The ABC's of the Los Angeles Children's Court

1. ENTERING THE DEPENDENCY SYSTEM

How Children Come Into The System

Children (persons under the age of 18 years of age) are referred to the dependency court system in a variety of ways. Any person can call the child abuse hotline and make a report of suspected child abuse or neglect. The calls are kept confidential so whether caller is a relative, friend or just a witness to an act of abuse, their identity is not disclosed to the parent(s). Referrals are also made by people who are required by law to report child abuse and they are called, "mandated reporters". Examples of mandated reports are teachers, police officers, doctors and other health care professionals. Some children are referred at birth if they are born with drugs in their system.

Are All The Children Taken into Protective Custody?

A Department of Children and Family Services (DCFS) social worker who has reasonable cause to believe that a child has been abused, neglected or abandoned and therefore falls within the description of Welfare and Institutions Code (WIC) Section 300 (a-j), and is in immediate danger, may take protective custody (also referred to as "detained") a child. (WIC 305) Children may also be detained if they are left without adequate supervision or are abandoned. If a child is left unattended, the social worker (known as Emergency Response (ER) workers) must first try to locate a parent or guardian before detaining the child. Before detaining the child, the social workers must first consider whether providing child welfare services would prevent or eliminate the need for removal. (WIC 319) Voluntary services can be provided in lieu of filing a petition and detention. See WIC 16506(b), 16507.4, 16507.5.[1]

There are situations where the ER worker determines that the child is not in immediate danger but there are facts sufficient to file a dependency petition under WIC 300. In those cases, the parent(s) are ordered to bring their child(ren) to the dependency court for what is called an "Initial Hearing". (WIC 319) Children brought under the jurisdiction of dependency court are commonly referred to as "dependents" while children who commit crimes and are brought under the jurisdiction of the delinquency system are referred to as "wards" or "delinquents."

What Happens To Cases In Other Courts?

When a case comes to dependency court there may be related proceedings in other courts. For example, if a parent is being criminally prosecuted for child abuse, that court action can proceed simultaneously. Similarly, if a child has a personal injury action, this can also proceed. However, dependency court has superior and sole jurisdiction for all issues involving

[1] California law now requires search warrants for DCFS investigations in the absence of a person's consent or exigent circumstances. Los Angeles County has practices and procedure in place to comply with the law but a full explanation is beyond the scope of this manual.

a child's custody from the date the petition is filed until the case is either dismissed or jurisdiction is terminated. (WIC 304) Thus, any family court action or guardianship proceedings are stayed (stopped) until the dependency proceeding is over. Family court jurisdiction over financial issues may proceed. At the conclusion of the dependency court case, the court will commonly make final custody and visitation orders that will remain in effect indefinitely unless a modification is sought in family court. A custody order of the juvenile court cannot be modified in family court unless the party can show that there is a significant change in circumstances since the juvenile court issued its order and it is in the best interest of the child. (WIC 302)

When a Dependent Commits a Crime

The most common situation occurs when a child who is already a dependent of the juvenile court is charged with a crime and in danger of becoming a delinquent. In this situation, the probation department and DCFS are mandated to file a joint assessment report. The report recommends which status would serve the child's best interest and at the same time protect the public safety. (WIC 241.1) The assessment report should consider all relevant data on the child and include a statement from the child's attorney and a Court Appointed Special Advocate, if the child has one. The 241.1 protocol also allows other California counties to participate so that a child who is dependent in Los Angeles County but is arrested in San Diego, can still have a 241.1 joint assessment.

Common situations where a 241.1 joint assessment are called for include the following:

1. When a dependent child commits a crime.
2. When a child is home on probation and is the victim of child abuse.
3. When probation seeks to terminate a delinquency case but the child cannot be returned home due to the potential of abuse or neglect in the home, or when there is no home to which the child can returned.
4. When a delinquency petition is filed (WIC 602) on a child who is not a dependent but the arraignment report suggests that abuse or neglect may have played a significant role in the criminal act.

Under WIC 241(e), a county can create a joint protocol to allow a child to simultaneously be a dependent child and a ward (WIC 300/600) of the court. The protocol must be signed by the chief probation officer, the director of the county social services agency, and the presiding judge of the juvenile court prior to the implementation. Los Angeles County has such a protocol and many children have been able to take part in this program.

Confidentiality of Dependency Court Cases

Dependency (and delinquency) court records and proceedings are confidential to protect the identity of children from public exposure. (WIC 827 - 828.3, California Juvenile Court Rule 1423) Those entitled to have access to the records and proceedings include the parties

(parents, guardians and children), their attorneys, the District Attorney, City Attorney or prosecutor, Court staff and the social worker and probation officer assigned to the case. Also entitled to access is "any person or agency providing treatment or supervision of the child", a judge, court-appointed child custody evaluator or mediator assigned to a family law case, a court-appointed evaluator in a probate guardianship case and Juvenile Justice Commissions. These recent additions are a result of a trend toward loosening the confidentiality requirements. Although these individuals are entitled to access, they may not disseminate any case related information to the media or any other individual or entity who is not a party to the case.

Other individuals or organizations such as a representative from a TV station, newspaper or other media organization or a defendant or plaintiff in a civil or criminal matter, are not automatically entitled to access the court files. In order to gain access, the individual or organization must file a Petition for Disclosure of Juvenile Records with the Presiding Judge of the Juvenile Court. The Presiding Judge reviews each petition on a case-by-case basis.

The Los Angeles Presiding Judge recently issued a Blanket Order clarifying who can attend dependency court hearings. (WIC 346) The Blanket Order states that the press has a legitimate interest in the work of the court and therefore unless a party can show that such access would present a reasonable likelihood of harm to a child or a child's best interest, the court should allow the press to be present.

2. COMMENCEMENT PROCEEDINGS

Who Are The Players And How Are The Parties Appointed Counsel?

In dependency court proceedings, parents, children and the county all have appointed counsel. Below is a description of the different organizations that represent the parties as well as the other important players in the court.

County Counsel
County Counsel represents The Department of Children and Family Services (DCFS). They do not represent the individual social workers but the entire agency. While they are not prosecutors, since no criminal charges are heard by the dependency court, they have the burden of proof.

Children's Law Center of California (CLCCA)
Created by the Superior Court in 1990, Children's Law Center of California represents the majority of the 28,000 children in the Los Angeles County dependency system. They also have offices in Sacramento. CLC attorneys represent the individual children in the court proceedings but as an organization, CLC, they also work on a broader organizational level to bring about system wide reform. To avoid conflicts, there are three separate firms (and two in the Lancaster court.)

Los Angles Dependency Lawyers, Inc.
Los Angeles Dependency Lawyers Inc. (LADL) is the organization that represents parents. It is comprised of four firms (to avoid conflicts of interest) and they are court appointed. Parents are required to see a financial evaluator in the courthouse to determine if they can pay for any or all or their attorney's services.

Private Attorneys
Parents may hire their own private attorneys however since the local rules require a minimum level of dependency legal education to practice in the court, it is not as common as in other courts.

Court Officers
Each courtroom has assigned attorneys from the above categories and one or two court officers. These individuals are social workers employed by DCFS. Their function in the court includes: acting as a liaison and consultant with County Counsel and the social workers in the field, organizing and handing out reports on each case.

Court Reporters
Court Reporters transcribe all the proceedings at every court hearing. If a case goes up on appeal, the court reporter will be required to transcribe the entire court hearing.

Bailiff
The bailiff is employed by the Sheriff's Department. Clients and attorneys must check in with the bailiff when they arrive in the morning. The bailiff then also makes a list on the dry erase board in the courtroom of everyone present. Their main responsibility is to protect the judicial officer and to make sure there are no violent altercations. If a parent is incarcerated, bailiffs supervise that individual and bring him or her from a cell on the bottom floor to a separate holding cell outside the courtroom.

Court Clerks
Dependency court clerks are responsible for taking down the orders of the court and memorializing them in a "minute order" after each court case. The minute order is the critical instrument in a Dependency case as it contains all the orders and findings of the Judicial Officer at each court hearing. The clerk also keeps the court's calendar and advises the court when it has a busy schedule and when there may be openings for trials.

Judicial Officers
Judicial Officers who sit in dependency court may be referees, commissioners or judges. If a referee is sitting, any party may request a rehearing on an order or finding. A rehearing application must be filed within ten days of the written order. If a rehearing is granted, a judge will hold a hearing on that issue. (WIC 252)

The Application for Petition, Petition and Detention Report

When the case first arrives in court, the attorneys assigned to the case will receive the above named documents. An emergency response (ER) worker writes the application for petition and the detention report but the actual petition is written by a social worker who specializes in drafting legally correct petitions. The name of the oldest child becomes the name of the case. If there is more than one child, the case name will be "name of oldest child, et al."

The application for petition lists the names of the children and the parents and the whereabouts of all the parties. It describes the situation which led to the filing of the petition and the efforts of the social worker, if any, to alleviate the need to detain or file the petition. The application may also include interviews with the parties.

The petition is the legal document by which the court determines whether there is sufficient evidence to find that the child falls within the jurisdiction of the dependency court. (WIC 332) The "counts" are factual allegations against the parent(s), which correspond to the legal paragraphs WIC 300 (a)-(j). These sections will be described in more detail below. The petition is the key document in any dependency case.

Finally, the detention report states the name(s) of the child(ren), if and where they are detained, reasons and recommendations for detention and statements from the child(ren) (if age appropriate) and the parent(s) concerning the detention.

Welfare and Institutions Code 300

Sections 300 describes the various types of abuse and neglect that, if the court finds to be **true by a preponderance of the evidence,** would be the basis for court jurisdiction. The following is a summary of the subdivisions:

300(a) Physical Abuse

The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted non-accidentally by the child's parent or guardian. This type of abuse does not include age-appropriate spanking to the buttocks. The key word in this subdivision is that the child has suffered injury or is at risk to suffer injury "non-accidentally." "Non-accidentally" means the parent or guardian inflicted the abuse through a volitional act, even if the parent or guardian did not actually intend to harm the child.

300(b) Neglect

The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure of his or her parent or guardian to: (1)

adequately supervise or protect the child; (2) provide adequate food, shelter, or medical treatment; or (3) provide adequate care due to mental illness, developmental disability or substance abuse. If a child is born with a positive toxicology for drugs or alcohol, the court can take jurisdiction under this section. Unlike the above subdivision, this subdivision refers to neglect or omission to act but not intentional abuse.

300(c) Emotional Damage

The child is suffering serious emotional damage, evidenced by severe anxiety, depression and/or aggression to oneself or others, or is at substantial risk of suffering serious emotional damage as a result of the conduct of the parent or guardian.

This subdivision is applicable when the parent or guardian is responsible for the child's severe emotional problems or does not have adequate resources to care for a child with serious emotional problems. It is not necessary that the parent or guardian actually caused the initial psychological trauma that resulted in the serious emotional damage, so long as the parent or guardian has failed to take the steps necessary to help the child deal with that emotional damage. An example would be if the child suffers psychological trauma at the hands of a third party, and the parent or guardian fails to secure counseling for the child which results in the child suffering serious emotional damage.

300(d) Sexual Abuse

The child has been sexually abused or there is a substantial risk of being sexually abused by his or her parent, or a member of the household. Sexual abuse is defined in Section 11165.1 of the Penal Code. Or, the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.
Attorneys should be familiar with Penal Code section 11165.1 when this subdivision is pled, since it is controlling in this instance.

300(e) Severe Physical and Sexual Abuse

The child is under five years of age and has suffered severe physical or sexual abuse by the parent, guardian or a person known by the parent. If a parent or guardian knew, or reasonably should have known that the person was physically abusing the child, they are similarly culpable.

This subdivision is important not only because of the seriousness of the abuse but also because if this allegation is found to be true (sustained) the court must deny family reunification services unless: the court can find, based on competent evidence that reunification services would prevent re-abuse or that not ordering services would be detrimental to the child because of the child's close attachment to the parent. (WIC 361.5(b)(5)) Under this subdivision, a parent may be denied family reunification services not only for personally inflicting the injury, but also if they knew or should have reasonably known that the abuse was taking place.

300(f) Causing the Death of Another Child

The child's parent or guardian has caused the death of another child through abuse or neglect.

Like subdivision 300(e), a perpetrator can be denied family reunification services if this count is sustained. However, a parent can only win those services back if the court finds by clear and convincing evidence that offering those services would be in the best interest of the child. (WIC 361.5(b)(4), 361.5(c)) Since the perpetrator need only have caused the death, but not necessarily been convicted by a criminal court, the Juvenile court could be put in the position of conducting murder trials. This can be especially complicated when a parent is awaiting trial in criminal court and the proceedings in juvenile court are used as discovery in the criminal trial.

300(g) Abandonment

The child has been left without any provision for support; parent has been incarcerated or institutionalized and cannot arrange for the care of the child; parent or guardian is unable or unwilling to provide support; or the whereabouts of the parent(s) is unknown. An incarcerated or institutionalized parent can rebut the presumption of abandonment if they prove they made adequate arrangements for the care of the child.

In January 2001, subdivision (g) was amended to include a situation where a parent "voluntarily surrenders" a child who is 72 hours old or younger and does not reclaim that infant within 14 days. This and related statutes were enacted to save infants whose parents abandon them at birth. The most common and often tragic of these situations is where a mother places a newborn in a dumpster in the hopes that no one will discover that the mother was both pregnant and gave birth. Now, a parent can drop off a baby at a hospital without being questioned or prosecuted. Thus, a parent who voluntarily surrenders an infant within the statutory time (72 hours of birth) will not be **criminally** prosecuted for abandonment. However, the entity that receives the child must notify the applicable social service agency (DCFS in Los Angeles) and the agency must then file a petition pursuant to subdivision (g) of the Welfare and Institutions Code and any other applicable subdivision. (See also, Health and Safety Code 1255.7 and Penal Code 271.5)

300(h) Freed for Adoption

The child has been freed for adoption by either relinquishment or termination of parental rights for twelve months, or an adoption petition has not been granted.

300(i) Cruelty

The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of the household, or the parent or guardian has failed to adequately protect the child from acts of cruelty when they knew or reasonably should have known that the child was in danger.

This subdivision can only be sustained if there are extreme and severe acts of maltreatment such as starvation or torture. Or where the abuse "shocks the conscience" such as where the

child is locked in a closet for extended periods of time, or kept in a dog crate for extended periods of time.

300(j) Abuse of Sibling

The child's sibling has been abused or neglected as defined in subdivision 300(a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions.

This subdivision allows siblings who may not have been abused or neglected to become dependents of the court. The rationale is that if one child has been abused, there is a substantial likelihood that other children in the family may also be abused. There is no need for the child who was abused or neglected to have been adjudicated a dependent or even still to be a child, as long as the abused or neglected sibling suffered abuse or neglect by the parent or guardian as defined in the above subdivisions. The court must, however, consider other factors such as age, gender and the nature of the abuse or neglect when deciding whether to take jurisdiction under this subdivision.

3. STATUTORY HEARINGS

Initial Hearing/Detention Arraignment

The first hearing in a dependency proceeding is the "Initial Hearing" although historically it was referred to as the "Detention/Arraignment". The name was changed to emphasize that a hearing must held whether or not a child is removed from the home of a parent or not. "Arraignment" is a term used to describe the portion of the hearing where the parents waive further reading of the petition and their rights at this hearing. As stated above, the application for petition, the petition and a detention report are the documents that are filed with the court. Statutorily, DCFS must file a petition within 48 hours after a child is removed and a hearing must be scheduled as soon as possible or before the expiration of the next judicial day after the petition is filed. (WIC 313, 315) If a child has not been detained but a petition has been filed, the initial hearing must take place as soon as possible.

DCFS is obligated to place children who are removed with a relative or an able and willing non relative extended family member (WIC 362.7, 309(d)). In January 2002, the California legislature allowed a new group of individuals to be available for placements for children in foster care. These individuals, called "**non relative extended family members,**" are defined as any adult with an established familial or mentoring relationship with the child. Examples may include distant relatives, relatives of half-siblings, teachers, clergy, neighbors, and family friends. Like relatives, the non relative extended family member's placement must comply with the same requirements of a foster parent. (WIC 362.7)

If a relative or non relative extended family member is unavailable or unsuitable, the child will be placed in a foster home, group home or a non-secure facility. DCFS must notify the parent or guardian immediately (usually within five hours) that the child has been detained and must provide a telephone number at which the child can be contacted. (WIC 308)

The address of the foster home can remain confidential until the disposition hearing unless the disposition hearing is more than sixty days from the date of detention, at which time the judge may authorize the disclosure of the address. DCFS may, in its discretion, deny telephone contact before the detention hearing if they deem that contact detrimental. When a child is over the age of ten and detained, that child is entitled to make two phone calls - one to his or her parent, guardian or other relative and one to his or her attorney. (WIC 308)

When children are in foster care, they are generally brought to court (if four years or older) to an area in the courthouse called "Shelter Care." This is a private area where children can take part in a variety of activities until they are called to court. The Court Appointed Special Advocate's office does a general introduction to dependency court for the children in shelter care and accompanies them to and from court hearings. Shelter Care also has areas for attorney interviews and family visits.

The issue at the detention hearing is whether the child should be detained pending the jurisdictional hearing. (WIC 319) Any party or person with relevant knowledge may present testimony on the issue of detention. If the court finds a "prima facie" case (just enough evidence on the face of the court documents) and one or more enunciated circumstances, the child will be detained out of the home of the parent(s). The court must find that the child comes within the description of WIC 300, that continuation of the child in the parent's home is contrary to the welfare of the child and any one of the following circumstances exist: (1) there are circumstances which show a substantial risk to the physical safety of the child, (2) the parent is likely to flee, (3) the child left a court ordered placement, or (4) the child refuses to return to the home where the alleged physical or sexual abuse occurred. If these elements cannot be proven, the child must be released to the parent(s). (WIC 319)

Children who are 10 years of age or older are entitled to be present at all hearings. If a child is not present, the court must determine whether the child was properly notified of their right to attend the hearing and ask why the child is not present. (Cal. Rules of Ct., Rule 1412(n))

Relative Placement

As stated above, if a child is detained, DCFS must attempt to place the child with an appropriate relative. If the child was not initially placed with relatives but there are relatives available, the court will order a pre-release investigation (PRI). The purpose of this order is to investigate the safety of the relative's home and determine whether the caretaker/relative has a history of criminal convictions and is a suitable placement for the child.

The definition of a relative is any adult who is related to the child by blood, adoption or affinity within the fifth degree of kinship, including stepparents, stepsiblings and all relatives whose status begins with the words great, great-great, or grand, or the spouse of any of these persons, even if the marriage was terminated by death or divorce. Preferential consideration, however, is given only to a child's grandparent, aunt, uncle or sibling. (WIC 319) Before

placing the child with a relative, DCFS must consider the relative's suitability. Some elements that are assessed include: an in-home assessment, the results of a criminal records check (commonly referred to as a "CLETS"), fingerprinting (commonly referred to as "livescan") and any prior child abuse allegations. (See also, WIC 309) A child can be placed in a home of a relative or nonrelative extended family member whose home has been "assessed" but not "approved" by DCFS.

Criminal Records Exemptions

A criminal conviction is not always an absolute bar to placement. DCFS can grant an exemption and allow the child to be placed in the home as long as there is enough evidence to support a reasonable belief that the person with the criminal conviction is of such good character as to justify the placement and not present a danger to the child. (WIC 309 (d)(4)). Certain felony crimes are not available for exemption such as drug or alcohol related convictions within the past five years, assault and battery and other violent crimes. (See Health and Safety Code 1522)

Sibling Placement

The court must also consider sibling relationships at placement. The court must investigate whether there are any siblings currently under the court's jurisdiction, the nature of the sibling relationship and the appropriateness of developing or maintaining that sibling relationship. (WIC 361.2(j)) As of January 2004, notice of court hearings must now be given to other dependent siblings. As of 2011, siblings must be placed together unless the court finds that such placement would be contrary to the safety or well being of any one of the siblings. (WIC 16002)

In addition to the sibling relationship, the court and DCFS are required to consider other factors when placing a child including but not limited to: the best interest of the child, the protection of the child from their parents, relative's ability/willingness to assist with the implementation of the case plan (although the inability to facilitate the case plan cannot be the sole basis for precluding preferential placement with a relative), whether there are other siblings or half-siblings in the home and whether that relative could provide legal permanence if reunification with the parents fails. (WIC 361.3 (a)(6))

The dual consideration of facilitating reunification with a parent while at the same time planning for legal permanence (which usually means adoption or guardianship) is called "**concurrent planning**"; the concept of concurrent planning was introduced in 1998 and is discussed further below.

Paternity and Parentage

At the detention hearing or as soon thereafter as practical, the court must inquire as to the parentage of the child. All men alleged to be the father must establish paternity either through a legal presumption or by showing that he is the biological father of the child. A presumption of paternity arises when the parents were married at the time of conception, signed a voluntary declaration of paternity or the court is otherwise satisfied that he is the "presumed" father because he can satisfy the requirements set forth in Family Code section 7611(d). "Mere biological" means a biological father who has done almost nothing to develop a relationship with the child either before or during the dependency hearing. An alleged father is a person who may be the father but whose biological paternity has not been established. An alleged father only has the right to notice of the proceedings and of the opportunity to establish paternity. An alleged father is not a father until paternity is established and therefore cannot be given services or be considered for placement as a father. The relatives of an alleged father are not relatives of the child for purposes of placement, but an alleged father and his relatives may qualify as non-relative extended family members in an appropriate case. Even a mere biological father is not automatically entitled to family reunification, which is why it is important for the court to make the required inquiries under this code section. A presumed father has the most rights in a dependency proceeding and can be deemed presumed even if they are found not to be the biological father.

These cases are not limited to fathers. Several cases have held that presumed status can apply to women who were the same sex partner of the mother and other situations where the child has only known the parent as their only psychological parent. This is an ever-changing area of the law that cannot be fully addressed in this manual.

Pre-Trial Resolution Conference (PRC)

A PRC report (also known as a social study report) is almost always ordered unless the case is set for a no time waiver trial (within 15 days of the detention hearing) and there is not enough time for a detailed report. The PRC report contains a detailed description of the circumstances surrounding the filing of the petition. (WIC 355) This report is to be an objective investigation and include both positive and negative information about the family. The social workers that generate these reports are called "Dependency Investigators" or "DI's." Their job is to gather enough evidence through interviews and other documents to legally prove or disprove the allegations set forth in the petition.

Even though reports are often replete with statements made to the social worker (hearsay), they can still be submitted to the court for the truth of the matter asserted (to prove the contents of the petition). (WIC 355) In the case of In re: Malinda S., 272 Cal.Rptr. 787 (1990), the Supreme Court held that a court can admit the hearsay evidence contained in a

PRC/social study report as long as the preparer of the report is available to testify. This case was modified in part and codified in WIC 355. WIC 355 provides that even if a party makes a timely objection to a statement in the social study, the statements of certain hearsay declarants (people quoted in the report) can be exclusively relied upon to prove an allegation in the petition. These individuals include peace officers, health practitioners, teachers and any child who is the subject of the petition and is under the age twelve, unless the statement was the product of fraud, deceit or undue influence. Additionally, any statement that would already be admissible in a civil or criminal proceeding can also be used to prove an allegation in the petition.

Any other individuals statement (not named above) are admissible only if those individuals are made available for cross-examination if an objection is made. Thus, a "lay" witness who is quoted in the social study report must be made available. This type of witness may be a relative, friend, neighbor or child who is not a party to the proceeding. This is a complicated statute and should be read carefully.

Most cases are resolved at the PRC hearing. If the case is contested, both the social worker and the individuals who are quoted in the report can be subpoenaed to court and cross-examined. If the parties cannot resolve their case informally, the case can be referred to mediation for settlement. (WIC 350)

Mediation is a process by which the disputants voluntarily come to a mutually accepted agreement. The mediators are facilitators rather than fact finders or judges and have a duty to help the parties come to a mutually satisfactory agreement. Dependency court has a group of professional mediators who, along with a DCFS social worker, assist the parties in reaching a fair resolution. If the case is "resolved" this only means that the parties have amended the language of the petition so that it more truly reflects the situation surrounding the filing of the petition. The parties can also agree to the particular subdivisions of WIC 300 that are relevant to the case.

If a parent does not attend the PRC hearing, the court may sustain the petition as written or set the case for a hearing where DCFS must prove the allegations in the petition based on their witnesses, reports and other admissible evidence. Some parties will agree to the dispositional issues and others will continue the case for an actual dispositional hearing. If the parties cannot come to an agreement, the case is set for adjudication (trial).

Adjudication/Trial

At an adjudication of the petition, the judicial officer must determine whether the child is a person described by WIC 300. (WIC 355) DCFS must prove the allegations by a preponderance of the evidence (sometimes described as a little more than "51%"). DCFS, represented by County Counsel, and any other party, may present both written and testimonial evidence proving or disproving the specific allegations of the petition. As mentioned above, County Counsel may offer into evidence the PRC report, which, though it contains hearsay

statements, is often admissible. At the conclusion of the trial the judicial officer will make findings of fact for the allegations that can be legally sustained and which should be dismissed for lack of evidence.

Disposition

At the disposition ("dispo") hearing (WIC 358) the court makes the legal finding that the child(ren) are dependents of the Juvenile Court. The purpose of the hearing is to determine whether the child(ren) should be released to the parents (if they are still detained), and what type of visitation and counseling programs are recommended. If the disposition hearing is set to take place at a different time than the trial or PRC, a disposition report is ordered. This report should include a discussion of the appropriate services for the parents, whether or not the child should be detained, and a plan of recommended visitation if the child is detained. If the child has siblings, the report must also address visitation for the child with the siblings. In order for the court not to order sibling visitation, it must find by clear and convincing evidence that the sibling interaction would be detrimental to the child or sibling. The court should also address grandparent visitation, if applicable. These orders are commonly referred to as "the case plan."

In 2006, a new section was added to specify that the child should also be involved in developing the case plan in an age and developmentally appropriate manner. If a child is aged twelve or older, the child shall have the opportunity to review, sign, and receive a copy of the case plan and if the permanent plan is adoption or placement in another permanent home, the case plan should now include a statement of the child's wishes and an assessment of those wishes. (WIC 16001.9, 16500.1)

The purpose of the case plan is to help the parents address the problems that brought them (and the children) into the system. The parents must participate in the court ordered programs and consistently visit the children. For example, if a petition was sustained because children were put at risk due to a parent with drug problems, DCFS may request that the court order the parent into a drug program that has a testing component; or if a parent inappropriately disciplined a child, a parenting class may be ordered. The implementation of the case plan is referred to as "family reunification."

Unlike the adjudication stage during which County Counsel must prove its case by a preponderance of the evidence, at the dispositional hearing the standard of proof depends on whether the child remains in the custody of the parents. If DCFS recommends continued detention of the child, the burden of proof is higher than if the child is to remain in the custody of the parent. If the child is to remain in the custody of his or her parent, the burden of proof is a preponderance of the evidence. However, if the child is to be removed, or remain removed, DCFS must prove by clear and convincing evidence that there would be substantial danger to the child's physical health, safety, protection, or physical or emotional

well-being, or that there are no reasonable means to protect the child's physical health if the child were returned home.

If a non-custodial parent comes forward and seeks custody of the child, the court must release the child to that parent unless the court finds that such placement would be detrimental to the child's safety, protection, or physical or emotional well-being. (WIC 361.2)

Family Reunification and Family Maintenance

At the disposition hearing the court develops a case plan to address the issues that gave rise to the filing of the petition and directs DCFS to provide appropriate services for the purpose of reunifying the family. If the child is ordered home with the parent and the case is not terminated after disposition, the court will order family maintenance services. (WIC 364) Family maintenance services are the same as family reunification services without the time limitation set by statute. The case is reviewed every six months, at which time DCFS must prove by a preponderance of the evidence that conditions still exist that warrant jurisdiction, or that such conditions would be likely to exist if dependency jurisdiction was terminated. If DCFS cannot meet that burden and the case does not warrant further supervision, the court will terminate jurisdiction (close the case).

Unlike family maintenance services, the family reunification ("FR") period lasts for generally six to twelve months and in some circumstances eighteen to twenty-four months depending on the age of the child at the time of removal, the participation of the parents in the court ordered programs and the reasons for removal. This will be more fully explained in the section entitled "Review Hearings."

The court must offer family reunification except under certain circumstances. Historically, the denial of family reunification was reserved for only the most serious types of abuse. The statute has expanded and now includes seventeen circumstances under which family reunification services may not be offered. (See WIC 361.5(b)(1) - (16) and WIC 361.5(e)(1)) [361.5 (e)(1) states that the court shall order reasonable services if the parent or guardian is incarcerated, institutionalized. . . . unless court determines those services would be detrimental to the child—should this circumstance be included here? It appears that services should be offered here] Did you mean to include WIC 361.5(c) here instead: "The court shall not order reunification in any situation described in paragraph (5) of subdivision (b) unless it finds that . . . those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental . . ." . If the court is considering denying family reunification, the parent(s) have a right to notice of that recommendation in advance of the hearing, and a right to present their own evidence to show that family reunification should be provided. (See WIC 361.5(b) and 361.5(c))

DCFS must provide proof at this hearing by clear and convincing evidence. If reunification is not offered, the court will immediately set a hearing to determine which permanent plan best suits the child's needs (long-term foster care, guardianship or adoption). (WIC 366.26) When considering the most appropriate permanent plan for the child, the court must also

consider a sibling relationship if one exists, and the impact that plan would have on the placement and visitation with the sibling(s).

Depending on the code section alleged, the denial of services is either mandatory or discretionary. If it is mandatory, the burden of proof shifts to the parent (and/or the child's attorney if they want reunification) to convince the court by clear and convincing evidence that reunification is in the best interests of the child. (WIC 361.5 (c)) The denial of services is mandatory in WIC 361.5 (b)(3), (4), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), and (16). Under WIC 361.5(c), reunification services shall not be offered unless the parent(s) can prove by competent evidence that those services would likely prevent re-abuse or continued neglect or that the failure to try reunification would be detrimental to the child. The disposition statute explains the type of relevant information that the court should consider when making its determination. (See WIC 361.5(h) and 361.5(c))

Below is a brief description of the circumstances under which the court does not need to provide reunification services to the parent or guardian:

- The whereabouts of the parent(s) are unknown and there has been a diligent search to find their whereabouts and that search was unsuccessful. (WIC 361.5(b)(1));
- The parent is suffering from a mental disability that renders him or her incapable of utilizing any reunification services. (WIC 361.5(b)(2));
- The child was declared a dependent due to sexual or physical abuse, removed from the parents, returned to their custody and then is removed again due to the same allegations of sexual or physical abuse. (WIC 361.5(b)(3));
- The parent has caused the death of a child through abuse or neglect (See WIC 361.5(b)(4));
- The child was brought within the jurisdiction of the court under WIC 300(e) because of the conduct of the parent. (WIC 361.5(b)(5));
- The parent has severely sexually or physically abused the sibling or half-sibling of the child. (WIC 361.5(b)(6) A recent amendment to this statute defines sibling as any person related by blood, adoption or affinity through *a common legal* or biological parent. This will allow reunification to be denied to a child who would otherwise be unrelated except if they share a legal guardian;
- The parent is not receiving reunification services for a sibling or half-sibling due to the circumstances described in WIC 361.5(b)(3), (5) or (6). (WIC 361.5(b)(7));
- The child was conceived out of a rape (this only applies to the parent who committed the crime) (See WIC 361.5(b)(8));
- The child was abandoned and the court finds that the abandonment itself posed a serious danger to the child or the child was voluntarily surrendered. (See WIC 361.5(b)(9));
- The court ordered termination of reunification services for any sibling or half-sibling of the child because the parent failed to successfully reunify with that sibling or half-sibling and according to the findings of the court, the parent has not made a subsequent effort to treat the problem that led to the removal of that sibling or half-sibling. (WIC 361.5(b)(10));

- The parental rights of a sibling or half-sibling of the child have been permanently severed and the parent has not made a reasonable effort to treat the problems that led to the removal of that sibling or half-sibling. (WIC 361.5(b)(11));
- The parent has been convicted of certain violent felonies. (WIC 361.5(b)(12));
- The parent has an extensive history of drugs or alcohol, has resisted prior court-ordered treatment in the past three years or has failed or refused prior dependency court-ordered treatment on at least two occasions even though it was available and accessible. (WIC 361.5(13));
- The parent voluntarily wishes to give up reunification services. (WIC 361.5(b)(14));
- The parent has on one or more occasions willfully abducted the child, the child's sibling or half-sibling from their placement and refused to disclose the child's whereabouts or return the child to the social worker. (WIC 361.5(15))
- The parent or guardian has been required by the court to be registered on a sex offender registry under the federal Adam Walsh Child Protection and Safety Act of 2006 (42 U.S.C. Sec. 16913(a)), of the Child Abuse Prevention and Treatment Act of 2006.

The denial of family reunification services is discretionary if a parent's whereabouts are unknown (WIC 361.5(b)(1)) or if a parent is suffering from a mental disability (WIC 361.5(b)(2)). Finally, if a parent is incarcerated, institutionalized, detained by the U.S. Department of Homeland Security, or deported to his or her country of origin, the court must order reunification unless it finds by clear and convincing evidence that those services would be detrimental to the child. (WIC 361.5(e)(1)) The court must consider the particular barriers the parent could encounter in trying to access services and ability to maintain contact with his or her child due to incarceration, institutionalization, detention, or deportation.

This is an extremely complex statute that must be studied carefully.

Visitation Orders

If a child is detained, there are various visitation plans that the court may implement throughout the life of the case. Below are some of the most common visitation plans:

Monitored

- This order usually occurs either at the beginning of a case before a court has gathered relevant facts, or if a court is concerned about leaving a child alone with a parent without supervision. Thus monitored means that another DCFS approved adult or a DCFS worker must be present at all times during a visit. Sometimes visits can be monitored outside of a caretaker's home but unmonitored in the caretaker's home.

Monitored in a neutral setting

- This visitation plan is the most restrictive. It generally means that visits will either take place at a DCFS office or in a park or other neutral setting.

Unmonitored/Reasonable

- Under this order a parent can see a child without supervision. Sometimes that time period is specified by the court, e.g., reasonable day visits.

Weekend/overnights

- This means unsupervised contact with weekend and/or overnight visits.

Types of Placements and Funding

If a child is not returned home, he or she is "suitably placed (s/p)" under DCFS supervision. This term means that the child is placed outside of the family residence. In January 2004, the legislature enacted a statute that addresses a child in foster care's extracurricular, enrichment and social activities. Caregivers now can use a "prudent parent standard" when deciding whether to give to permission for activities such as sleepovers, dances and other age appropriate activities. (WIC 408) Below are some examples of placement options:

Non Relative Extended Family Member

As explained above, this new category of individuals is defined as any adult with an established familial or mentoring relationship with the child. Examples may include distant relatives, relatives of half-siblings, teachers, clergy, neighbors, and family friends. (WIC 362.7)

Home of Relative

If at all possible, a relative placement is preferable. DCFS, the Court and the parties all bear responsibility in helping to identify viable relatives for placement. (WIC 361.3)

Foster Homes

A non-related foster care home is usually a family residence with six or fewer children, including the parents' biological children. There are two types of foster homes: DCFS licensed homes and Foster Family Agencies (FFAs) homes. FFAs are licensed from the State of California and then in turn certify foster homes under their supervision. FFAs generally provide a higher rate to foster parents and additional support. Most FFAs visit their homes on a weekly basis whereas DCFS is legally required to visit foster homes on a monthly basis. There is a great deal of paperwork that goes into certifying the home for a license. A home can be temporarily certified for the purpose of a placement as long as the foster care provider has filed an application with DCFS and DCFS has visited the home and completed a home study.

Foster care providers are also entitled to funding and other assistance such as Medi-Cal, free lunches and a clothing allowance. If a child has special needs, he/she may be entitled to higher rates to help pay for therapy or other services.

Group Homes

Group homes contain more than six children and are generally for children who are over ten years of age. When a child is hard to place due to emotional or behavioral problems, he or she is more likely to be placed in a group home.

Funding

All children in foster care are entitled to monetary aid for their care and support. The aid (also known as a benefit or grant) is paid to the caregiver. Children placed with a non-relative qualify for federal foster care (as per the Social Security Act, Title IV-E) or state foster care. There are three levels of foster care funding: basic, F-rate and D-rate. The "F" and "D" rates are known as "specialized care rates" and they give the caregiver more money due to the high level of care required by these children. The F-rate is for children with special medical or developmental needs, while D-rate is for children with severe emotional or behavioral problems. Children without special medical or emotional needs receive the basic rate. Expert consultation is highly recommended in areas related to funding.

In January 1998, the legislature introduced the concept of concurrent planning. (See WIC 366.21(c), 366.22 (a), (c) and 366.21 (e), (f), and (g)) Under concurrent planning, DCFS provides services for reunifying the family while at the same time plans for the legal permanence if reunification efforts should fail. As of January 2004, new legislation was introduced to assure that throughout the proceedings, the court is informed about the caregiver's willingness to provide legal permanency for the child if reunification services are unsuccessful. (See WIC 358.1(i), 358(b), 361.3(a)(6)) Adoption is the most preferred of these plans as it is the most legally permanent of the options. Thus, DCFS may place a child in a foster home that is eligible to adopt and provide services to achieve legal permanence at the same time they are attempting to reunify a child with a parent.

Placement with a Non-Custodial Parent

When a child is removed from one parent because of abuse or neglect and there is another parent who the child was not residing with at the time of the events, the court must place the child with that "non-custodial" parent as long as the following circumstances exist:

1. The parent requests custody; and
2. The court finds that placement would not detrimental to the safety, protection, or physical or emotional well-being of the child.

If the court places with the previously non-custodial parent, the court can: (1)close the case with a final custody order (a Juvenile Custody Order) and the parent becomes the legal and physical custodian; (2) order the parent to take custody and set a three months review where, the court can decide to close the case with a Juvenile Custody Order or provide services; or (3) order services to maintain the child in the home of the non-custodial parent and/or order services to the parent from whom the child was removed. Caution: The services to the parent that the child was removed from are not "family reunification

services" as discussed below. Instead, they are services pursuant to WIC 366 and are commonly referred to as "enhancement services." The services provided to the non-custodial parent are pursuant to WIC 364. See, (WIC 361.2)

Review Hearings

As of January 2010, a child, regardless of their age, is deemed to have entered foster care on the earlier of two dates: *the jurisdictional hearing (WIC 356) or sixty days after the child was initially removed from the physical custody of the parent. (WIC 361.49)* This is consistent with federal law.

Reunification services may be extended to 18 months from the original removal of the child in limited circumstances. These circumstances include parents who are in substance abuse programs, incarcerated or institutionalized parents, parents detained by the U.S. Department of Homeland Security, or parents deported to his or her country of origin. (WIC 361.5(a)(3), 266,22(b), 366,25). The court must consider the parent's barriers to his/her access to services and ability to maintain contact with the child. As further explained below, the Court will have to make numerous findings in order to extend the time period.

Review hearings are referred to by a variety of acronyms such as: ".21(e)," ".21(f)," ".22". These acronyms are shorthand for the actual statute numbers, WIC 366.21(e), 366.21(f) and 366.22.

366.21(e) Hearing

This first status review hearing is held six months after the disposition.

There is a two-tier analysis depending on the age of the children:

For children who were under three years of age on the date of the initial removal (or are part of a sibling group where one child is under three on the date of the initial removal and will likely be placed together), reunification services shall be provided for no less than six months from the date of disposition and continue no longer than 12 months from the date the child entered foster care, unless the child is returned home to the parents. WIC 361.5(a)(1)(B)

For a child who is three years or older on the date of initial removal, reunification services shall begin at the disposition date and continue no longer than 12 months from the date the child entered foster care, unless the child is returned home to the parents. WIC 361.5(a)(1)(A)

Under the 6 month review statute, the court must order the return of the child to his/her parents *unless the court finds by a preponderance of the evidence that the return of the child would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.*

DCFS has the burden of establishing detriment. If the parent fails to participate regularly and make substantial progress in court-ordered treatment programs, this will constitute prima facie evidence that the return of the child would be detrimental.

The services worker writes a report for each of these review hearings which discusses the progress of the parent(s) in the court ordered programs, how the visits have been proceeding, how the child is doing in placement, and any other relevant evidence. The report must also address sibling visitation, if applicable. If there are siblings, the report must address the nature of the relationship, the frequency and nature of sibling visitation, and the appropriateness of developing or maintaining the sibling relationship. If the siblings are not placed together, the report must state what efforts are being made to place them together, or why such efforts are not appropriate. In determining the nature of the sibling relationship, the court should consider factors including but not limited to: whether the siblings were raised together, shared common experiences, have existing close and strong bonds, whether either sibling expresses a desire to visit or to live with his/her sibling, and whether ongoing contact is in the "child's best emotional interest." (WIC 366, 366.1(c))

After considering all evidence, the court will either return the child to the custody of the parents or terminate reunification services for a child under three. If the child is not returned, the Court must determine whether DCFS has offered appropriate and sufficient services to the parent(s) that would help alleviate the problems that led to the removal of the child. This finding by the Court is called "Reasonable Efforts" and the Court must make a "Reasonable Efforts" finding at all three review hearings. (WIC 366.21(e), 366.21(f) and 366.22) If the parent disagrees with the recommendation, they have the right to set the matter for "contest." A contest is an evidentiary hearing where DCFS has the burden of showing that it would be detrimental to return the child home.

Extension of Services for Children under Three

The court will only give the parents six more months of services if the parent proves there is a substantial probability that the child may be returned to the parent's custody within the next six months (or reasonable efforts were not provided).

The court must consider certain special circumstances such as whether the parent has been incarcerated, institutionalized, detained by the U.S. Department of Homeland Security, or deported to his/her country of origin, or has been participating in a court ordered substance abuse residential treatment program and whether these circumstances were legitimate barriers to the parent's abilities to access services and/or ability of the parent to maintain contact with the child. The court must also consider, among other factors, the parent's efforts to maintain contact with the child. (WIC 361.5 (a)(3))

If a child is over the age of three at the time of initial removal, and the child is not returned home, reunification services are extended for six more months but not more than 12 months from the date the child entered foster care.

Additional Important Relationships

If a child is 10 years of age or older and has been in foster care for over six months, DCFS also has an obligation to identify and maintain relationships with persons who are important to the child. These efforts are to be made throughout the dependency case. It is hoped that these efforts will identify permanent placement options for the child or if no permanent placement option is available, he or she will have a life-long connection with a committed adult. (WIC1601.1(i), 366.1(g), 366.(a)(1)(B), 366.21, 366.22, 366.26(c)(3), 366(c)(1)(A), 366.3,(e), 16500.1(b)(11), 10609.4(b)(1)(G), 16501.1(f)(14), 391(b)(5))

366.21(f) Hearing

This hearing, entitled the "Permanency Hearing", is scheduled to take place no later than twelve months after the child entered foster care. Like the six month review hearing described above, DCFS has the burden of establishing by a preponderance of the evidence that *the return of the child would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.* For a youth who is 16 years or older, the court must also determine whether services have been made available to assist him or her in making the transition from foster care to independent living.

The court must also make a finding at this hearing whether the child has in-state or out-of-state placement options. If the child is placed out-of-state, the court must determine whether that placement continues to be appropriate and in the best interest of the minor.

At the twelve-month hearing, the court will either terminate family reunification services or give the parent six more months of family reunification.

As with the six month hearing, the court again must consider:

Whether certain exceptional circumstances such as whether the parent has been incarcerated, institutionalized, detained, deported, and whether these circumstances have been particular barriers to the parent's abilities to access services and/or ability of the parent to maintain contact with the child. The court must also consider, among other factors, the parent's efforts to maintain contact with the child.

The court will only give the parents six more months of services if it can be proven that there is a substantial probability that the child will be returned within the next six months and that this is a "compelling reason" not to terminate family reunification services. (WIC 366.21 and 366.22)

In order for the court to find a substantial probability that the child will be returned to the parent, the court must find:

1. The parent has consistently contacted and visited the child;
2. The parent has made significant progress in resolving the problems that led to the child's removal; and
3. The parent has demonstrated the capacity and ability to complete the objectives of the treatment plan and provide for the child's safety, protection, physical and emotional well-being. (WIC 366.21(g)(1))

This is a higher standard than the previous two hearings, making it more difficult for parents to receive more than twelve months of reunification services.

If six more months are ordered, the next hearing must be held within 18 months from the date the child was originally taken from the physical custody of the parent.

If the court terminates family reunification services, it must find by clear and convincing evidence that DCFS has offered reasonable services to the parents and set a WIC 366.26 hearing within 120 days to determine the most appropriate permanent plan for the child.

The court can all consider if the parent has been arrested and issued an immigration hold, detained by the Homeland Security or deported and the court determines there is a substantial probability that the child will be returned to the physical custody of that parent within the statutory timeframe. The parent must show that they have consistently and regularly contacted and visited the child, taking into account the barriers of their arrest, hold or deportation and they have made significant progress in resolving the issues that led to the removal of the child.

366.22 Hearing

The eighteen-month permanency hearing is eighteen months from the date of the initial removal of the child (this is in accordance with Federal law). If the child is not returned to the home of the parent, the court will terminate family reunification services and order a "permanent plan" for the child. As in the six and twelve month review hearings, the court must order the return of the child to the physical custody of his or her parent(s) unless it finds by *a preponderance of the evidence that returning the child would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.* DCFS has the burden of establishing detriment. The failure of the parent to participate regularly and make substantial progress in the court ordered treatment plan is prima facie evidence of that detriment. Again, like the six and twelve month hearing, the court must consider:

Whether certain exceptional circumstances such as whether the parent has been incarcerated, or institutionalized or been participating in a court ordered substance abuse residential

treatment program and whether these circumstances have been legitimate barriers to the parent's abilities to access services and/or ability of the parent to maintain contact with the child. The court must also consider, among other factors, the parent's efforts to maintain contact with the child. (WIC 366.21.f(2))

24 Month Hearing

As of January 2009, the court may extend reunification services to the parent to 24 months from the date the child entered foster care if the court determines by clear and convincing evidence that it would be in the best interest of the child and makes a finding that there is a substantial probability the child will be returned to the physical custody of the parent.

The parent must show they are making significant and consistent progress in a substance abuse treatment program or was recently discharged from incarceration, institutionalization, or the custody of the U.S. Department of Homeland Security, and is making significant and consistent progress in establishing a safe home for the child's return. The extension of services may also be provided if reasonable services have not been provided. The court will consider the following factors in its decision: whether the parent has consistently and regularly contacted the child, whether the parent has made consistent progress in the prior 18 months in resolving the problems that led to the child's initial removal, whether the parent can produce evidence that they have the capacity and ability to complete the objectives of the substance abuse plan or a post discharge from incarceration or institutionalization, and whether there is a substantial probability the parent will be able to provide for the child's safety, protection, physical and emotional well-being, and special needs. (WIC 366.22(b), 361.5(a)(3)).

If the court cannot make the above findings, the court shall order a hearing under WIC 366.26 as long as the court can find by clear and convincing evidence that reasonable services were provided by DCFS to the parent.

Selection and Implementation Hearing – WIC 366.26

At the 366.26 hearing the court will determine whether adoption, legal guardianship with a relative or non-relative or long-term foster care is the most appropriate permanent plan for the child. When determining a permanent plan, the court must also consider all factors related to maintaining and/or developing sibling contact. If the court finds by clear and convincing evidence that the child is not a proper subject for adoption and there is no one willing to accept legal guardianship, the court may order that the child remain in long-term foster care.

In determining a permanent plan, DCFS must submit an adoption assessment. (WIC 366.21 (I)) This document should provide a complete assessment of the child and include the following factors: contact with his or her parent(s), an evaluation of the child's mental, medical, scholastic, developmental and emotional status, whether there are prospective or

interested adoptive families for the child, the nature of the relationship between the child and prospective family, and an analysis of the likelihood that the child will be adopted if parental rights are terminated.

Only if the court determines by clear and convincing evidence that the child will be adopted based on these criteria can parental rights be terminated. Some practitioners confuse the concept "likelihood that a child will be adopted" with whether the child is "adoptable." The statute clearly states the standard is whether the child is "likely to be adopted." Many argue that "likely to be adopted" means that adoptive parents have already been found for the child. However, case law has consistently declined to accept this interpretation. If a parent objects and claims that a child is not likely to be adopted (based, for example, on a child's age or disability), DCFS will rebut with testimony from an experienced adoption worker who will testify that based on his or her experience, a home could be located for that child, making them "likely to be adopted."

If the child is placed with a relative caregiver, the assessment must include whether the relative caregiver has a preference for legal guardianship or adoption. If the preference is for legal guardianship, the assessment must state whether or not the preference is due to an unwillingness to accept legal or financial responsibility for the child. If the caregiver's only concern is financial, the court may not remove the child for that sole reason.

In making its recommendation for a permanent plan for a child, DCFS considers the following in order of preference:

1. Adoption - a legal process in which the child is freed from the birth parents either by relinquishment or termination of parental rights. The child is then adopted, a new birth certificate is issued and the adoptive parents become the sole legal parents of the child.

2. Relative Legal Guardianship - suspends, but does not terminate the rights and responsibilities of the birth parents. The guardian becomes the legal caregiver and is entitled to make all decisions concerning the child's health, education and well being. The court must order visitation for the parents unless it finds by a preponderance of the evidence that visitation would be detrimental to the physical or emotional well-being of the child. (WIC 366.26 (c)(4)) All guardianships terminate by operation of law once the child reaches eighteen (18) years of age. The relative must be **the current caretaker** of the child.

3. Identify adoption as the permanent placement goal and order efforts to be made to locate an appropriate adoptive family for the child within 180 days.

4. Non-Relative Legal Guardianship – The Non-relative Legal Guardian has the same rights and responsibilities as a Relative Legal Guardian. The Guardian who is a relative versus a non-relative receives different types and amounts of assistance.

5. Long Term Foster Care - the child remains in foster care until the age of eighteen or graduation from high school, whichever is later. The rights and responsibilities of the birth parents are not terminated, but the care and control of the child is transferred to the Juvenile Court. Federal law has eliminated the phrase "long term foster care" and replaced it with "Another Planned Permanent Living Arrangement" to emphasize the fact that even children who do not receive the benefits of adoption or legal guardianship are in need of and should receive as much stability and permanency as possible. It is anticipated this term will find its way into the California rules and statutes in the future. As with a Legal Guardianship, court must order visitation for the parents unless it finds by a preponderance of the evidence that visitation would be detrimental to the physical or emotional well-being of the child. (WIC 366.26 (c)(4))

If the evidence already exists at the time of the review to show neither adoption or legal guardianship is appropriate, the court may order an alternative permanent plan of long term foster care without the necessity of a WIC 366.26 hearing. Otherwise the court will set a WIC 366.26 hearing (also known as the Selection and Implementation hearing). If a 366.26 hearing is ordered and the parent wishes to appeal the finding of the court, they must first file a Petition for Extraordinary Relief (also known as a "writ"). The parent must sign and the trial attorney must file an "Intent to file a Writ Petition" within seven days of the court's order. The petition must be prepared in accordance with the California Rules of court, rules 39.1B and 1402.

366.26 Hearing

At this hearing, the court will choose between guardianship, adoption, or long-term foster care.

If the court chooses adoption, it can either terminate parental rights or identify adoption as the permanent plan without permanently severing parental rights and order that efforts be made to identify an appropriate adoptive family within 180 days. The court generally continues the termination when an adoptive home may be harder to identify because the child is part of a large sibling group or has multiple disabilities. If a family is identified and the adoption is finalized, the court will close the case (terminate jurisdiction). As stated above, a plan of adoption can only be chosen if the court makes a finding by **clear and convincing evidence** that the child is "**likely to be adopted**." When that finding is made, the child will then be "freed" and parental rights will be terminated. There are only five exceptions to this rule and the burden shifts to the parent to prove by a preponderance of the evidence one or more of the following circumstances:

1. The parents have maintained regular visitation and the child would benefit from continuing the relationship.
2. The child is twelve years old or older and objects to the termination of parental rights.

3. The child is in a residential treatment facility and finding an adoptive home is unlikely or undesirable, and the child will still be able to find a permanent family placement if parents cannot resume custody when residential care is no longer necessary.
4. The child is living with a relative or foster parent who cannot adopt the child due to exceptional circumstances that do not include an unwillingness to accept legal or financial responsibility. However, the relative or foster parent can provide a stable and permanent home and the removal of the child from that home would adversely affect the child's emotional wellbeing. This exception does not apply if the child is living with a non-relative or if the child is either under six years of age or a member of a sibling group where at least one child is under six years of age and the siblings are or should be placed together. The court must make these findings by a preponderance of the evidence. (WIC 366.26(A)(B i-vi)). Other exceptions also apply where the child is an Indian child. Please consult an expert where issues involving ICWA and Indian children apply.
5. A fifth exception to adoption includes sibling rights and states: where there would be substantial interference with the child's sibling relationship, termination of parental rights would be detrimental to the child's best interest. The court must consider the nature and extent of that relationship and whether the child was raised in the same home, shared significant common experiences or had a close and strong bond. Further, the court must consider whether the ongoing contact is in the child's best interest including the child's long-term emotional interest, as balanced against the benefit of legal permanence through adoption. (WIC 366.26 (B)(v)

Removal of Child from Prospective Adoptive Parent

Until recently, DCFS was legally able to remove a child from a prospective adoptive home without any redress from the caregiver or prospective adoptive parent. A new subdivision of WIC 366.26 now allows a prospective adoptive parent the right to petition the court for a hearing to object to the removal of a child. The caregiver must have had the child in his or her home for at least 6 months, expressed a commitment to adopt the child or taken at least one of the specified steps to complete the adoption process. The court must designate the caregiver as a "prospective adoptive parent" either before or during the hearing on the removal of the child.

Prior to a change in placement of a prospective adoptive parent, DCFS must provide notice to the court, the child's attorney, the child if over 10 years of age, and a designated prospective adoptive parent or a caregiver if that caregiver would likely meet the designation of a prospective adoptive parent. Any of these noticed parties may file a petition objecting to the removal within five court days or 7 calendar days whichever is longer. The hearing must be held no later than five dates after the petition is filed.

At the hearing, the court must first determine whether the caregiver meets the threshold criteria to be a prospective adoptive parent, and then must determine whether the removal would be in the best interest of the child. (WIC366.26(n))

If a petition objecting to removal of a child is not filed by a noticed party or the court does not set a hearing on its own motion, the child may be removed from a designated prospective parent without a hearing.

Reinstatement of Parental Rights

The order permanently terminating parental rights under WIC 366.26 is final and binding once the 60 day appeal period lapses or a parent's appeal is denied. The court has no power to set aside that final order except in a very limited circumstance.

A new statute now allows a child who has not been adopted for three years after his/her parental rights were terminated, to petition the court to reinstate parental rights. The petition may be filed earlier than three years if there is a stipulation among the parties. If the court determines that reinstatement is in the best interest of the child, a hearing will be set and notice to the parties will be made. The court will only grant the petition if the court can find by clear and convincing evidence that the child is no longer likely to be adopted and reinstatement of parental rights is in the child's best interest.

If the court orders reinstatement of parental rights over a child twelve or younger but the new permanent plan does not included reunification with the parent or legal guardian, the court must specify the factual basis for its findings that reinstatement is in the best interest of the child. (WIC 366.26 (i)(2))

Review of Permanent Plan (RPP)

If the juvenile court orders a permanent plan and court jurisdiction continues, i.e., the child is in long-term foster care, guardianship or the adoption is not finalized, the court will continue to review the case every six months until the child is adopted, turns 18 years old, marries, or graduates from high school. (WIC 366) There are also limited circumstances when the court can retain jurisdiction until the child reaches the age of 21 if that child has special needs.

At the RPP hearing, the court must consider what progress has been made to provide a more permanent home for the child and the safety of the child as well as the following factors including:

- The continuing necessity for and appropriateness of the placement;
- the continuing appropriateness and extent of compliance with the permanent plan;
- the extent of the agency's compliance in making reasonable efforts to return the child to a safe home and complete whatever steps necessary to finalize the permanent placement of the child;
- the adequacy of services provided to the child;
- the extent of any progress the parents have made in alleviating the necessity of the child to be placed in foster care;
- the likely date the child may be returned to a safely maintained home, placed for

adoption, legal guardianship or another planned permanent living arrangement;
- what services for transition to independent living a child aged 16 or older is receiving;
- the nature and appropriateness of developing and/or maintaining a sibling relationship;
- if siblings are placed together, the frequency and nature of the visits;
- whether or not reasonable efforts have been made to make and finalize a permanent placement for the child and the impact of the sibling relationship on the child's placement and plan for legal permanence.

When does the court terminate jurisdiction for a child in long term foster care who reaches the age of majority (18 years old)?

A child who has not returned to the custody of his/her parents, has no legal guardian or has not been adopted can terminate jurisdiction when a child has reached the age of 18 and graduated from high school. For a child with developmental delays, the court can retain jurisdiction until the child reaches 21 years of age. (WIC 303)

When a court terminates jurisdiction, the child must be present at the hearing, unless the child wishes not be present or the child cannot be located and DCFS has thoroughly documented its efforts to find the child. (WIC 391) A court cannot terminate a child's case unless DCFS submits a court report, which verifies that certain services and information have been provided to the child.

Nonminor Dependents

In January 2012, the law recognized "Non-Minor dependents (NMD)" as defined by former foster youth (or wards – not addressed in this manual) who have attained the age of 18, 19, 20 or 21 who qualify under the eligibility requirements such as completed high school, enrolled in higher education, employed for at least 80 hours per month or participating in a program designed to assist achieve employment. There is an implementation timeline which began in 2012, extending services to youth up to 19, 2013 extending services to youth up to 20 years old and 2014, extending benefits to youth up to 21 years old subject to budget appropriation. Again, these are complex statutes that need to be studied carefully for their significance and interface with other statutes and cannot be fully dealt with in this manual.

388 Hearing

The WIC 388 hearing is the most common vehicle by which DCFS, a parent or other interested person may petition the court to change or modify a court order. It is commonly used by a parent to petition the court to change custody or modify custody or a visitation plan after a case is in the permanency planning stage. The petition must state a change of circumstances or new evidence that would warrant the modification of the current court order. If the court can make this preliminary finding, it will order a hearing within thirty days. The burden is on the petitioning party to prove by a preponderance of the evidence that it is in the best interests of the child to make the proposed change of order. This statute was recently amended to add a provision which allows a child who is a dependent to petition the court to request court orders for visitation, placement or other related orders regarding the establishment or maintenance of sibling relationships. (WIC 388(b))

As of January 2009, a party including the child, may petition the court to terminate reunification services prior to the date of the six month hearing if there is a child under the age of three at the time of removal or the prior to the twelve month date for a child over three years old. The party must allege:

1. A change of circumstances exists that would qualify for a termination of services under the disposition statute (WIC 361.5(b) or (e) or
2. The action or inaction of the parent including, but limited to the failure to visit the child, or participate regularly and make substantial progress in a court-ordered treatment plan which creates a substantial likelihood that reunification will not occur.

Factors to be considered is whether the parent is not visiting as a result of incarceration, institutionalization, detention by the U.S. Department or Homeland Security, deportation, or participation in a substance abuse program. The court shall grant the petition only if it finds by a preponderance of evidence that reasonable services have been offered and by clear and convincing evidence that one of the two above conditions exist and it would be in the child's best interest to terminate reunification services. (WIC 388 (c)).

As of January 2010, a motion is not required at the 366.21(e) hearing (the 6 month hearing) if the court can find by clear and convincing evidence one of the following:

a) the child was initially removed under section 300(g) which in general specifies that the child has been left without any provision for support and the whereabouts of the parent are still unknown;
b) the parent has failed to contact and visit the child; or
c) the parent has been convicted of felony indicating parental unfitness.

4. MISCELLANEOUS TERMS AND PROGRAMS

Adoption Assistance Program

The Adoption Assistance Plan (AAP) is a financial aid packet for parents adopting dependent children. It is designed to help remove economic barriers to adoption and meet the financial needs of dependent children. All dependent children are eligible for these benefits and there is no means test or income eligibility requirement for prospective adoptive parents. AAP continues until the child reaches age 18. However, if the child has a physical or mental handicap, the age limit can be extended until 21. Additionally, all AAP eligible children remain eligible for Medi-Cal.

Court Appointed Special Advocates (CASA)

This is a program that operates out of the Courthouse whose members are all specially trained volunteers. CASAs assist the children when they come to court from shelter care and are assigned to specific children who have been referred by the Court. Usually the child's attorney has asked for the referral. Any child within Los Angeles County can be referred to a CASA but many of the cases involve children with little or no parental support and/or children with special needs.

Comfort for Court Kids, Inc.®

This publicly supported charity provides free teddy bears to every child who attends a court hearing at Children's court. The Comfort for Court Kids organization believes that "the teddy bear is a universal symbol of love and affection"™ and as such, assists children to cope with very difficult situations.

Clerk's Office

The Clerk's Office is located on the second floor of the courthouse. If you need the next court date or access to a file or legal forms, you can obtain information there.

Court Interpreters

Certified Court Interpreters are highly skilled professionals who assist non-English speaking parties. There are a number of Spanish speaking interpreters available in every courtroom; if other languages are needed, the court makes an order for an interpreter. There are also a number of sign language interpreters who translate for the deaf and hard-of-hearing parties. There are certain courtrooms which have been designated Deaf Courtrooms where the Judicial Officer and the attorneys have received special training.

Juvenile Court Mental Health Unit

This unit in the courthouse is available to review the psychotropic medication requests for children and provide assistance with placement options for children with mental health problems. If you have questions about the latest drugs or medications for children or adults, you should consult with the mental health unit.

Free Arts For Abused Children

This is a non-profit organization that recruits volunteers to do creative arts activities with the children while they are waiting for their cases to be heard in court. The program operates on the third, fourth and fifth floors of the courthouse.

Free Legal Services for Children

The Alliance for Children's Rights, Public Counsel, Protection and Advocacy, Mental Health Advocacy, and the Legal Aid Foundation of Los Angeles are all organizations that provide free legal assistance to children in foster care. Some of the issues these organizations specialize in are: health care, social security income and disability benefits, special immigrant status, Regional Center, special education, foster care benefits, and agency adoptions.

Independent Living Program (ILP)

The Independent Living Programs are designed for children sixteen years and older who are not in their parents' custody. These programs help transition children to adulthood by assisting with college applications and scholarships, how to find and keep a job and other important life skills. Most of the children find this program to be valuable and one that should be court ordered unless DCFS has already made the referral.

Indian Child Welfare Act

The Indian Child Welfare Act of 1978 ("ICWA") was enacted to establish minimum Federal standards when American Indian children are removed from their families and placed in foster or adoptive homes. ICWA was intended to redress past practices of placing children in non-Indian homes that resulted in the further deterioration of the American Indian culture. Since ICWA is federal law it supersedes Californian dependency law. ICWA, among other things, requires higher levels of proof for the placement of children in foster care and the termination of parental rights.

When the Application for Detention is filed, DCFS is supposed to make an initial investigation of whether the child and/or a parent is eligible to be enrolled in a tribe or is currently enrolled in a tribe. If there is a possibility of tribal membership or eligibility, the hearing officer at the arraignment will order that DCFS obtain verification. Once tribal membership or eligibility has been verified, the case is transferred to a special courtroom that handles all the American Indian cases. Once the tribe has been notified, the tribe or the Indian parent can request that the case be transferred to the tribal court for all further proceedings. If the case is not transferred, the tribe may still intervene at any point in the proceedings and thereby become a party to the hearings.

211/Info Line

This organization is located in the lobby of the courthouse and acts as an information center that helps to locate appropriate treatment programs for families and parents. There are forms in each courtroom that attorneys can fill out for their clients to bring to INFO LINE and get immediate referrals, or individuals can simply walk in and ask for referrals. Individuals can also dial "211" and they will automatically be connected to INFO LINE.

Interstate Compact For The Placement of Children (ICPC)

The ICPC was created in 1960 to provide for the supervision and protection of children who are taken into custody in one state but then placed (usually) with a relative in a different state. Generally, it is a contract between two different states and establishes procedures and responsibilities among those participating. All of the 50 states plus the District of Columbia and the Virgin Islands are members.

Dependent children may not visit out of state for longer than 30 days without ICPC approval. The court can release children to non-offending parents living out of state but some receiving states will not provide courtesy supervision without ICPC. Placement from one Member State into another requires the cooperation and agreement of agencies in both states. This applies to children being sent to live with parents or relatives, as well as out of home placements. The sending state retains jurisdiction over the child to determine all matters of the custody, supervision, care, treatment, and disposition of the child which it would have had if the child had remained in the sending state, until the child is adopted, reaches the age of majority, becomes self-supporting, or dependency is dismissed.

Mediation

The courthouse has a mediation program staffed with professional mediators. The mediation process affords the parties a confidential and informal setting where, at any stage of the proceedings, issues of the case can be discussed. For example, at the PRC, petition language can be amended and an appropriate case plan can be agreed upon. During mediation, the parties, with or without their attorneys, have the opportunity to express their feelings in total confidence. Each mediator is assisted by a DCFS worker who acts as a liaison between the field and the Court. Parents, County Counsel, parent's and children's attorneys, as well as DCFS must all consent before an Agreement is sent to the Court for court approval.

Special Education

School districts must provide each disabled student between the ages of three and twenty-two who qualify for special education services a free appropriate public education (FAPE) in the least restrictive environment. In addition, the school district must provide whatever supplemental services (often referred to as related services) the child requires in order to benefit from his or her education. A child can qualify for special education services under thirteen criteria. If a child is having serious school problems that affect his/her achievement, either the School District or caregiver (holder of educational rights) can request an evaluation to determine whether special education services are appropriate. If the child qualifies for

special education, the School District must develop an Individual Education Plan ("IEP") for the child.

SSI

Supplemental Security Income is a program that provides income to needy children who are under 18 and students under 22. Benefits include a check from the federal government, a check from the state government and Medi-Cal. To be eligible, a child must meet all four conditions:

- U.S. citizen,
- U.S. resident,
- Disabled or blind, and
- Financially needy

Social Security Survivor Benefits

If a parent dies, a child may be eligible for "Survivor" benefits. The social security office determines eligibility.

Regional Centers

Regional Centers provides services to individuals of all ages who have developmental disabilities. The Regional Center serves adults, children, infants, toddlers and anyone at risk of having a developmental disability and is also responsible for the education of disabled children from birth until the age of three. Once a child turns three, the local school district becomes responsible for all special education programs and related services. Individuals who are clients of the Regional Center gain access to resources for education, health, welfare, rehabilitation, therapy, social services and recreation.

Undocumented Children

Undocumented foster children are eligible for GRI (General Relief Ineligible) which is equivalent to the foster care rate. These children are also eligible for most Medi-Cal benefits. If an undocumented child does not reunite with his or her parents and the court orders him or her into a permanent plan of long term foster care or legal guardianship, he or she is eligible to apply for "Special Immigrant Juvenile Status" (SIJS) which, if granted, allows the child to obtain resident card also known as a "green" card. These cases should be referred to the DCFS Immigration Unit.