January 1, 2014, may file a petition to resume dependency jurisdiction if the court previously dismissed dependency jurisdiction but retained general jurisdiction under Welf & I C §303(b). The petition may also be filed by the county child welfare services or tribal placing agency on behalf of the nonminor. If the nonminor completed a voluntary reentry agreement [see Welf & I C §11400(z)] with the placing agency, the agency must file the petition on behalf of the nonminor within 15 judicial days of the date the agreement was signed unless the nonminor elects to file the petition at an earlier date. Welf & I C §388(e)(1). See Judicial Council form JV-466, Request to Return to Juvenile Court Jurisdiction and Foster Care.

The petition to resume jurisdiction may be filed in the juvenile court that retains general jurisdiction under Welf & I C §303(b), or may be submitted to the juvenile court in the county where the youth resides and forwarded to the juvenile court that retained general jurisdiction and filed with that court. The juvenile court with general jurisdiction must receive the petition from the court where the petition was submitted within five court days of its submission, if the petition is filed in the county of residence. A hearing must be held within 15 judicial days of the date the

petition was filed if the nonminor makes a prima facie showing of the following criteria [Welf & I C §388(e)(2)(A)]:

- The nonminor was previously under juvenile court jurisdiction, subject to an order for foster care placement, when he or she attained 18 years of age, and has not attained the age limits described above.
- The nonminor intends to satisfy at least one of the following conditions [see Welf & Inst C §11403(b)]:
 - Complete secondary education or a program leading to an equivalent credential.
 - Enroll in an institution that provides postsecondary or vocational education.
 - Participate in a program or activity designed to promote, or to remove barriers to, employment.
 - Employed for at least 80 hours per month.
 - Incapable of doing any of the above activities due to a medical condition, and that incapability is supported by regularly, updated information in the case plan.
- The nonminor wants assistance either in maintaining or securing appropriate supervised placement, or is in need of immediate placement and agrees to supervised placement under the voluntary reentry agreement described in Welf & I C §11400(z).

A court's jurisdiction over a nonminor former dependent who was receiving benefits under Welf & I C §11405 did not automatically terminate when his or her guardian died, and must be construed to include the power to appoint a new guardian in the event of the original guardian's death. *In re A.F.* (2013) 219 CA4th 51, 58, 161 CR3d 312.

Hearing. When ordering a hearing on a petition to resume dependency jurisdiction, the court must give prior notice, or cause prior notice to be given, to the persons and by the means prescribed by Welf & I C §386, except that notice to parents or former guardians need not be provided unless the nonminor requests, in writing on the face of the petition, notice to the parents or former guardians. Welf & I C §388(e)(2)(B). Local procedures and protocols authorizing appearances by telephone must adhere to the guidelines established in Cal Rules of Ct 5.531. Welf & I C §388(e)(3).

Before the hearing, the court must order the county child welfare or probation department or Indian tribe (see Welf & I C §10533.1) to prepare a report addressing whether the nonminor intends to satisfy at least one of the criteria set forth above. When the recommendation is for the nonminor dependent to be placed in a setting where minor dependents also reside, the results of a background check (see Welf & I C §16504.5) may be used by the placing agency to determine appropriate placement options. The existence of a criminal conviction is not a bar to eligibility for reentry or resumption of dependency jurisdiction over a nonminor. Welf & I C §388(e)(4).

The court must resume dependency jurisdiction over a former dependent, and order that the nonminor's placement and care be under the responsibility of the county child welfare services department, tribe, consortium of tribes, or tribal organization, if the court finds that (i) the nonminor was under juvenile court jurisdiction subject to an order for foster care placement when he or she turned 18, (ii) the nonminor did not pass the age limits described above, (iii) reentry and remaining in foster care are in the nonminor's best interests, and (iv) the nonminor intends and agrees to satisfy one of the criteria described above, and demonstrates his or her agreement to placement by signing the voluntary reentry agreement. Welf & I C §388(e)(5)(A).

The hearing must be completed no more than 120 days after the date the petition was submitted. Welf & I C §388(e)(5)(B). The agency that is responsible for the nonminor’s placement and care must prepare a new transitional independent living case plan and submit it to the court for the Welf & I C §366.31 review hearing within 70 days of the resumption of dependency jurisdiction. In no event may the Welf & I C §366.3 review hearing be held more than 170 calendar days from the date the nonminor signed the voluntary reentry agreement. Welf & I C §388(e)(5)(C).

- **JUDICIAL TIP:** New legislation operative in 2014 creates a reentry mechanism for a nonminor dependent in a guardianship or adoption established after the nonminor turned 18, who becomes eligible for extended foster care payments if the guardian or adoptive parent dies. After a hearing, a court may assume dependency jurisdiction if the nonminor intends and agrees to satisfy certain educational or vocational requirements and signs a voluntary reentry agreement. See Stats 2013 ch 487 (AB 787); see also Stats 2013 ch 485 (AB 346) for companion legislation.

H. [§103.67] Scheduling of Further Hearings; Review by Writ

Unless dependency jurisdiction is ordered terminated at a review hearing, the court should schedule further hearings (*e.g.*, future review hearings or .26 hearings) before adjourning the review hearing. Welf & I C §§366(a)(1), 366.3(a) (review hearings must be held every six months). At the review hearing, the court must advise the parties present of the date of any future hearing and of their right to be present and represented by counsel at the hearing. Welf & I C §366.21(a).

There is no direct appeal from an order setting a .26 hearing. See Welf & I C §366.26(*l*). An order setting a .26 hearing may be reviewed on appeal only if a petition for an extraordinary writ is filed under the requirements of Cal Rules of Ct 8.450 and *all* the following conditions are met (Welf & I C §366.26(*l*)(1)).

- The writ petition was filed in a timely manner,
- The writ petition substantively addressed the issues to be challenged on appeal, and
- The appellate court summarily denied the petition or otherwise failed to decide the case on the merits.

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.

Those requirements listed above must also be met for a party to appeal an order retaining or changing a placement of a child once termination of parental rights have already occurred. See Welf & I C §366.28(b); discussion in §103.53 (possible orders at postpermanency review hearings held under Welf & I C §366.3). There is also no direct appeal from a finding (at the six-month review) that reasonable reunification services had been provided; this finding may, however, be reviewed by writ. *Melinda K. v Superior Court* (2004) 116 CA4th 1147, 11 CR3d 129. But see *In re T.G.* (2010) 188 CA4th 687, 696, 115 CR3d 406, holding that a “reasonable services” finding as part of an order made at the six-month review is appealable.

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. Moreover, foster parents who are given *de facto* status have no standing to appeal an order changing placement to prospective adoptive parents. *In re P.L.* (2005) 134 CA4th 1357, 1361, 37 CR3d 6.

If, between the setting of the .26 hearing and the commencement of the hearing itself, a party files a petition under Welf & I C §388, showing a change of circumstances which, if proved, would cause a reconsideration of the findings and orders setting the .26 hearing, the court must set the Welf & I C §388 petition for hearing before the commencement of the .26 hearing. See *In re Marilyn H.* (1993) 5 C4th 295, 309, 19 CR2d 544; Cal Rules of Ct 5.570. See also discussion in §103.58.

IV. SAMPLE FORMS

A. [§103.68] Script: Conduct of Review Hearing

[If parents and the child are represented by counsel and all required conflict of interest statements are on file, go to (4).]

(1) Appointment of attorney for parents or guardians

You have a right to be represented by an attorney during this review hearing and all other hearings in the juvenile court. If you want to employ a private attorney, the court will give you an opportunity to do so.

[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, who is being appointed.

[If parents waive counsel]

This is a serious matter. The court might determine 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 knowingly and 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 (3).]

(2) Attorney for child

The court has read and considered the documentary material submitted by the DSS that is relevant to the limited purpose of assessing whether to appoint counsel for the child. Would anyone like to be heard on the issue of why the court should not appoint counsel for the child?

[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 *[the child understands the nature of the proceedings; the child is able to communicate and advocate effectively on behalf of him or herself before the court, other counsel, other parties, including social workers, and other professionals involved in the case; and under the circumstances of the case, the child would not gain any benefit by being represented by counsel because [state reasons for each finding]/there is a need to appoint counsel for the child at this time].*

The court *[does not appoint counsel at this time/appoints [name of attorney]]* to represent the child.

(3) 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, a jurisdiction hearing, and a disposition hearing *[as well as [six-/12-/18-] month review hearings]*. At the previous hearing, the court ordered that *[state orders]*. At this hearing the court will determine whether *[the out-of-home placement will continue/jurisdiction should be terminated/ reunification services should be maintained, increased, or terminated, etc.]*.

Note: 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 parents' or guardians' position. Many judges encourage attorneys who appear in their courts to take this responsibility.

(4) 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).]

(5) 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 relevant evidence, (4) the right to subpoena witnesses, and (5) the right to a hearing on the issues raised in the review report. 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 §103.26.

For nonminor dependents

You have the right to seek termination of dependency jurisdiction, which means that the court will not be involved in your life in any way. If it later turns out that you would like the protection of the court, you may contact your lawyer to seek resumption of jurisdiction, up until the time you turn 21 years of age.

(6) Advisement re addresses under Welf & I C §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.

Note: The court should ensure that Judicial Council Form JV-140, Notification of Mailing Address, is made available

(7) 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 report dated _____, prepared by *[name]*, consisting of _____ pages, and containing the following attachments: *[list attachments]*.

Note: The term for the social worker's supplemental report (see Welf & I C §366.1) varies from county to county. Whatever the local usage, the court must indicate which documents it is relying on.

The court has also read and considered the report of *[name]*.

Note: The court may read and consider the report of any court-appointed special advocate. See §103.27.

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

Now is the time for you to present any evidence or make any statement you may wish to make before the court decides *[whether to continue the child's present living situation or change it in some way/what services to offer or augment, etc.]*. 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?

Note: If the answer is no, the court should orally examine or permit testimony of the child, if present, and the parents or other persons with relevant knowledge bearing on relevant issues. 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 before the court decides on continuing or changing the child's placement and the nature and extent of the reunification services.

[To persons seeking fifth amendment protection from testifying (see CALIFORNIA JUDGES BENCHGUIDE 102: JUVENILE DEPENDENCY DISPOSITION HEARING §102.19 (CAL CJER))]

I am going to grant the *[joint]* request of the DSS *[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.

Note: 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).

(8) Introduction of court process to child witness

Hello. I am Judge _____. 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 Y. *[He/She]* is here to make sure that no one gets hurt. *[Mr./Ms.]* Z 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.]* Z can hear you.

Mr. L and Ms. M 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 the best for everyone.

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

Also, you may not understand all the questions. Adults 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."

Note: Some judges may not want to tell the child that their job is to be fair for fear that the child will not find the result fair and be more traumatized than reassured. Whatever explanation, if any, is given to the child must be appropriate to the child's age, experience, and stage of development.

(9) Final question

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

B. [§103.69] Script: Findings and Orders—In General

(1) Introduction

The court has read and considered *[name the documents, e.g., the social worker's report dated _____, and attached documents or whatever the local nomenclature is]*.

[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.

(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 biological or presumed father (or not a father at all) after holding a hearing on the issue.]

The court finds that the legal status of *[name]* is *[status of father, e.g., presumed father]*.

[If de facto parent status is sought]

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

[Or]

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

[Optional]

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

(3) When child has not been removed

The court finds that the following conditions that justified assumption of jurisdiction under section 300 no longer exist: *[state conditions]*. Moreover, withdrawal of supervision would not cause those conditions to reoccur. Therefore, jurisdiction is terminated.

[Or]

The court finds by a preponderance of the evidence that the following conditions that justified assumption of jurisdiction under section 300 still exist: *[state conditions]*.

[And/Or]

The court *[further]* finds that withdrawal of supervision would cause those conditions to reoccur. Therefore, jurisdiction is retained and a further review hearing is scheduled for *[date]*.

These additional services are ordered to alleviate these conditions:

[List services and the conditions they are intended to address.]

C. [§103.70] Script: Findings and Orders—Six-Month Review

Note: For all possible findings and orders, see Judicial Council forms JV-430–JV-433. For required findings concerning the case plan and the child’s education, see Appendix V, Case Plan and Educational Findings and Orders—Dependency.

(1) Return of child

The court orders that custody of [*name of child*] is returned to [*parent/guardian/other former custodian*].

[Or]

The court finds by a preponderance of the evidence that returning the child home would create a substantial risk of harm to the child's [*physical health/emotional well-being*] because [*state reasons*]. Therefore, [*name of child*] may not be returned home at this time.

(2) Finding under Welf & I C §366.21(e); Cal Rules of Ct 5.708(i)(1); 42 USC §675(5)(B)

The court finds that out-of-home placement [*is/is not*] appropriate and that the placement [*continues to be/is no longer*] necessary because [*state reasons*] and is [*no longer*] appropriate to this child because [*state reasons*]. [[*Name of parent or guardian*] shall therefore have custody of the child effective [*date*].]

If the child has been placed out of state, the placement [*continues to be/ is no longer*] appropriate (Welf & I C §366(c)).

(3) Reunification services (Welf & I C §366.21(e))

The court further finds that:

[*Add as applicable*]

DSS has complied with the case plan in making reasonable efforts (to return the child to a safe home and in completing any steps to finalize permanent placement); and

[*Parents/Guardians/Other*] have participated regularly and made substantive progress in court-ordered treatment programs; the extent of the progress is as follows [*describe*]:

[Or]

DSS has provided services and opportunities but [*parent/guardian/ other*] has not participated regularly and made substantive progress in court-ordered treatment programs in that [*describe*].

[Or]

The services provided have been inadequate in that [*explain*] [*and in addition*] [*parent/guardian/other*] has not participated regularly and made substantive progress in court-ordered treatment programs in that [*describe*].

The court also finds that the following progress has been made toward alleviating or eliminating the need for foster care [*describe*]:

[*And/Or*]

The services set forth in the case plan include those needed to assist the child in making the transition from foster care to independent living.

Limitations on the right of the parent or guardian to make educational decisions are [*describe*] (Welf & I C §366(a)(1)(C)).

(4) Date of return of child or permanent placement

Finally, it is likely that the child will be returned home by [date].

[Or]

It is likely that the child will be placed for adoption or legal guardianship by [date].

[And/Or]

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

[If there are siblings]:

The nature of the relationship with the siblings is [describe].

It is [appropriate/ not appropriate] to maintain sibling relationships.

[If siblings are not placed together], the reason for that placement, is [describe].

The frequency and nature of sibling visitation is [describe].

The impact of sibling relationship on placement and permanent planning is [describe].

[Or]

There is a continuing need to suspend sibling interaction, if applicable.

(5) Moving toward termination of parental rights

The court finds the following by clear and convincing evidence:

The child was removed initially under Welfare and Institutions Code section 300(g), and

[Add as applicable]

the whereabouts of [name of parent or guardian] are still unknown.

[Or]

[name of parent or guardian] has failed for six months to contact and visit the child.

[Or]

[name of parent or guardian] has been convicted of a felony indicating parental unfitness.

[Continue]

A hearing under Welfare and Institutions Code section 366.26 will be scheduled for [date within 120 days (Welf & I C §366.21(e); Cal Rules of Ct 5.710(b)(3), (c))]. This order may be challenged by the filing of an extraordinary writ in the appellate court.

(6) Reunification services discontinued/assessment prepared (Welf & I C §366.21(h)–(i); Cal Rules of Ct 5.708(n)(1), (4))

Reunification services shall be discontinued. DSS shall prepare an assessment that will include the current search efforts for the absent parent, a review of the nature and amount of contacts between [name of child] and the [parent/guardian], prospects for adoption, and an evaluation of [name of child].

(7) Visitation and Maintenance of Relationships (Welf & I C §366.21(h))

Visitation with [name of parent or guardian] shall continue.

[Or]

The court finds that visitation would be detrimental to the child and therefore must [be discontinued/not take place].

[And/Or]

The court finds that visitation with [individuals important to the child other than siblings] must continue.

(8) Child placed with noncustodial parent

The court finds that supervision is no longer necessary. Custody is transferred permanently to [name of noncustodial parent] as provided in Welfare and Institutions Code section 361.2(b)(1). Jurisdiction is terminated.

[Or]

Placement with [name of noncustodial parent] shall continue with court supervision.

(9) When out-of-home placement continues but .26 hearing has not been ordered (Welf & I C §366.21(e))

Reasonable reunification services have [not] been [provided/offered] to the [parent/guardian]. The court now orders that reunification services be [initiated/continued/modified].

If [name of child] cannot be returned home by the 12-month permanency hearing, a proceeding for termination of parental rights under Welfare and Institutions Code section 366.26 may be instituted.

(10) For nonminor dependent or for a dependent for whom this is the last hearing before turning 18 years of age

The plan that has been developed to ease your transition to independent living contains the following provisions [you may continue to receive aid/ are under the court's protection if you do the following: attend college/ work at least 80 hours per month/other options] (see Welf & I C §11403). The benefits of remaining under the court's jurisdiction are that [state benefits]. If you wish, you may ask the court to terminate this jurisdiction which would mean that the court will not be involved in your life in any way (Welf & I C §366(a)(1)(F)).

(11) Setting 12-month permanency hearing (Welf & I C §§366(a), 366.21(a); Cal Rules of Ct 5.715(a))

A 12-month permanency hearing is set for *[insert date within six months]*.

[To parents or guardians]

You have the right to be present and represented by counsel at that hearing.

D. [§103.71] Script: Findings and Orders—12-Month Permanency Hearing

Note: For all possible findings and orders, see Judicial Council forms JV-435–JV-438. For required findings concerning the case plan and the child’s education, see Appendix V, Case Plan and Educational Findings and Orders—Dependency.

(1) Return of child

The court orders that custody of *[name of child]* shall be returned to *[name of parent/guardian/other former custodian]*.

[Or]

The court finds by a preponderance of the evidence that returning the child home would create a substantial risk of harm to the child’s *[physical health/emotional well-being]* because *[state reasons]*. Therefore, *[name of child]* may not be returned home at this time.

(2) Reasonable reunification services (Cal Rules of Ct 5.708(e))

Reasonable reunification services have *[not]* been *[provided/offered]* to the *[parents/guardians]*.

[If applicable] The services set forth in the case plan include those needed to assist the child in making the transition from foster care to independent living.

Limitations on the right of the parent or guardian to make educational decisions are *[describe]* (Welf & I C §366(a)(1)(C)).

(3) Finding re placement (Welf & I C §366.21(f); Cal Rules of Ct 5.708(i)(1); 42 USC §675(5)(B))

The court finds that the placement *[continues to be/is no longer]* necessary because *[state reasons]* and *[is appropriate/is no longer appropriate]* to this child because *[state reasons]*.

[Name of custodian] shall therefore have custody of the child effective *[date]*.

If the child has been placed out of state, the placement *[continues to be/ is no longer]* appropriate (Welf & I C §366(c)).

The court further finds that:

DSS and *[parents/guardians/other]* have participated regularly and made substantive progress in court-ordered treatment programs.

[Or]

DSS has provided services and opportunities but [*name of parent/guardian/other*] has not participated regularly and made substantive progress in court-ordered treatment programs in that [*describe*].

[Or]

The services provided have been inadequate in that [*describe*].

(4) Permanent Plan

The permanent plan is:

Adoption

[Or]

Legal guardianship with a specific goal of [*e.g., dismissal of dependency or adoption*]

[Or]

Permanent placement with [*name*], a fit and willing relative with a specific goal of [*e.g., kinship adoption, guardianship, transition to independent living with identification of caring adult to serve as a lifelong connection*].

The plan is appropriate and is ordered as the permanent plan. The likely date by which DSS will finalize the permanent plan is [*date*] and the likely date by which the child's permanent goal will be achieved is [*date*].

(5) Finding re foster care

The court also finds that the following progress has been made toward alleviating or eliminating the need for foster care [*describe*]:

(6) For nonminor dependent or for a dependent for whom this is the last hearing before turning 18 years of age

The plan that has been developed to ease your transition to independent living contains the following provisions [*you may continue to receive aid/ are under the court's protection if you do the following: continue to attend college/work at least 80 hours per month/other options*] (see Welf & I C §11403). The benefits of remaining under the court's jurisdiction are that [*state benefits*]. If you wish, you may ask the court to dismiss this jurisdiction which would mean that the court will not be involved in your life in any way (Welf & I C §366(a)(1)(F)).

[And/Or]

You may remain [*with your current foster family/in some other planned, permanent living arrangement*]. (Welf & I C §366.21(g)(2)).

(7) Further Hearings

The court finds that to return [*name of child*] to the custody of [*his/her*] [*parents/guardians*] would be detrimental because [*state reasons*]. The court also finds that [*there is a substantial probability that [name of child] will be returned to the physical custody of [name of parent/guardian]/reasonable services have not been provided to [name of parent/guardian]*].

Therefore, a permanency review hearing is set for [*date within six months, but not later than 18 months from the date the child was taken from the physical custody of the parent or guardian (see Welf & I C §366.21(g)(1); Cal Rules of Ct 5.720(a))*].

[*To parent or guardian*]

You have the right to be present and represented by counsel at that hearing.

If [*name of child*] cannot be returned home by the next review hearing, a proceeding for termination of parental rights under Welfare and Institutions Code section 366.26 may be instituted.

Note: This procedure is authorized by Welf & I C §366.21(g)(1).

[*Or*]

The court finds by clear and convincing evidence that [*name of child*] is not a proper subject for adoption and there is no one willing to accept legal guardianship. Therefore, [*name of child*] shall remain in foster care and a hearing is set for [*date not later than six months*].

The court finds by clear and convincing evidence that reunification services have been offered or provided to [*name of parent or guardian*].

(8) Scheduling .26 hearing

A hearing under Welfare and Institutions Code section 366.26 will be scheduled for [*date within 120 days (see Welf & I C §366.21(e); Cal Rules of Ct 5.715(b)(4)(B))*].

This order may be challenged by the filing of an extraordinary writ in the appellate court.

(9) Discontinuing reunification services (Welf & I C §366.21(h)–(i))

Reunification services shall be discontinued. DSS shall prepare an assessment that includes the current search efforts for the absent parent, a review of the nature and amount of contacts between [*name of child*] and the [*parent/guardian*], prospects for adoption, and an evaluation of [*name of child*].

The caregiver for [*name of child*] shall receive the child's birth certificate in accordance with Welfare and Institutions Code sections 16010.4 and 16010.5. [Additionally, [*name of child*], who is [*child's age if 16 years of age or older*] years of age, shall receive his or her birth certificate.]

(10) Visitation

Visitation with [*parent/guardian*] shall continue.

[*Discontinuance or prohibition of visitation (see Welf & I C §366.21(h))*]

The court finds that visitation would be detrimental to [*name of child*] and therefore must [*be discontinued/not take place*].

E. [§103.72] Script: Findings and Orders—18-Month Permanency Review

Note: For all possible findings and orders, see Judicial Council forms JV-440–JV-443. For required findings concerning the case plan and the child’s education, see Appendix V, Case Plan and Educational Findings and Orders—Dependency.

(1) Return of child

The court orders that custody of [*name of child*] shall be returned to [*name of parent/guardian/other former custodian*].

[*Or*]

The court finds by a preponderance of the evidence that returning the child home would create a substantial risk of harm to the child’s [*physical health/emotional well-being*] because [*state reasons*]. Therefore, [*name of child*] may not be returned home at this time.

(2) Services

Reasonable reunification services have [*not*] been [*provided/offered*] to the [*parent/guardian*]. The court must take into account barriers to accessing those services or maintaining contact with the child caused by incarceration or institutionalization. Welf & I C §366.22(a).

[*Continue*]

(3) Placement/Permanent Plan

The permanent plan is:

Adoption

[*Or*]

Legal guardianship with a specific goal of [*e.g., dismissal of dependency or adoption*]

[*Or*]

Permanent placement with [*name of relative*], a fit and willing relative with a specific goal of [*e.g., kinship adoption, guardianship, transition to independent living with identification of caring adult to serve as a lifelong connection*].

The plan is appropriate and is ordered as the permanent plan. The likely date by which DSS will finalize the permanent plan is [*date*] and the likely date by which the child’s permanent goal will be achieved is [*date*].

(4) For nonminor dependent or for a dependent for whom this is the last hearing before turning 18 years of age

The plan that has been developed to ease your transition to independent living contains the following provisions [*you may continue to receive aid/ are under the court’s protection if you do*]

the following: continue to attend college/work at least 80 hours per month/other options] (see Welf & I C §11403)]. The benefits of remaining under the court's jurisdiction are that *[state benefits]*. If you wish, you may ask the court to dismiss this jurisdiction which would mean that the court will not be involved in your life in any way. (Welf & I C §366(a)(1)(F)).

[And/Or]

You may remain *[with your current foster family/in some other planned, permanent living arrangement]*. (Welf & I C §366.22(a)).

(5) Scheduling Further Hearings

The best interests of the child would be met by providing additional services to *[parent or guardian]* who has recently been discharged from *[incarceration/institutionalization]* and has made significant and consistent progress in establishing a safe home for the child *or*

To *[parent or guardian]* who has made significant and consistent progress in a drug treatment program.

Therefore, the case is continued to a 24-month subsequent permanency hearing, and DSS is required to provide six more months of services (see Welf & I C §366.22(b)).

[Or]

A hearing under Welfare and Institutions Code section 366.26 will be scheduled for *[date within 120 days]* (see Welf & I C §366.22(a); Cal Rules of Ct 5.720(b)(3)(C)).

This order may be challenged by the filing of an extraordinary writ in the appellate court.

(6) Discontinuing reunification services

Reunification services shall be discontinued. DSS shall prepare an assessment that will include the current search efforts for the absent parent, a review of the nature and amount of contacts between *[name of child]* and *[parent/guardian]*, prospects for adoption, and an evaluation of *[name of child]*.

(7) Visitation

Visitation with *[parent/guardian]* shall continue.

[When visitation detrimental to child (see Welf & I C §366.21(h))]

The court finds that visitation would be detrimental to *[name of child]* and therefore must *[be discontinued/not take place]*.

F. [§103.73] Script: Findings and Orders—Postpermanency Planning Review Hearing

Note: For all possible findings and orders, see Judicial Council forms JV-445–JV-446. For required findings concerning the case plan and the child’s education, see Appendix V, Case Plan and Educational Findings and Orders—Dependency.

(1) Terminating or continuing jurisdiction

[Termination of jurisdiction (see Welf & I C §366.3(a); Cal Rules of Ct 5.740(a))]

Because *[name of child]* has been adopted since the last review hearing, juvenile court jurisdiction is terminated and the case is dismissed.

[Continuation of dependency jurisdiction]

The court finds that *[name of guardian]* is the legal guardian of *[name of child]* and orders the continuation of dependency jurisdiction over *[name of child]*.

[Termination of dependency jurisdiction (see Welf & I C §§366.3(a), 366.4; Cal Rules of Ct 5.740(a), (c))]

The court finds that *[name of guardian]* is the legal guardian of *[name of child]* and orders the termination of dependency jurisdiction. The court retains jurisdiction over *[name of child]* as a ward of the guardianship.

Note: For terminating dependency jurisdiction for a nonminor dependent (see Welf & I C §§224.1 (Indian child) 303, 366, 366.31, 391), see the script in §103.68. Dependency jurisdiction may not be terminated without holding a hearing under Welf & I C §391. Welf & I C §391(e).

(2) Notice

[If child is in a placement other than a preadoptive home or the home of a legal guardian, parental rights have not been terminated, and jurisdiction has not been dismissed:]

[And]

[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.

[When both parents present]

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

(3) Review of court documents; findings

The court has read and considered the report submitted by DSS and has taken into account the following factors *[describe with particularity (see Welf & I C §366.3(e))]*:

- The progress being made to provide a permanent home;
- The continuing necessity for and appropriateness of the child's placement;
- Identification of people, other than siblings, who are important to a child who is 10 years of age or older and who is in out-of-home placement for six months or longer, and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child;
- The continuing appropriateness of and extent of compliance with the permanent plan, including efforts to maintain relationships with those people who are important to a child who is 10 years of age or older and who is in out-of-home placement for six months or longer from the date he or she entered foster care, as well as efforts to identify a prospective adoptive parent or legal guardian;
- The extent of DSS compliance with the case plan in making reasonable efforts to return the child to a safe home and to complete plans for permanent placement;
- Whether there should be limitations on the right of the parent or guardian to make educational decisions for the child;
- The adequacy of services provided, including documents, information, and services for a child who has reached the age of majority (see Welf & I C §391);
- The parents' progress toward alleviating the causes that required foster care;
- The likely date by which the child may be safely returned to and maintained in the home, placed for adoption or in some other permanent living situation, or, in the case of an Indian child in consultation with the child's tribe, placed for tribal customary adoption;
- The services needed to assist a child who is 16 years of age or older to make the transition from foster care to independent living; and
- Whether the child has siblings under the court's jurisdiction, and if so:
 - The nature of the relationship with the siblings;
 - The appropriateness of developing and maintaining sibling relationships;
 - If siblings are not placed together, the reason for that placement, and efforts, if any, to correct it;
 - Frequency and nature of sibling visitation; and
 - Impact of sibling relationship on placement and permanent planning.
- If the child is a nonminor dependent:
 - Transition to independent living;
 - Efforts made to provide written information about the case;
 - Efforts made to assist in education, employment, housing, health insurance, maintaining relationships with people important to the nonminor, etc.; and
 - Efforts made toward providing relevant documents as set out in Welf & I C §391(e)(2).

(4) Child remains in foster care

[*Name of child*] shall remain in foster care.

For nonminor dependent

You may remain [*with your current foster family/in some other planned, permanent living arrangement*] under a mutual agreement with DSS (see Welf & I C §11403(d)) or in supervised independent living consistent with the transitional plan. Welf & I C §366.32(b).

(5) Other options (see Welf & I C §366.3(h))

The permanent plan is:

Adoption

[Or]

Legal guardianship with a specific goal of [*e.g., dismissal of dependency or adoption*]

[Or]

Permanent placement with [*name of relative*], a fit and willing relative with a specific goal of [*e.g., kinship adoption, guardianship, transition to independent living with identification of caring adult to serve as a lifelong connection*].

The plan is appropriate and is ordered as the permanent plan. The likely date by which DSS will finalize the permanent plan is [*date*] and the likely date by which the child's permanent goal will be achieved is [*date*].

[Or for nonminor dependent]

The plan that has been developed to ease your transition to independent living contains the following provisions [*you may continue to receive aid/are under the court's protection if you do the following: continue to attend college/ work at least 80 hours per month/other options*] (see Welf & I C §11403). The benefits of remaining under the court's jurisdiction are that [*state benefits*]. If you wish, you may ask the court to dismiss this jurisdiction which would mean that the court will not be involved in your life in any way. (Welf & I C §366(a)(1)(F)).

(6) Further reunification services (see Welf & I C §366.3(e); Cal Rules of Ct 5.740(b))

The court finds by a preponderance of the evidence that further efforts at reunification are the best alternative for the child and orders further reunification services until [*date not later than six months*].

(7) Reasonable efforts

Reasonable efforts to finalize a permanent placement [*have/have not*] been made. Welf & I C §366.3(d)–(g).

(8) Setting review hearing

A review hearing is set for [*date within six months*].

[*To parents or guardians (see Welf & I C §366.3(e)–(g); Cal Rules of Ct 5.740(a)–(b))*]

You have the right to be present at that hearing.

G. [§103.74] Script: Findings and Orders—Terminating Jurisdiction for Nonminor Dependent (Welf & I C §391)

(1) Findings

The court finds that:

(a) DSS has notified [*the nonminor dependent*] about this hearing and

- He/she is present in court.

[Or]

- He/she has chosen not to appear.

[Or]

- [*The nonminor dependent*] is not available and DSS has made the following efforts to locate him/her. [*List efforts to locate nonminor dependent.*]

(b) The court has received a report concerning whether it is in the [*the nonminor dependent's*] best interests to continue dependency jurisdiction, including a plan for transitioning to independent living and the advisability of a court-ordered trial discharge from foster care

(2) Continuing dependency jurisdiction (Welf & I C §391(c), (e)–(f))

Dependency jurisdiction is continued. At every review hearing between now and when [*the nonminor dependent*] turns 21 years of age, DSS must submit a report describing efforts towards a transition to independent living, including efforts to supply [*the nonminor dependent*] with his/her social security card, birth certificate and other documents, assistance with obtaining housing, health insurance, and application to educational or training programs, and assistance in obtaining employment.

(3) Terminating dependency jurisdiction

Dependency jurisdiction is terminated because [*the nonminor dependent*] [*does not wish to continue dependency jurisdiction/after reasonable efforts, DSS is unable to locate the nonminor dependent/the nonminor dependent is not eligible under Welf & I C §11403(b).*]

[And]

[*The nonminor dependent*] will remain within the court's jurisdiction until he/she turns 21.

[And/Or]

_____ [*The nonminor dependent*] is to have a trial period of independence away from foster care, with an end date being the day before the nonminor turns 21. (Welf & I C §366.31(c)). You [*the nonminor dependent*] may ask your lawyer to request the court to resume dependency jurisdiction under Welfare & Institutions Code §388(e). (Welf & I C §366.31(c)).

[And]

DSS must give [*the nonminor dependent*] written information concerning his/her family and placement history, location of siblings, date of termination of jurisdiction, and any Indian heritage. (Welf & I C §391(e)(1)).

Appendix I: Dependency Proceedings—Title IV-E Findings: Legal Citations*

Revised July 15, 2010

FEDERAL Title IV-E of the Social Security Act, 42 U.S.C. § 670 et seq.	CALIFORNIA Dependency Welf. & Inst. Code (WIC), § 300 et seq.	RESULT IF NO FINDING
Detention/Removal Hearings		
<p>A. Court must make finding that continuance in the home of the parent or legal guardian would be contrary to the child’s welfare. (42 U.S.C. § 672(a)(1)-(2).)</p> <p>This finding must be made at the time of the first court ruling authorizing removal of the child from the home. (45 C.F.R. § 1356.21(c).)</p>	<p>Continuance in the home of the parent or legal guardian is contrary to the child’s welfare. (Welf. & Inst. Code, §§ 319(b), 11401(b)(3); Cal. Rules of Court, rule 5.678(a)(2).)</p> <p>This finding must be made at the time of the first court ruling authorizing removal of the child from the home. (Welf. & Inst. Code, § 319(c).)</p>	Never eligible for title IV-E funding (45 C.F.R. § 1356.21(c).)
<p>B. Court must order that placement and care are the responsibility of the state agency or any other public agency with whom the responsible state agency has an agreement. (42 U.S.C. § 672(a)(1)-(2); 45 C.F.R. § 1356.71(d)(1)(iii).)</p>	<p>Temporary placement and care are vested with the child welfare agency pending disposition or further order of court. (Welf. & Inst. Code, § 319(e); Cal. Rules of Court, rule 5.678(d).)</p>	No funding until findings are made.
<p>C. Court must make finding that reasonable efforts have been made to prevent or eliminate the need for removal. (42 U.S.C. §§ 671(a)(15), 672(a)(1)-(2); 45 C.F.R. § 1356.21(b)(1).)</p> <p>This finding must be made within 60 days of the date of removal. (45 C.F.R. § 1356.21(b)(1).)</p>	<p>Reasonable efforts have been made to prevent or eliminate the need for removal. (Welf. & Inst. Code, §§ 319(d)(1), 11401(b); Cal. Rules of Court, rule 5.678(c)(1).)</p>	Never eligible for title IV-E funding. (45 C.F.R. § 1356.21(b)(1)(ii).)
Case Review/Status Review Hearings — D Findings		
<p>Court must review child’s status and safety no less frequently than once every six months from the date the child entered foster care, in order to make the recommended legal findings as set forth on side two, sections II and IV (42 U.S.C. §§ 671(a)(16), 675(5)(B); 45 C.F.R. §§ 1355.20, 1355.34(c)(2)(ii).)</p>	<p>Periodic status reviews must be held, and the required findings made, no less frequently than every six months, with the first status review being held at the time of the initial dispositional hearing. (Welf. & Inst. Code, §§ 361(e), 366(a), 366.3, 11400(i), 11404.1; Cal. Rules of Court, rule 5.710(a).)</p>	Failure to make findings will have financial consequences due to noncompliance with the state plan.
Permanent Plan Hearings — D Findings		
<p>Court must hold a permanency hearing to select a permanent plan no later than 12 months from the date the child entered foster care, and must hold subsequent permanency plan hearings every 12 months thereafter. (45 C.F.R. §§ 1355.20, 1356.21(b)(2)(i); 42 U.S.C. § 675(5)(C), (F).)</p> <p>For a case in which no reunification services are offered, the permanency hearing must be held within 30 days of disposition. (45 C.F.R. § 1356.21(h)(2).)</p>	<p>A permanency planning hearing must be held, and the required findings made, within 12 months from the date the child entered foster care, and subsequent permanency hearings must be held every 12 months thereafter. (Welf. & Inst. Code, §§ 361.5(f), 366.21(f), 366.21(g), 366.22, 366.3, 11400(j), 11404.1; Cal. Rules of Court, rule 5.715.)</p>	Funding stops unless findings are made.

Definition of “date the child entered foster care”:

Dependency—The date the child entered foster care is the earlier of the first finding of child abuse or neglect (jurisdictional finding) or 60 days after the child is physically removed from the home of the parent(s) or legal guardian(s). (Welf. & Inst. Code, § 361.49); Cal. Rules of Court, rule 5.502(9)(A).)

*This chart is based on laws in effect at the time of publication — July 15, 2010. Federal and state laws can change at any time. The chart was compiled by the Judicial Review and Technical Assistance project of the Administrative Office of the Courts’ Center for Families, Children & the Courts, 455 Golden Gate Avenue, San Francisco, California 94102, 415-865-8836.

Appendix II: Dependency Proceedings—Basic Title IV-E Findings To Ensure Compliance

Findings and orders must be based on sufficient supporting evidence, presented to the court by the county agency.

I. Detention/Removal Hearings—Make the following:

- A. Continuance in the home is contrary to the child's welfare.
- B. Temporary placement and care are vested with the social services agency.
- C. Reasonable efforts have been made to prevent removal.

II. Prepermanency Hearings—Make the following:

- D1. The child's placement is necessary. The child's current placement is appropriate.
- D2. The county agency has complied with the case plan by making reasonable efforts to return the child to a safe home & to complete whatever steps are necessary to finalize the permanent placement of the child.
- D3. The extent of progress made toward alleviating or mitigating the causes necessitating placement has been: by the father _____, by the mother _____.
- D4. The likely date by which the child may be returned to and safely maintained in the home or placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in an identified placement with a specific goal is ___/___/___.
- D7. For child 16 years of age or older: The court finds that the services set forth in the case plan include those needed to assist the child in making the transition from foster care to independent living.

III. Permanency Hearing—Make the following:

- D1. The child's placement is necessary. The child's current placement is appropriate.
- D2. The county agency has complied with the case plan by making reasonable efforts to return the child to a safe home & to complete whatever steps are necessary to finalize the permanent placement of the child.
- D3. The extent of progress made towards alleviating or mitigating the causes necessitating placement has been: by the father _____, by the mother _____.
- D5. The plan selected below is appropriate:
 - a. An immediate return to the home is ordered as the permanent plan; **or**
 - b. The continuation of reunification services and the setting of a further permanency review hearing are ordered. There is a substantial probability that the child will be returned within the next six months and (1) the parent has consistently and regularly contacted and visited the child, (2) made significant progress in resolving the problems that led to the child's removal, *and* (3) demonstrated the capacity and ability to complete the treatment plan objectives and provide for the child's safety, protection, physical and emotional well-being, and special needs. There is a compelling reason for determining that a hearing held under Welf. & Inst. Code § 366.26 is not in the best interest of the child. The court informed all parents present at time of the hearing and further advises all parents that if the child is not returned to the custody of a parent at the next permanency hearing a proceeding under Welf.& Inst. Code § 366.26 may be instituted which could result in the termination of parental rights and adoption; **or**
 - c. Reunification services are terminated. Based upon the clear and convincing evidence already presented, a compelling reason exists for determining that a hearing held under Welf. & Inst. Code § 366.26 is not in the best interest of the child. The following permanent plan is ordered:
 - (1) placement with _____, a fit and willing relative, with a specific goal of _____. (*Provide the relative's name and select a goal, e.g., kinship adoption; legal guardianship; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.*); **or**
 - (2) placement with _____, with a specific goal of _____. (*Provide the name of the placement and select a goal e.g., return home; adoption; legal guardianship; placement with a relative; a less restrictive foster setting; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.*); **or**
 - d. Reunification services are terminated. There is clear & convincing evidence that reasonable services were provided or offered to the parents. A hearing is set under Welf. & Inst. Code § 366.26.
- D6a. The likely date by which the agency will finalize the permanent plan is ___/___/___ (*Use this finding only for a child with a plan of immediate return home under D5a.*).
- D6b. The likely date by which the child may be returned to and safely maintained in the home *or* placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in an identified placement with a specific goal is ___/___/___ (*Use this finding only when the court continues reunification services under D5b.*).
- D6c. The likely date by which the child's specific goal will be achieved is ___/___/___ (*Use this finding only for a child with a specific goal under D5c.*).
- D6d. The likely date by which the child may be placed for adoption, appointed a legal guardian, or placed permanently with a relative or in an identified placement with a specific goal is ___/___/___ (*Use this finding only when the court terminates reunification services under D5d.*).
- D7. For child 16 years of age or older: The court finds that the services set forth in the case plan include those needed to assist the child in making the transition from foster care to independent living.

Appendix II: Dependency Proceedings—Basic Title IV-E Findings To Ensure Compliance (Cont'd)

IV. Postpermanency Hearing—Make the following:

D1. The child's placement is necessary. The child's current placement is appropriate.

D2. The county agency has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent placement of the child.

D5. The permanent plan selected below is appropriate and ordered:

- a. An immediate return to the home; **or**
- b. Adoption as ordered at the hearing held under Welf. & Inst. Code § 366.26; **or**
- c. Legal guardianship as ordered at the hearing held under Welf. & Inst. Code § 366.26 with a specific goal of _____ (Select a goal, e.g., dismissal of dependency or adoption.); **or**
- d. Based upon the clear and convincing evidence already presented, a compelling reason exists for determining that a hearing held under Welf. & Inst. Code § 366.26 is not in the best interest of the child and the child's permanent plan is:
 - (1) placement with _____, a fit and willing relative, with a specific goal of _____. (Provide the relative's name and select a goal, e.g., kinship adoption; legal guardianship; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.); **or**
 - (2) placement with _____, with a specific goal of _____. (Provide the name of the placement and select a goal, e.g., return home; adoption; legal guardianship; placement with a relative; a less restrictive foster setting; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.).

D6a. The likely date by which the agency will finalize the permanent plan is ___/___/____. (Use this finding for a child with a plan of immediate return home under D5a or adoption under D5b.).

D6c. The likely date by which the child's specific goal will be achieved is ___/___/____. (Use D6c finding only for a child with a specific goal under D5c or D5d.).

D7. For child 16 years of age or older: The court finds that the services set forth in the case plan include those needed to assist the child in making the transition from foster care to independent living.

Appendix III: Delinquency Proceedings—Title IV-E Findings: Legal Citations*

Revised July 15, 2010

FEDERAL	CALIFORNIA	RESULT IF NO FINDING
Title IV-E of the Social Security Act, 42 U.S.C. § 670 et seq.	Delinquency Welf. & Inst. Code (WIC), § 602 et seq.	
Detention/Removal Hearings		
<p>A. Court must make finding that continuance in the home of the parent or legal guardian would be contrary to the child’s welfare. (42 U.S.C. § 672(a)(1)-(2).)</p> <p>This finding must be made at the time of the first court ruling authorizing removal of the child from the home. (45 C.F.R. § 1356.21(c).)</p>	<p>Continuance in the home of the parent or legal guardian would be contrary to the minor’s welfare. (Welf. & Inst. Code, §§ 636(d), 11401(b)(3); Cal. Rules of Court, rule 5.760(c).)</p> <p>This finding must be made at the time of the first court ruling authorizing removal of the minor from the home. (Welf. & Inst. Code, § 636(d)(4).)</p>	Never eligible for title IV-E funding (45 C.F.R. § 1356.21(c).)
<p>B. Court must order that placement and care are the responsibility of the state agency or any other public agency with whom the responsible state agency has an agreement. (42 U.S.C. § 672(a)(1)-(2); 45 C.F.R. § 1356.71(d)(1)(iii).)</p>	Temporary placement and care are vested with the probation officer pending disposition or further order of court. (Welf. & Inst. Code, § 636(d)(3)(B); Cal. Rules of Court, rule 5.760(e)(2), (f)(2).)	No funding until findings are made.
<p>C. Court must make finding that reasonable efforts have been made to prevent or eliminate the need for removal. (42 U.S.C. §§ 671(a)(15), 672(a)(1)-(2); 45 C.F.R. § 1356.21(b)(1).)</p> <p>This finding must be made within 60 days of the date of removal. (45 C.F.R. § 1356.21(b)(1).)</p>	Reasonable efforts have been made to prevent or eliminate the need for removal. (Welf. & Inst. Code, §§ 636(d)(2)(B), 727.4(d)(5), 11401(b); Cal. Rules of Court, rule 5.760(e)(3).)	Never eligible for title IV-E funding. (45 C.F.R. § 1356.21(b)(1)(ii).)
Case Review/Status Review Hearings — D Findings		
Court must review child’s status and safety no less frequently than once every six months from the date the child entered foster care , in order to make the recommended legal findings as set forth on side two, sections II and IV (42 U.S.C. §§ 671(a)(16), 675(5)(B); 45 C.F.R. §§ 1355.20, 1355.34(c)(2)(ii).)	Periodic status reviews must be held, and the required findings made, for minors in placement no less frequently than every six months from the date the minor entered foster care until termination of the case. (Welf. & Inst. Code, §§ 727.2(c), 11400(i); Cal. Rules of Court, rule 5.810(a).)	Failure to make findings will have financial consequences due to noncompliance with the state plan.
Permanent Plan Hearings — D Findings		
<p>Court must hold a permanency hearing to select a permanent plan no later than 12 months from the date the child entered foster care, and must hold subsequent permanency plan hearings every 12 months thereafter. (45 C.F.R. §§ 1355.20, 1356.21(b)(2)(i); 42 U.S.C. § 675(5)(C), (F).)</p> <p>For a case in which no reunification services are offered, the permanency hearing must be held within 30 days of disposition. (45 C.F.R. § 1356.21(h)(2).)</p>	A permanency planning hearing must be held, and the required findings made, within 12 months from the date the minor entered foster care , and subsequent permanency hearings must be held every 12 months thereafter. (Welf. & Inst. Code, §§ 727.3(a)(1), 11400(j); Cal. Rules of Court, rule 5.810(b).)	Funding stops unless findings are made.

Definition of “date the minor entered foster care”:

Delinquency—The date the minor entered foster care is the date that is 60 days after the date on which the minor was physically removed from the home of the parent(s) or legal guardian(s) unless one of the following exceptions applies: (1) If the minor is detained pending initial foster care placement and remains detained for more than 60 days, then the date of entry into foster care is the date of the hearing at which placement is ordered. (2) If the minor is adjudged a ward; committed to a ranch, camp, school, or other institution; and remains in that facility for more than 60 days prior to placement in foster care, then the date of entry into foster care is the date the minor is physically placed in foster care. (3) If at the time the wardship petition is filed, the minor is a dependent of the juvenile court and in out-of-home placement, then the date of entry into foster care is the earlier of the date the juvenile court made a finding of abuse or neglect, or 60 days after the date on which the minor was removed from his or her home. (Welf. & Inst. Code, § 727.4(d)(4); Cal. Rules of Court, rule 5.502(9)(B).)

*This chart is based on laws in effect at the time of publication — July 15, 2010. Federal and state laws can change at any time. The chart was compiled by the Judicial Review and Technical Assistance project of the Administrative Office of the Courts’ Center for Families, Children & the Courts, 455 Golden Gate Avenue, San Francisco, California 94102, 415-865-8836.

Appendix IV: Delinquency Proceedings—Basic Title IV-E Findings To Ensure Compliance

Findings and orders must be based on sufficient supporting evidence, presented to the court by the probation department.

- A. Continuance in the home is contrary to the minor's welfare.
- B. Temporary placement and care are vested with the probation department.
- C. Reasonable efforts have been made to prevent removal.

II. Prepermanency Hearing—Make the following:

- D1. The minor's placement is necessary. The minor's current placement is appropriate.
- D2. The department has complied with the case plan by making reasonable efforts to return the minor to a safe home & to complete whatever steps are necessary to finalize the permanent placement of the minor;
- D3. The extent of progress made toward alleviating or mitigating the causes necessitating placement has been: by the father _____, by the mother _____, by the minor _____; and
- D4. The likely date by which the minor may be returned to and safely maintained in the home *or* placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in an identified placement with a specific goal, is ___/___/___.
- D7. For minor 16 years of age or older: The court finds that the services set forth in the case plan include those needed to assist the minor in making the transition from foster care to independent living.

- D1. The minor's placement is necessary. The minor's current placement is appropriate.
- D2. The department has complied with the case plan by making reasonable efforts to return the minor to a safe home & to complete whatever steps are necessary to finalize the permanent placement of the minor.
- D3. The extent of progress made toward alleviating or mitigating the causes necessitating placement has been: by the father _____, by the mother _____, by the minor _____.
- D5. The plan selected below is appropriate:
 - a. An immediate return to the home is ordered as the permanent plan; *or*
 - b. The continuation of reunification services and the setting of a further permanency review hearing are ordered. There is a substantial probability that the minor will be returned within the next six months and the minor and his/her parent(s)/guardian(s) have demonstrated the capacity and ability to complete the objectives of the case plan. The court informed all parents present at the time of the hearing and further advises all parents that if the minor is not returned to the custody of a parent within the next six months a proceeding under Welf. & Inst. Code § 727.31 may be instituted, which could result in the termination of parental rights and adoption; *or*
 - c. Reunification services are terminated.
 - (1) Permanent placement with _____, a fit and willing relative, with a specific goal of _____. *(Provide the relative's name and select a goal, e.g., adoption; legal guardianship; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.); or*
 - (2) Placement with _____, with a specific goal of _____. *(Provide the name of the placement and select a goal, e.g., return home; adoption; legal guardianship; placement with a relative; a less restrictive foster setting; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.)* Based upon clear and convincing evidence already presented, a compelling reason exists for determining that a plan of termination of parental rights and adoption is not in the best interest of the minor; *or*
 - d. Reunification services are terminated.
 - (1) Adoption is identified as the permanent plan. The court finds by clear and convincing evidence that reasonable services were provided or offered to the parents. A hearing is set under the procedures described in Welf. & Inst. Code § 727.31 and an adoption assessment report is ordered; *or*
 - (2) A legal guardianship shall be established. A hearing is set under Welf. & Inst. Code § 728(c) and a guardianship assessment report is ordered.
- D6a. The likely date by which the agency will finalize the permanent plan is ___/___/___. *(Use this finding only for a minor with a plan of immediate return home under D5a.).*
- D6b. The likely date by which the minor may be returned to and safely maintained in the home *or* placed for adoption, appointed a legal guardian, placed permanently with a relative, or placed in an identified placement with a specific goal is ___/___/___. *(Use this finding only when the court continues reunification services under D5b.).*
- D6c. The likely date by which the minor's specific goal will be achieved is ___/___/___. *(Use this finding only for a minor with a specific goal under D5c.).*
- D6d. The likely date by which the minor may be placed for adoption or appointed a legal guardian is ___/___/___. *(Use this finding only when the court terminates reunification services under D5d.).*
- D7. For minor 16 years of age or older: The court finds that the services set forth in the case plan include those needed to assist the minor in making the transition from foster care to independent living.

Appendix IV: Delinquency Proceedings—Basic Title IV-E Findings to Ensure Compliance (Cont'd)

IV. Postpermanency Hearing—Make the following:

D1. The minor's placement is necessary. The minor's current placement is appropriate.

D2. The department has complied with the case plan by making reasonable efforts, including whatever steps are necessary to finalize the permanent placement of the minor.

D5. The permanent plan selected below is appropriate and ordered:

a. An immediate return to the home; **or**

b. Adoption as ordered at the hearing held under Welf. & Inst. Code § 727.31; **or**

c. Legal guardianship as ordered at the hearing held under Welf. & Inst. Code § 728 with a specific goal of _____ (Select a goal, e.g., dismissal of delinquency or adoption); **or**

d. Permanent placement with _____, a fit and willing relative, with a specific goal of _____ (Provide the relative's name and select a goal e.g., adoption; legal guardianship; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.); **or**

e. Placement with _____, with a specific goal of _____. (Provide the name of the placement and select a goal e.g., return home; adoption; legal guardianship; placement with a relative; a less restrictive foster setting; independent living with identification of a caring adult to serve as a lifelong connection; assisted adult living with identification of a caring adult to serve as a lifelong connection.) The court finds by clear and convincing evidence, based upon the evidence already presented to it that there is a compelling reason for determining that a plan of termination of parental rights and adoption is not in the best interest of the minor.

D6a. The likely date by which the department will finalize the permanent plan is ___/___/____. (Use this finding for a minor with a plan of immediate return home under D5a or adoption under D5b.).

D6c. The likely date by which the minor's specific goal will be achieved is ___/___/____. (Use D6c finding only for a minor with a specific goal under D5c, D5d, or D5e.).

D7. For minor 16 years of age or older: The court finds that the services set forth in the case plan include those needed to assist the minor in making the transition from foster care to independent living.

Appendix V

Case Plan and Educational Findings and Orders—Dependency

CASE PLAN

1. The child was actively involved in the development of his or her case plan including planning for the child's permanent placement.
2. The child was NOT actively involved in the development of his or her case plan including planning for the child's permanent placement and:
- (1) The social worker is ordered to actively involve the child in the case plan development including planning for the child's permanent placement.
 - (2) The social worker is not required to actively involve the child in the case plan development because the child is unable, unavailable or unwilling to participate.
3. The mother father was actively involved in the development of the case plan including planning for the child's permanent placement.
4. The mother father was NOT actively involved in the development of the case plan including planning for the child's permanent placement and:
- (1) The social worker is ordered to actively involve the parent in the case plan development including planning for the child's permanent placement.
 - (2) The social worker is not required to actively involve the parent in the case plan development because the parent is unable, unavailable or unwilling to participate.

EDUCATIONAL

1. A limitation on the right of the parents to make educational decisions for the child is NOT necessary. The parents hold educational rights and responsibilities in regard to the child's education including those in California Rules of Court, rule 5.650(e) and (f). A copy of rule 5.650(e) and (f) may be obtained from the social worker.
2. A limitation on the right of the parents to make educational decisions for the child is necessary and those rights are limited as ordered by the court during today's hearing and as set forth in the form JV-535, *Findings and Orders Limiting Right to Make Educational Decisions for the Child, Appointing Educational Representative, and Determining Child's Educational Needs* filed at the conclusion of today's hearing. The educational rights and responsibilities of the educational representative are found in California Rules of Court, rule 5.650(e) and (f). A copy of rule 5.650(e) and (f) may be obtained from the social worker.
3. The court further finds that:
- a. The child's educational needs are being met.
 - b. The child's physical needs are being met.
 - c. The child's mental health needs are being met.
 - d. The child's developmental needs are being met.
 - e. The services, assessments, and evaluations the child needs are:
 - (1) set forth in the social worker's report.
 - (2) set forth on the record.
 - (3) specified here: _____
-
- f. The following persons are ordered to take the steps necessary for the child to begin receiving the services, assessments, and/or evaluations identified in item (3)(e):

- (1) social worker
- (2) parent (*name*): _____.
- (3) surrogate parent(*name*): _____
- (4) educational representative (*name*): _____
- (5) other (*name*): _____
- g. The child's education placement has changed since the last review hearing.
- (1) The child's educational records, including any evaluation regarding a disability, were transferred to the new education placement within two business day for the request for enrollment in the new education placement.
- (2) The child is enrolled in school.
- (3) The child is attending school.

Prepared by the Judicial Review and Technical Assistance Project of the Administrative Office of the Courts' Center for Families, Children & the Courts.

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