CALIFORNIA JUDGES BENCHGUIDES

Benchguide 100

JUVENILE DEPENDENCY INITIAL OR DETENTION HEARING

[REVISED 2018]

JUDICIAL COUNCIL OF CALIFORNIA

OPERATIONS AND PROGRAMS DIVISION

CENTER FOR JUDICIAL EDUCATION AND RESEARCH

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JUVENILE DEPENDENCY INITIAL OR DETENTION HEARING

I. [§100.1] SCOPE OF BENCHGUIDE

This benchguide provides a procedural overview of dependency initial or detention hearings under Welf & I C §§290.1–342 and Cal Rules of Ct 5.480–5.482 and 5.500–5.678. The initial petition hearing or detention hearing is the first instance of judicial intervention in the dependency process and is held whenever a petition is filed, whether or not the child is in protective custody. See Welf & I C §315, Cal Rules of Ct 5.670. If the child is in protective custody, the initial hearing is called a detention hearing. This benchguide includes a procedural checklist, a brief summary of the applicable law, and scripts.

Throughout this benchguide, the agency responsible for abused or neglected children will be referred to as the Department of Social Services (DSS) and the person who investigates and supervises dependency cases will be called the social worker. See Welf & I C §215. *Note*: The term "child" will be used below in the checklists for the sake of brevity, except when the governing authority or context indicates otherwise. The grounds for initial detention by a police officer or social worker and the procedures followed until the time of the detention hearing are set out in §§100.64–100.71.

II. [§100.2] PROCEDURAL CHECKLIST

(1) *Call the case.* In some counties, the social worker, the social worker assigned to the court as a court officer, or a deputy county counsel calls the case. It is important to set an appropriate tone in the courtroom. It should be informal and non-adversarial, unless there is a contested issue of law or fact. Welf & I C §350(a)(1). See the sample script in §100.59 for the conduct of the detention hearing.

☛ JUDICIAL TIP: Be aware parents routinely believe the court and DSS work together. It is important to differentiate the court's role from DSS's role. Most people do not understand the court acts as a check and balance on the executive branch based on the constitutional balance of powers doctrine. When the court conveys its authority to detain and return children to parents and helps families understand that DSS's role is to provide services and support, it works to minimize the disdain parents often have for social workers. Consequently, these parents engage in services sooner (at or near detention) instead of waiting until after the disposition hearing.

(2) *Provide an admonishment regarding confidentiality.*

(3) *Determine who is present and their interest in the case before the court.* Welf & I C §§290.1(a), 346, 349; Cal Rules of Ct 5.530(b). See §100.26.

- *If the child is present, inform child of the right to address the court and permit his or her participation if he or she desires it.* Welf & I C §349(a), (c). See §100.30.
- *Attorneys serving as temporary judges should obtain a stipulation from the parties under Cal Rules of Ct 2.816.* Referees and commissioners should also obtain a written stipulation. See discussion in §100.15.

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

If the child is 10 years old or older and is not present, determine whether he or she was properly notified of his or her right to attend the hearing, inquire whether the child was given an opportunity to attend. See Welf & I C §349(a), (d).

If no parent or guardian is present:

- *Determine whether they received notice.*
- *If not, determine whether due diligence efforts to notify them were made, and, if so, conduct the hearing.*

- *If the parents or guardians can be easily located (*e.g.*, if they are incarcerated in the local county jail), continue the case for 1 day to permit due diligence efforts to be used to locate and serve them.*

☛ JUDICIAL TIP: Most judges will hold the detention hearing even if due diligence efforts to serve were not made, subject to the holding of a rehearing once the parents or guardians are served. If friends, relatives, and/or the child are present in the court, they should be questioned for information that may lead to the parents' whereabouts.

See §100.44 for a discussion of continuances.

(5) *Inquire whether the factual information on the petition (names, dates, addresses, ages, etc.) is correct.* The bench officer should correct the petition by amendment or interlineations if, on inquiry, any of the parties provide corrections to the names, addresses, ages, or other factual information in the petition.

- *Ask each parent or guardian to designate for the court his or her permanent mailing address and compare with the address listed in the petition.*
- *Advise each parent or guardian that the designated mailing address will be used by the court and DSS for notification purposes and emphasize the importance of updating a new address in writing, using Judicial Council form* Notification of Mailing Address (JV-140) *every time the parent moves to ensure notification.* Welf & I C §316.1(a); Cal Rules of Ct 5.534(i). See form in §100.59.

☛ JUDICIAL TIP: With electronic filing, interlineations are obsolete or soon will be. The judicial officer should direct DSS to immediately file the amended petition. Judges should ensure that the clerk places the addresses and the advisement into the minute order and that the DSS gets the order.

(6) *If there is an indication the child recently lived out-of-state, determine whether the provisions of the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA) (Fam C §§3400–3465) apply.* See Appendix II.

Note: Where no state meets the definition of a home state, California can have subject matter jurisdiction. Fam C §§3421, 3424. Where the parent(s) and children moved from another state "several months" earlier, but have not been in CA for 6 months, the court has jurisdiction if there is no evidence the family is just visiting. See *In re S.W.* (2007) 148 CA4th 1501, 1509–1510, 56 CR3d 665.

(7) *Indian Child Welfare Act (ICWA): Ask the parents whether the child has possible American Indian heritage and, if so, order DSS to notice the appropriate federally recognized tribe(s).* Ensure that the Indian Child Inquiry Attachment (form ICWA-010(A)) is attached to the petition and order the parents or guardians to complete the Parental Notification of Indian Status (form ICWA-020). If there is "reason to know" that the child is an Indian child, confirm that the agency has used due diligence to identify and work with all the tribes of which the child may be a member in accordance with federal regulations. 25 CFR §23.107(b)(1). See discussion in §§100.49–100.58.

(8) *Initiate an inquiry as to the parentage of the child and take steps to make a determination regarding parentage.* See Cal Rules of Ct 5.668(b) and discussion in §§100.32–100.33.

(9) *Appoint counsel for parents. Advise the parents and guardians of their constitutional, statutory, and due process rights. See generally Cal Rules of Ct 5.534.* See §§100.24–100.25.

- Right to an attorney: When the parent, guardian, or Indian custodian cannot afford an attorney, the court may appoint an attorney. Welf & I C §317(b); see §§100.16–100.23. If DSS detained the child, or the petitioner recommends an "out-of-home" placement, and the parent cannot afford an attorney, the court shall appoint counsel unless there is a knowing and intelligent waiver. Welf & I C §317(b).
  - The attorney must have the requisite training, including retained counsel. Welf & I C §317; see §100.23.
  - The court should order the parents to fill out a financial declaration and reserve the right to impose some or all the attorney's fees depending on ability to pay. See Welf & I C §§903.1, 903.45, 903.47; Judicial Council forms JV-130-INFO through JV-136 (forms regarding paying for lawyers in dependency court).
- Right to present evidence at every stage in the proceedings (*e.g.*, detention, jurisdiction, disposition, termination of services, etc.);
- Right to compel witnesses and other evidence;
- Right to cross-examine persons who prepared reports, provided documents, and witnesses;
- Right to timely hearings;
- Right to notice; and

- Right to reports and documents used to support reports.

If parents do not qualify for court appointed counsel, make inquiries as to whether they want a 1-day continuance to retain private counsel or want to represent themselves. See discussion in §100.17.

☛ JUDICIAL TIP: Many courts appoint counsel to the parties prior to the detention hearing, when DSS notices the court of a new detention, in order to coordinate smoother hearings. This allows the attorneys to talk to their clients immediately before the hearing. Many parents are distraught and having an attorney to give them advice prior to coming into court generally makes the detention hearings more productive.

(10) *If counsel for the child was not appointed prior to the hearing, appoint an attorney for the child, unless there is a finding that the he or she would not benefit from the representation by counsel, as required in* Cal Rules of Ct 5.660(b).

- *Appointed counsel for the child serves as the Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem under Cal Rules of Ct 5.662.*
- *In the rare event that an attorney is not appointed for the child, the court must appoint a court-appointed special advocate (CASA) as the child's CAPTA guardian ad litem under Cal Rules of Ct 5.662.*

See discussion in §§100.18–100.21.

(11) *Conduct the formal arraignment on the petition, unless waived by counsel, and tell the parties what to expect of this and of other juvenile court proceedings and their rights at each stage of the proceedings.* Welf & I C §§311(b), 316; Cal Rules of Ct 5.534(c), (g), 5.668(a). See form in §100.59 (conduct of initial or detention hearing). Read the substance of the allegations in the petition to the parties, or obtain a waiver of this reading requirement from the attorneys.

(12) *Detention Findings. In an uncontested hearing, based on the social worker's report, make the detention findings*. Cal Rules of Ct 5.676(b); see §§100.24, 100.29. If there is not sufficient evidence of the below findings, release the child to his or her parent(s)/guardian(s). When detaining the child (see §§100.34–100.36), make these Title VI-E findings where there is prima facie evidence:

- *The child comes within* Welf & I C §300 *(see petition),* and
- *Continuing in the home of the parent or guardian is contrary to the child's welfare.*

☛ JUDICIAL TIP: The "contrary to the welfare" finding (see §100.36) needs to be made at the first judicial determination that a

child cannot stay home with the parent. This means that the finding may need to be made before the detention hearing, *e.g.*, if the court signs a protective custody warrant for the removal of a child from the parents, then the "contrary to the welfare" finding must be made when the court signs the warrant.

- *Reasonable efforts were made to prevent or eliminate the need for removal*
  - — If there was a lack of pre-detention services (See DSS report) and it was unreasonable not to provide services prior to detention, the court must identify needed services and order DSS to provide them. The court should also consider whether putting services in place or making protective orders will allow the child to remain/return home to avoid further detention. See Welf & I C §§319(d), (e), 306; see also Cal Rules of Ct 5.678(c)(2).
- *And one or more of the circumstances exists* (Welf & I C §319(b)(1)–(4), Cal Rules of Ct 5.678(c)(3)):
  - — There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the parent's or guardian's physical custody;
  - — There is substantial evidence that a parent, guardian, or custodian is likely to flee the jurisdiction;
  - — The child has left a placement in which he or she was placed by the juvenile court; or
  - — The child indicates an unwillingness to return home, if the child has been physically or sexually abused by a person residing in the home.

Note: It is critical that all detention findings and orders are made orally on the record (to ensure federal funding for services) and in the written orders of the court. Cal Rules of Ct 5.674. Failure to do so may result in permanent lack of federal funding, even if remedied at future hearings.

- *Order that temporary placement and care be vested with the DSS, pending disposition or further court order.* Cal Rules of Ct 5.678(d).

(13) *Contested Detention Hearing.* Where the parties request a contested detention hearing, the court has the discretion to either order a detention hearing within 3 court days or an expedited jurisdiction hearing within 10 court days. Welf & I C §321. *Plan to facilitate child's testimony if appropriate.* See Welf & I C §350(b); see §§100.27–100.31.

☛ JUDICIAL TIP: It often makes sense to order the expedited jurisdiction hearing for judicial economy because the evidence will likely be virtually the same despite the differing burdens of proofs (*i.e.*, prima facie evidence at detention and a preponderance at jurisdiction) and this gives the attorneys time to become familiar with the case.

(14) *Order visitation.* For parents/guardians, siblings and anyone else with whom visitation will benefit the child. Cal Rules of Ct 5.670(c); see §100.39. Consider the trauma on the child of removal and the importance of visitation to reunification.

(15) *Inquire whether there is a relative willing and able to take the child.* Welf & I C §319(b), (d)(2); see §100.40. If so, the court should order DSS to investigate him or her as a possible placement.

(16) *Order reunification services pending disposition.* Welf & I C §319(e); see §100.38.

(17) *Order each parent or guardian to either complete Judicial Council form* Your Child's Health and Education (JV-225) *or to apprise the social worker or court staff of the information necessary to complete the form.* Welf & I C §16010; Cal Rules of Ct 5.668(c); see §100.37.

(18) *Education rights*. Determine whether it is necessary to temporarily limit the educational and developmental services rights to the child. If the parents are not capable of holding educational or developmental services rights, the court may limit those rights at the detention hearing in favor of a responsible adult. Welf & I C §319(g)(1); Cal Rules of Ct 5.651(b); see §100.42.

(19) *Rule on any additional requests* such as motions for restraining orders under Welf & I C §213.5 and, if appropriate, under Welf & I C §340.5. See §§100.4–100.8.

(20) *Set the petition for a jurisdiction hearing within 15 court days.*

III. APPLICABLE LAW

A. [§100.3] Initial or Detention Hearing—General Background

When a child has been detained by a peace officer or social worker, a petition has been filed, and the child has not been released to the custody of a parent or guardian, the juvenile court must hold a hearing to determine whether the detention should continue. Welf & I C §315. Under the juvenile court law "detained" means removal of the child from the persons legally entitled to physical custody. Cal Rules of Ct 5.502(11). A child is also deemed to have been taken into custody and delivered to the social worker if there is reasonable cause to believe the child is described by Welf & I C §300, but the child cannot be moved because he or she is under medical care. Welf & I C §309(b) (commonly called a "hospital hold"). In addition, a child is deemed detained if he or she is not returned to the custody of the

parent or guardian after a social worker has received the child and made an initial investigation. See Welf & I C §309(c).

If a child has not been detained, but DSS determines that a petition concerning the child should be filed, an initial hearing on the petition must be held within 15 days after the petition was filed. See Cal Rules of Ct 5.670(a). If the child has been detained, a petition must be filed within 48 hours (excluding nonjudicial days) of the time at which the child was removed from the custody of the parent or guardian by a social worker or police officer. Welf & I C §313(a). The detention hearing must be heard the next judicial day after the petition has been filed. Welf & I C §315; but see Cal Rules of Ct 5.670(b) (hearing must be held no later than 48 hours (excluding nonjudicial days) in certain situations after the child arrives at a facility).

B. Restraining Orders

1. [§100.4] In General

Once a petition to declare a child a dependent child of the juvenile court has been filed, the juvenile court has exclusive jurisdiction to issue restraining orders under Welf & I C §213.5 until the petition is dismissed or dependency is terminated. Welf & I C §§213.5(a), 304.

The Judicial Council has adopted forms for these restraining orders. The Request for Restraining Order—Juvenile (JV-245) is required for the application for a restraining order and the Notice of Hearing and Temporary Restraining Order—Juvenile (JV-250) is for temporary restraining orders. The Restraining Order—Juvenile (JV-255) is for orders after hearing. Welf & I C §213.5(i); Cal Rules of Ct 5.620(b), 5.630. A party filing an answer must use Answer to Request for Restraining Order—Juvenile (JV-247).

Restraining orders may be used to protect children who are the subject of dependency proceedings, other children in the house, and the parent, guardian, or caretaker, even if the child does not reside with that person. Welf & I C §213.5(a).

Willful and knowing violation of a restraining order issued under Welf & I C §213.5 is a misdemeanor punishable under Pen C §273.65. Welf & I C §213.5(h). Once a restraining order has been issued under Welf & I C §213.5, no court other than a criminal court may issue a restraining order that is contrary to the juvenile court order. See Welf & I C §304.

Although rarely applicable at the detention hearing stage, restraining orders may also be sought under Welf & I C §340.5 to protect a social worker or any member of the social worker's family from threats of physical harm. A court has jurisdiction to issue a 3-year restraining order against a parent under Welf & I C §340.5 even when the social worker who is being protected is no longer assigned to the case. *In re Matthew F.* (2005) 132 CA4th 883, 886–888, 33 CR3d 909. See discussion in Seiser & Kumli,

Seiser & Kumli On California Juvenile Courts Practice and Procedure §2.47[3] (Matthew Bender 2018).

The court must order that any party who is enjoined under a dependency protective order (see Welf & I C §213.5, §304, or §362.4) be prohibited from taking action to obtain the location or address of a protected party or the family member, caretaker, or guardian of such a party, unless there is good cause for not making such an order. Welf & I C §213.7(a).

2. [§100.5] Procedure

The court may issue these orders after notice and a hearing or on ex parte application as provided in CCP §527 or Fam C §6300. Welf & I C §213.5(a), (d); see Cal Rules of Ct 5.630(a), (d). If issued without notice, an order to show cause must be made returnable on the earliest day the business of the court permits, but not later than 21 days from the issuance of the order, or 25 days if good cause appears to the court for the later date. Welf & I C §213.5(c). The court may shorten the time for service of the order to show cause on its own motion or on the declaration of the person seeking the order. Welf & I C §213.5(c).

This hearing may be combined with any other regularly scheduled hearing regarding the child. Welf & I C §213.5(c)(5).

☛ JUDICIAL TIP: It is important to ensure that the person to be restrained has had proper notice; many judicial officers require that this person be personally served with the request for the protective order, notice of hearing, and with the restraining order itself. See generally Cal Rules of Ct 3.1152 (using civil harassment procedure by analogy).

In determining whether to issue the order ex parte, the court must consider all documents submitted with the application and may review the child's juvenile court file. Cal Rules of Ct 5.630(d)(1).

When the person to be restrained is personally served with a temporary restraining order and notice of hearing but does not appear at the hearing either personally or through counsel, and when the terms and conditions are identical to those of the original order (except for duration), the subsequent order may be issued and served by first-class mail to the person's last known address. Welf & I C §213.6(a).

The court must state the time period for the order on its face (no more than 3 years). Welf & I C §213.5(d)(1), (f). But the court may terminate the restraining order before its expiration date or extend it beyond the expiration date by court order or consent of all parties. See Welf & I C §213.5(d)(1); see Cal Rules of Ct 5.630(k).

All data with respect to a restraining order must now be transmitted by the court or its designee within one business day to law enforcement personnel by (1) transmitting a physical copy of the order to a local law

enforcement agency authorized by the Department of Justice (DOJ) to enter orders into CLETS or (2) with approval of the DOJ, entering the order into CLETS directly. Welf & I C §213.5(g).

Before a ruling on the request for an order, a search must be conducted as described in Fam C §6306(a) for prior criminal convictions or restraining orders. Welf & I C §213.5(j)(1).

When issuing custody or visitation orders under Welf & I C §213.5, the court must follow the procedures of Fam C §6323(c)–(d) (making orders when there are domestic violence allegations). Welf & I C §213.5(k).

3. [§100.6] Content of Restraining Orders

Under Welf & I C §213.5(a), the juvenile court may issue a number of orders during the pendency of a dependency proceeding, including the following:

- Enjoining any person from molesting; attacking; striking; stalking; threatening; sexually assaulting; battering; harassing; telephoning, including making annoying telephone calls; destroying the personal property of; contacting, either directly or indirectly, by mail or otherwise; coming within a specified distance of; or disturbing the peace of:
  - — the child who is the subject of the proceedings or any other child of the household;
  - — the child's parent, guardian, or current caretaker, whether or not the child lives with him or her; or
  - — the child's current or former social worker or court-appointed special advocate.
- Excluding any person from the residence of the person having care, custody, and control of the child.

The court may also make an order restraining the child's caretaker from allowing the abusing parent or stepparent to have contact with the child. See Welf & I C §213.5(a); Cal Rules of Ct 5.630.

☛ JUDICIAL TIP: If the person to be restrained is not a household member, it is good practice for the judge to enjoin the parents from permitting "contact" with that person. "Contact" may be defined in the order as including messages or gifts sent to the child, telephone calls, and other forms of communication.

The showing necessary to exclude any person from the child's dwelling is the same as that required for removal of a child from the parent's custody. See Welf & I C §361(c). Restraining orders may be issued excluding a person from the child's residence regardless of which party holds title to or is lessee of the residence (Welf & I C §213.5(e)(1)), but all

the factors of Welf & I C §213.5(e)(2) must apply, including that evidence shows the person seeking the order has a right under color of law to possession of the premises (Welf & I C §213.5(e)(2)(A)).

The conduct to be restrained may be annoying, rather than violent. See, *e.g., In re Cassandra B.* (2004) 125 CA4th 199, 212 , 22 CR3d 686, in which a restraining order was correctly issued against the mother under Welf & I C §213.5, despite the lack of actual violence; in this case, mother tried to enter the home of the caregivers, followed the caregivers' car, appeared unauthorized at the child's school, and threatened to remove the child from the caregivers' home. Stalking under Welf & I C §213.5 need not mean literally following someone around, but can be accomplished by such activities as concealing oneself during visitation, showing up unannounced at the child's school, hiring a private detective, and surreptitiously discovering the location of the foster residence. *In re Brittany K.* (2005) 127 CA4th 1497, 1511–1512, 26 CR3d 487.

4. [§100.7] Prior Restraining Orders

Before the hearing on issuance or denial of a restraining order, a search must be conducted under Fam C §6306(a) for prior criminal convictions or restraining orders. Welf & I C §213.5(j)(1); Cal Rules of Ct 5.630(j)(1). In deciding whether to issue such an order, the court must consider (Welf & I C §213.5(j)(2)):

- Parole or probation status;
- Whether the conviction was for a violent or serious felony;
- Whether misdemeanor convictions involved domestic violence, weapons, or other violence; and
- Whether there were any prior restraining orders and, if so, whether they were violated.

If the search indicates that an outstanding warrant exists against the subject of the search, the judge must order the clerk to immediately notify appropriate law enforcement officials. Welf & I C §213.5(j)(3)(A); Cal Rules of Ct 5.630(j)(2). Similarly, if the search uncovers the fact that the person who is the subject of the search is on probation or parole, the judge must order the clerk to immediately notify the appropriate parole or probation officer of any information discovered that the judge determines to be applicable. Welf & I C §213.5(j)(3)(B); Cal Rules of Ct 5.630(j)(2).

The rule of exclusive concurrent jurisdiction (first court assuming jurisdiction has exclusive jurisdiction over all parties) does not prevent a juvenile court from issuing a restraining order against a father when a criminal court has already issued such an order. *In re B.S., Jr.* (2009) 172 CA4th 183, 191–193, 90 CR3d 810.

5. [§100.8] Continuing, Terminating, or Modifying Order

The court can continue a hearing on a restraining order for good cause. The court can make this finding on its own motion, or the party requesting the continuance can file the request in writing before or at the hearing or can make the request orally at the hearing. Welf & I C §213.5(c)(3); Cal Rules of Ct 5.630(e)(1). If the judge grants the continuance, any temporary restraining order that was issued remains in effect until the end of the continued hearing, unless otherwise ordered by the judge. When granting the continuance, the judge can also modify or terminate a temporary restraining order. Welf & I C §213.5(c)(4). Either a new Notice of Hearing and Temporary Restraining Order—Juvenile (JV-250) or Request and Order to Continue Hearing (JV-251) must be used for this purpose. Cal Rules of Ct 5.630(e)(2).

Note: If the person to be restrained could not be timely served, this may be good cause for a continuance. The judge can then shorten the time for service on either his or her own motion or the motion of the person seeking the restraining order. Welf & I C §213.5(c)(1). In addition, after being served, the person to be restrained is entitled as a matter of course to one continuance (for a reasonable period) to respond to the petition. Welf & I C §213.5(c)(2).

If an action is filed to terminate or modify a protective order by a party other than the protected party, the protected party must be given notice of the proceeding by personal service (see CCP §1005(b)) or, if the protected party has obtained a confidential address or name (see Govt C §§6205–6210), by service on the Secretary of State. If the protected party cannot be notified before the hearing, the juvenile court must deny the motion to modify or terminate the order without prejudice or continue the hearing until the protected party can be properly noticed and may, on a showing of good cause, specify another method for service of process that is reasonably designed to afford actual notice to the protected party. The protected party may waive his or her right to notice if he or she is physically present and does not challenge the sufficiency of the notice. Welf & I C §213.5(d)(2).

C. Conducting the Initial or Detention Hearing

1. [§100.9] Initiating the Hearing

If the social worker determines that the child is to be detained, a petition must be filed with the juvenile court clerk, who must set the matter for hearing on the detention hearing calendar. Welf & I C §§290.1, 311(a). A detained child must be released within 48 hours (excluding nonjudicial days) if no petition has been filed. Welf & I C §313(a). The notice of the hearing must be given as soon as possible after the filing of the petition. Welf & I C §290.1(c).

The contents of the petition are prescribed by Welf & I C §332. The petition must be filed on a required Judicial Council form. Cal Rules of Ct 5.524(c). The filing party must use either form JV-100 or form JV-110, as prescribed by local rule or practice. See Cal Rules of Ct 5.524(c). Attachments for additional children may also be required as specified in Cal Rules of Ct 5.524(c).

An unverified petition may be dismissed without prejudice. Welf & I C §333. If DSS seeks to dismiss the petition and the child's counsel does not object to dismissal, a verified petition may also be dismissed; in that case, the parents do not have the right to present evidence before the dismissal. See *In re Eric H.* (1997) 54 CA4th 955, 965–967, 63 CR2d 230. However, once a verified petition has been filed, it may not be dismissed by DSS in opposition to the wishes of the child's counsel without notification to all interested parties so that each may have an opportunity to be heard and to object. *Allen M. v Superior Court* (1992) 6 CA4th 1069, 1074, 8 CR2d 259.

An initial hearing for a nondetained child is also initiated by the filing of a petition in juvenile court. Cal Rules of Ct 5.670(a). Once a petition is filed, the clerk must set the hearing within 15 court days. Cal Rules of Ct 5.670(a).

Once a petition has been filed and until it is dismissed or dependency is terminated, the juvenile court has sole jurisdiction over issues of custody and visitation. Welf & I C §304; Cal Rules of Ct 5.620(a).

2. [§100.10] Venue

The initial or detention hearing must be commenced in the juvenile court in the county in which the child resides, the county in which the child is found, or the county in which the acts take place, or circumstances exist, that bring the child under Welf & I C §300. See Welf & I C §327.

3. [§100.11] Time Limitations

The court must hold the detention hearing for a child who has been removed from the custody of a parent or guardian by a police officer or social worker as soon as possible, but no later than the expiration of the next judicial day after a petition to declare the child a dependent has been filed. Welf & I C §315. The court must not continue a hearing beyond the statutory time unless it determines that the continuance is not contrary to the child's interests. Cal Rules of Ct 5.550(a)(1).

Failure to hold the hearing within these time limits generally requires release of the child from custody. See Welf & I C §315. However, because the purpose of the juvenile court law is to protect children, a court should not jeopardize the child's safety as a "punishment" for the DSS's failure to meet time constraints. *Los Angeles County Dep't of Children's Servs. v*

Superior Court (1988) 200 CA3d 505, 509, 246 CR 150 (DSS had not filed the petition within the requisite time). An initial hearing for a nondetained child must be held within 15 court days of the filing of the petition. Cal Rules of Ct 5.670(a).

A detention hearing must be held within 48 hours (excluding noncourt days) after the child has arrived at a facility within the county (Cal Rules of Ct 5.670(b)) if:

(1) The child was taken into custody in a different county and transported to the requesting county under a protective custody warrant,

(2) The child was taken into custody in the county in which a protective custody warrant was issued, or

(3) The child was transferred in custody from another county's juvenile court under Cal Rules of Ct 5.610.

In any event, a court may continue any hearing beyond the time limit that is otherwise required as long as the continuance is not contrary to the child's interest. Welf & I C §352(a). Moreover, there is an automatic right to a 1-day continuance on motion of the child, parent, or guardian. Welf & I C §322; Cal Rules of Ct 5.672(a). The child must remain in custody pending completion of a continued detention hearing or rehearing unless otherwise ordered by the court. Cal Rules of Ct 5.672(a). See also §100.44 on continuances.

☛ JUDICIAL TIP: Failure to make this finding may cause permanent loss of federal funding for foster care. See discussion of other required findings in §100.36. The court may make this a temporary finding pending the continued detention hearing.

If the child is not detained, continuances of the initial hearing must be made under Cal Rules of Ct 5.550. Cal Rules of Ct 5.672(b).

4. Notifying the Parents, Guardians, and Counsel

a. [§100.12] Who Must Be Notified

When a detention hearing has been set, the following people whose whereabouts are known or become known must be served or notified by the social worker before the petition is filed (Welf & I C §290.1(a)) or by the clerk after the petition is filed (Welf & I C §290.2(a)):

- The mother, all fathers, presumed and alleged, and the legal guardians;
- The child, if 10 years old or older;
- Any known sibling if the sibling is the subject of a dependency proceeding or has been adjudged a dependent child unless the child's case is scheduled for the same court on the same day. If 10 years or older, notice goes to the sibling, the sibling's caregiver, and

the sibling's attorney; if under 10 years old, then just the caregiver and attorney must be notified.

- When there is no parent or guardian who lives in California, or when the parent's or guardian's residence is unknown, any adult relative residing within the county or, if none, the adult relative residing nearest the court;
- The attorneys for the parents or guardians and the child;
- The district attorney, when the district attorney has notified the clerk that he or she wishes to receive the petition, containing the time, date, and place of the hearing;
- The probate department that appointed the guardian if the child is a ward of a guardian appointed under the Probate Code;
- The Indian custodian and the tribe of that child, or all federally recognized tribes in which the child may be a member, if the court knows or has reason to know that an Indian child is involved (Welf & I C §§290.1(g), 290.2(e), 224.1(a), 224.2(a)); and
- The Bureau of Indian Affairs if an Indian child is involved (Welf & I C §§290.1(g), 290.2(e), 224.2(a)) and the Secretary of the Interior if the location of the parents, Indian custodian, or tribe is not known and assistance is needed in identifying or locating them (25 CFR §§23.11, 23.111). For a more detailed discussion of notice under ICWA, see §§100.52–100.56.

☛ JUDICIAL TIPS:

- Although not usually done at a detention hearing, the court may consider terminating or modifying a guardianship appointed under the Probate Code if the minor is subject to a petition filed under Welf & I C §300. Welf & I C §728. See, *e.g., In re Merrick V.* (2004) 122 CA4th 235, 250, 19 CR3d 490, in which the court terminated the Probate Code guardianship during the dependency process. It may be better practice to wait until after the jurisdiction hearing because if there isn't sufficient basis for jurisdiction, then the guardians would have no legal right to the child, thus eliminating the status quo. If the child is a ward of a guardian who was appointed as a result of a juvenile dependency permanency plan, the juvenile court may wish to consider terminating the guardianship under Cal Rules of Ct 5.740(c). Again, it may make sense to leave the guardianship in place if reunification services with the guardian is viable. If guardianship is terminated under any of these methods, it may affect the need for a new dependency petition and any potential disposition.

- Registered domestic partners are included in the definition of "spouse" and share the same rights and duties as are granted to or imposed on spouses, including rights and obligations with respect to a child of either partner. Fam C §§143, 297.5(a), (d). Gender-specific terms referring to spouses must be construed to include domestic partners. Fam C §297.5(j). Thus, parents who are registered domestic partners have the same right to attend and participate in dependency hearings as other parents.

Notice is not required for a parent whose parental rights have been terminated. Welf & I C §§290.1(b), 290.2(b).

Once any alleged father comes to the court's attention, each alleged father must be notified of all court proceedings. Welf & I C §§290.1(a)(2), 290.2(a)(2), 316.2(b). Notice to an alleged father is critical because it enables him to appear and assert a position, which includes establishing his paternal status. See *In re O.S.* (2002) 102 CA4th 1402, 1408, 126 CR2d 571.

This notice does not make an alleged father a party to the proceedings, nor does it entitle him to participate in the proceedings. It only notifies him that it has been alleged that he is or could be the father of the child, the child is the subject of proceedings under Welf & I C §300, and that termination of parental rights could result. See Welf & I C §316.2(b). Thereafter, it is the responsibility of the alleged father to step forward and seek to establish his parentage and a relationship with the child if he desires. See, *e.g., In re Joseph G.* (2000) 83 CA4th 712, 715–716, 99 CR2d 915 (receipt of statutory notice insufficient to make alleged biological father a party of record); *In re Emily R.* (2000) 80 CA4th 1344, 1355, 96 CR2d 285 (to be declared a presumed father, the alleged father must first assume parental responsibilities). The alleged father must be provided with a copy of Judicial Council form Statement Regarding Parentage (Juvenile) (JV-505) and given assistance (if needed) by both the court and DSS in his efforts to establish parentage. *In re Paul H.* (2003) 111 CA4th 753, 761–762, 5 CR3d 1. Even if he is incarcerated, he must be fully notified of all proceedings with a copy of the petition, notice of the next scheduled hearing, and Judicial Council form JV-505, unless some exceptions apply. *In re Kobe A.* (2007) 146 CA4th 1113, 1121–1122, 53 CR3d 437.

☛ JUDICIAL TIP: It is a good practice to notify all possible fathers—presumed, biological (parentage established in a child-support, family-law action, or by genetic testing), and alleged—to help ensure that parentage issues can be fully addressed.

b. [§100.13] Contents and Timing of Notice

Once the petition is filed, if the child has been detained, notice must be given as soon as possible and at least 5 days before the hearing, unless the

hearing is scheduled to be heard within 5 days; in that case, the clerk must give notice at least 24 hours prior. Welf & I C §290.2(c)(1).

If the child is not detained, the clerk must give notice at least 10 days before the hearing. Welf & I C §290.2(c)(2). If any person who is required to be notified resides outside the county, the clerk must send the notice and copy of the petition by first-class mail as soon as possible after the petition is filed and at least 10 days before the hearing is scheduled. Welf & I C §290.2(c)(2). Personal service outside the county at least 10 days before the hearing is equivalent to service by first-class mail. Welf & I C §290.2(c)(2).

The notice must include the date, time, and place of the hearing, the name of the child on whose behalf the petition was brought, and a copy of the petition. Welf & I C §§290.1(d), 290.2(d), Cal Rules of Ct 5.524(e)(1).

c. [§100.14] Type of Notification

When the petition is filed, the probation officer or social worker must give written or oral notice, with a copy of the petition. See Welf & I C §290.1(e), Cal Rules of Ct 5.524(e)(1). If the person to be served cannot read, the notice must be given orally and the social worker or probation officer must file a declaration stating that oral notice was given and to whom. Welf & I C §290.1(e), Cal Rules of Ct 5.524(h). If it appears the person to be served does not read English, the social worker must provide notice in the language believed to be spoken by that person. Cal Rules of Ct 5.667(b).

Once a petition has been filed, the court clerk must issue notice, attached to a copy of the petition, by first-class mail or personal service. See Welf & I C §290.2(c)(2). If a person fails to appear after service by mail, the court must order personal service. Welf & I C §290.2(c)(2).

Notice of the petition cannot be served electronically. Welf & I C §§290.1(f), 290.2(c)(3).

Failure to respond is not a basis for arrest or detention. Welf & I C §290.2(c)(2). When appropriate, however, the court can issue a citation or warrant of arrest for the parent and a protective custody warrant for the child. Welf & I C §§338–340. Service may be waived by a voluntary appearance in court entered in the minutes or by written waiver filed with the clerk. Welf & I C §290.2(c)(2); Cal Rules of Ct 5.524(g).

In the case of an Indian child, notice must be by registered or certified mail, return receipt requested. See Welf & I C §224.2(a)(1). The mandatory notice form to be used by the social worker is Judicial Council form ICWA-030, Notice of Child Custody Proceeding for Indian Child. See *In re H.A.* (2002) 103 CA4th 1206, 1215, 128 CR2d 12.

☛ JUDICIAL TIP: The Judicial Council form ICWA-030, Notice of Child Custody Proceeding for Indian Child, is intended to satisfy all the requirements for notice in possible ICWA cases.

When using due diligence in locating the parent, it means at the very least that the party doing the investigation (usually DSS) must not ignore the most likely means of finding the parent. *In re Arlyne A.* (2000) 85 CA4th 591, 599, 102 CR2d 109 (due diligence declaration appeared valid on its face, but DSS had failed to check directory assistance for town of father's family residence when informed that the father lived there).

5. [§100.15] Judicial Officers

Initial and detention hearings, like other juvenile court hearings, may be conducted by referees who may perform subordinate judicial duties assigned to them by the presiding judge of the juvenile court. See Cal Rules of Ct 5.536. They generally have the same power as judges and are entitled to hear dependency cases as a matter of right (*i.e.*, without a stipulation—Welf & I C §248), except the presiding judge of the juvenile court may require that certain of a referee's orders be approved by a juvenile court judge before becoming effective (Welf & I C §251). Any orders by a referee requiring removal of a child from the physical custody of the person entitled to custody must be approved by a judge within 2 days in order to become effective. Welf & I C §249; Cal Rules of Ct 5.540(b)(1). Similarly, any order of a referee that the presiding judge has required to be expressly approved must also be approved by a judge within 2 days. Cal Rules of Ct 5.540(b)(2). Lack of compliance with Welf & I C §249 does not deprive a referee of fundamental jurisdiction, thereby invalidating later orders in the proceeding. *In re Jesse W.* (2001) 93 CA4th 349, 359, 113 CR2d 184.

A referee who has received a stipulation as a temporary judge under Cal Const art VI, §21 is empowered to act fully as a juvenile court judge. Cal Const art VI, §21; Cal Rules of Ct 2.816, 5.536(b). Indeed, the orders of a subordinate judicial officer who sits as a temporary judge are as final and nonreviewable as those of a judge. *In re Brittany K.* (2002) 96 CA4th 805, 815, 117 CR2d 813. Their orders, therefore, require no approval by a judge.

To avoid the necessity for approval by a judge, a referee may obtain a stipulation to act as a temporary judge. See Cal Rules of Ct 5.536. Procedures to follow in obtaining the stipulation are set out in Cal Rules of Ct 2.816. Failure to follow the procedures exactly will not void the stipulation and deprive the court of jurisdiction. See *In re Richard S.* (1991) 54 C3d 857, 865, 2 CR2d 2 (Cal Rules of Ct 2.831, regarding stipulation to have a referee sit as temporary judge, is directory rather than mandatory). A stipulation is necessary to give the court's acts immediate finality, but the absence of a stipulation does not deprive the court of jurisdiction. *In re Roderick U.* (1993) 14 CA4th 1543, 1551, 18 CR2d 555. The consequence of a failure to obtain a stipulation is that a rehearing may be required (see §100.47).

If, before the jurisdiction hearing takes place, a stipulation is made that a commissioner should serve as a temporary judge until the final determination, a parent may not withdraw the stipulation before the disposition hearing. *In re Steven A.* (1993) 15 CA4th 754, 669–770, 19 CR2d 576. The superior court is not required to designate commissioners as juvenile court referees and, in many jurisdictions, commissioners serve as temporary judges by express or implied stipulation. As such, their decisions and orders are not subject to rehearing. A stipulation to a commissioner acting as a temporary judge need not be in writing; a "tantamount stipulation" may be implied from the conduct of the parties and attorneys. *In re Horton* (1991) 54 C3d 82, 98, 284 CR 305; *In re Courtney H.* (1995) 38 CA4th 1221, 1227–1228, 45 CR2d 560. For example, a failure to timely object to a commissioner sitting as a judge is tantamount to an implied waiver of the required stipulation. *In re Brittany K.*, *supra*, 96 CA4th at 813; see also *Elena S. v Kroutik* (2016) 247 CA4th 570, 575–577, 202 CR3d 318 (stipulations will be implied if hearing involves performance of judicial function and party affirmatively participates in proceeding and does not object to commissioner until after completion of hearing).

A referee or commissioner assigned as a referee who is *not* acting as a temporary judge must inform the child and parent or guardian that review by a juvenile court judge may be sought. See Welf & I C §248; Cal Rules of Ct 5.538(a)(2). A child, parent, guardian, or the DSS may apply for a rehearing at any time up to 10 days after the service of a written order. Welf & I C §252; Cal Rules of Ct 5.542(a). If the referee's decision is one that requires approval by a juvenile court judge, the order becomes final 10 calendar days after service of a written copy of the order or 20 judicial days after the hearing, whichever is later. *In re Clifford C.* (1997) 15 C4th 1085, 1093, 64 CR2d 873. For decisions by a referee that do not require approval by a juvenile court judge to become effective, a judge may make an order for a rehearing within 20 judicial days of the hearing, but not more than 10 days following the service of a written copy of the order. *In re Clifford C.*, *supra* (delinquency case reconciling Welf & I C §§250 and 253).

If the proceedings that were before a referee were recorded by a court reporter, the reviewing judge may rule on the request for a rehearing on the basis of the transcripts. Welf & I C §252; Cal Rules of Ct 5.542(c). If there was no official report of the proceedings or if the judge fails to rule on the application within 20 days of receiving it (maximum of 45 days with an extension), the application for rehearing must be granted as a matter of right. Welf & I C §252; Cal Rules of Ct 5.542(b)–(c). Rehearings of matters heard before a referee are conducted de novo before a juvenile court judge. Welf & I C §254; Cal Rules of Ct 5.542(e). See discussion of rehearings in §100.47.

Attorneys who act as pro tem judges under Cal Const art VI, §21 must follow the stipulation procedure of Cal Rules of Ct §2.816.

A juvenile court judge or referee may impose sanctions under CCP §128.7 in a dependency proceeding. *In re Mark B.* (2007) 149 CA4th 61, 80, 56 CR3d 697.

6. Right to Counsel

a. [§100.16] In General

Any person who is entitled to notice under Welf & I C §§290.1 and 290.2 has the right to representation by counsel of his or her own choice. Welf & I C §349(b). Although the right to counsel in dependency proceedings was historically viewed as a purely statutory one (see, *e.g.*, *In re James S.* (1991) 227 CA3d 930, 936, 278 CR 295), this view has changed since passage of Senate Bill 243 (Stats 1987, ch 1485), which placed the termination of parental rights within the context of the dependency case itself. Courts have held that right to counsel may acquire a due process dimension when the proceedings could lead to a termination of parental rights (see *Lassiter v Department of Social Servs.* (1981) 452 US 18, 31–32, 101 S Ct 2153, 68 L Ed 2d 640), or when the petition contains allegations against a parent that could result in criminal charges being filed (*In re Emilye A.* (1992) 9 CA4th 1695, 1707, 12 CR2d 294).

Neither failure to appoint counsel at the detention hearing nor possible ineffectiveness of later-appointed counsel is a due process violation that may be raised on appeal after termination of parental rights; significant safeguards built into dependency proceedings preclude such a claim. *In re Meranda P.* (1997) 56 CA4th 1143, 1151–1155, 65 CR2d 913. If, however, possible ineffectiveness of counsel undermines those safeguards to such an extent that the parent is denied due process, it is possible that a claim of ineffective assistance of counsel could be raised on a later appeal. See *In re Janee J.* (1999) 74 CA4th 198, 208–209, 87 CR2d 634. It may also be raised by a later petition for writ of habeas corpus in an appropriate case. See *In re O.S.* (2002) 102 CA4th 1402, 1406 n2, 126 CR2d 571.

Once appointed, counsel may not withdraw because of lack of contact with the client without establishing why the lack of contact prevents the performance of his or her duty. *In re Malcolm D.* (1996) 42 CA4th 904, 916, 50 CR2d 148. Once appointed, counsel must represent the client in all proceedings (see Welf & I C §317(d)), including writ proceedings in the appellate court (*Rayna R. v Superior Court* (1993) 20 CA4th 1398, 1404–1405, 25 CR2d 259), and all subsequent juvenile court proceedings (*In re Tanya H.* (1993) 17 CA4th 825, 827, 833 n7, 21 CR2d 503), unless the parents demonstrate that they no longer desire further legal representation (*Janet O. v Superior Court* (1996) 42 CA4th 1058, 1065, 50 CR2d 57).

Although the court should monitor the bills of appointed counsel, it may not by local policy interfere with the statutory right of the parent to continued representation (Welf & I C §317(d)) by requiring that all counsel

be relieved of the appointment after the first permanency planning review hearing unless there is a showing of good cause. *In re Tanya H., supra,* 17 CA4th at 830–832.

b. [§100.17] Parents or Guardian

At each hearing, the court must advise an unrepresented parent or guardian of the right to be represented by an attorney and the right of the indigent parent or guardian to have one appointed if the child is placed, or recommended to be placed, outside the home. Welf & I C §317(a); Cal Rules of Ct 5.534(c)–(d). Generally, the court may appoint counsel for an indigent parent or guardian. Welf & I C §317(a). If the child has been removed from the home or the petitioning agency is recommending removal, the court must appoint counsel for an indigent parent or guardian. Welf & I C §317(b); Cal Rules of Ct 5.534(d)(1)(B).

In deciding whether to appoint counsel, the court must make a case-by-case determination of whether the presence of counsel would make a "determinative difference" on the outcome of the proceeding in deciding if a parent has a due process right to representation by counsel at a stage in the dependency proceeding in which parental rights may be terminated. *In re Ronald R.* (1995) 37 CA4th 1186, 1196, 44 CR2d 22.

☛ JUDICIAL TIP: Many judges appoint counsel for all parents at this stage of the proceedings because it is not yet clear which parent the child will reside with, which parent is likely to reunify with the child, or what conflicts between the parents exist or may arise.

However, the court has no obligation under Welf & I C §317 to appoint counsel for an indigent parent who has chosen not to appear and has made no request for counsel. *In re Ebony W.* (1996) 47 CA4th 1643, 1645, 55 CR2d 337. Nor does the court have statutory authority to appoint counsel for a parent whose parental rights have been terminated. *In re Jacob E.* (2004) 121 CA4th 909, 924, 18 CR3d 430.

☛ JUDICIAL TIP: When a parent is incarcerated, it is often advisable to have that parent appear in court for the detention hearing, but it may be sufficient to appoint counsel for the parent, hold the detention hearing in the parent's absence, and advise the attorney that the hearing can be put back on calendar if, after the attorney speaks with the client, it becomes clear that there is an issue that needs to be dealt with. Another option is to continue the hearing for a day to allow appointed counsel to speak with the incarcerated client.

If the parent elects self-representation, the court *must* take a waiver of the parent's right to counsel under Welf & I C §317(b), but need not engage in a full *Faretta*-type inquiry. *In re Angel W.* (2001) 93 CA4th 1074, 1084,

113 CR2d 659 (.26 hearing). Before precluding a disruptive but mentally competent parent from self-representation on the grounds of protecting the process from disruption, the court must find that the parent is and will remain so disruptive as to significantly delay the proceedings or cause the proceedings to negatively impact the child's right to a fair and prompt hearing. 93 CA4th at 1085. In accord is *In re A.M.* (2008) 164 CA4th 914, 927, 79 CR3d 620 (court correctly rejected parent's self-representation because of probability of undue delay). And when a parent waives the right to be represented by appointed counsel who is a juvenile dependency law specialist and instead retains his or her own attorney, that parent may not later complain of an unfavorable outcome. *In re Jackson W.* (2010) 184 CA4th 247, 256–257, 108 CR3d 509.

Because a parent has the statutory right to counsel under Welf & I C §317, the court must appoint counsel for both a mother and a presumed father if they are indigent. See *In re Zacharia D.* (1993) 6 C4th 435, 451, 24 CR2d 751 (parent is defined as a mother or a presumed father as used in dependency statutes). Judicial officers often will appoint counsel for a biological father who has established paternity and has taken steps toward filling a parental role in the child's life.

☛ JUDICIAL TIP: When counsel represents both parents, the judge should determine whether a conflict between the parents exists and should warn the parents about the dangers of dual representation. Some judges always appoint separate counsel because there is so often a potential for conflict.

If the social services agency or another party is seeking to establish the parentage of an alleged father over his objection, the alleged father does have a right to appointed counsel to help him defend against that action. *Salas v Cortez* (1979) 24 C3d 22, 34, 154 CR 529. Alleged fathers have no right to appointed counsel to help them in bringing their own action to establish parentage, however. Despite this, some courts do appoint counsel for the limited purpose of helping an alleged father to establish parentage. If parentage is not established in a timely fashion, or if it is determined the alleged father does not qualify for either biological or presumed father status, counsel should then be relieved.

No counsel is required for the parents of a nonminor dependent who is under the court's jurisdiction as described in Welf & I C §11400(v), unless the parents are receiving court-ordered family reunification services. Welf & I C §317(d). See the definition of a "nonminor dependent" in §100.18.

For a discussion of appointment of a guardian ad litem for a parent, see §100.26.

c. Child

(1) [§100.18] In General

The court must appoint counsel for the child, nonminor, or nonminor dependent unless it finds that the child, nonminor, or nonminor dependent would not benefit from the appointment of counsel. Welf & I C §317(c)(1); Cal Rules of Ct 5.534(d)(1)(A), 5.660(b). It must also appoint a CAPTA guardian ad litem for each child who is the subject of a dependency petition. Cal Rules of Ct 5.662(c). If an attorney is appointed, he or she will serve as the CAPTA guardian ad litem. Cal Rules of Ct 5.662(c). The court must identify the CAPTA guardian ad litem on the record. Cal Rules of Ct 5.662(c). Counsel for the child must act as the child's CAPTA guardian ad litem, but when counsel is not appointed, a CASA volunteer can adequately fulfill the independent investigative and informational functions. *In re Charles T.* (2002) 102 CA4th 869, 877–878, 125 CR2d 868; see also Cal Rules of Ct 5.662(c).

Note: There are three categories of dependents: a child, a nonminor, or a nonminor dependent. A "child" is a person under the age of 18 years. Cal Rules of Ct 5.502(5). A "nonminor" is a dependent child of the court over the age of 18 who does not meet the definition of a "nonminor dependent." See *In re K.L.* (2012) 210 CA4th 632, 636–639, 148 CR3d 606. A "nonminor dependent" means a foster child who (1) was under a foster care order at the age of 18, (2) is in foster care under the placement and care responsibility of a specified agency, and (3) has a transitional independent living case plan. Welf & I C §11400(v); see Cal Rules of Ct 5.900.

In order to find that the child would not benefit from counsel, the court must find all of the following (Cal Rules of Ct 5.660(b)(1)):

- The child understands the nature of the proceedings;
- The child can communicate with the court, other counsel, other parties, and the social workers and other professionals involved in the case, and can advocate effectively for him or herself; and
- Under the circumstances, there would be no benefit to the child from having counsel appointed.

If the court finds that the child, nonminor, or nonminor dependent would not benefit from counsel, it must state reasons on the record for that finding on each of the criteria listed above. Welf & I C §317(c)(1); Cal Rules of Ct 5.660(b)(2).

If the court finds no benefit from appointment of counsel for the child, it must appoint a court-appointed special advocate (CASA) to serve as the CAPTA guardian ad litem. Welf & I C §326.5; Cal Rules of Ct 5.502(3), (4), 5.660(b)(3), (f), 5.662(c). See also Cal Rules of Ct 5.655 (recruitment, duties, etc. of CASAs). The court may also appoint a CASA for a child who has an attorney. Cal Rules of Ct 5.660(f)(4).

☛ JUDICIAL TIP: If the court appoints an attorney for the child, the attorney must also be named as the child's CAPTA guardian ad litem. The dual appointment should be clearly indicated on the court's minute order.

When appointing counsel, the court must determine whether to appoint independent counsel; the court may appoint the district attorney, public defender, or other member of the bar, as long as that attorney does not represent a party or an agency whose interests conflict with those of the child, nonminor, or nonminor dependent. Welf & I C §317(c).

☛ JUDICIAL TIPS:

- Whether the court is appointing a government attorney (from the office of district attorney or public defender) or private counsel, the court must ensure that the attorney has the skill and judgment to handle the child's, nonminor's, or nonminor dependent's case. Cal Rules of Ct 5.660(d).
- If there is a pending family law case and the child is represented by counsel in that case, the court may wish to consider appointing the same counsel if that counsel is qualified to appear in juvenile court under Cal Rules of Ct 5.660(d) and any local rules of court. If that appointment would not be appropriate, the court should order juvenile court counsel to keep the family law counsel informed.

The attorney must be free to make an independent assessment of how to handle the litigation to best serve the interests of the child. *Allen M. v Superior Court* (1992) 6 CA4th 1069, 1075, 8 CR2d 259 (child's counsel has great latitude in presenting pertinent information to the court).

A parent may have standing to raise the question of a child's right to counsel as long as the parent's interests and the child's interests are intertwined. *In re Patricia E.* (1985) 174 CA3d 1, 6, 219 CR 783, disapproved on other grounds, 31 C4th at 60.

There is good cause under Welf & I C §317(d) to relieve the child's counsel when the court finds representation no longer benefits the child. *In re Jesse C.* (1999) 71 CA4th 1481, 1490, 84 CR2d 609. If counsel for the child is relieved, however, a CASA must be appointed as the child's CAPTA guardian ad litem. See Welf & I C §326.5.

(2) [§100.19] Attorney's Duties

The child's, nonminor's, or nonminor dependent's attorney must generally represent the child's, nonminor's, or nonminor dependent's interests at the detention hearing and at all subsequent hearings. Welf & I C §317(d)–(e). To that end, the attorney must make investigations on the child's behalf, examine and cross-examine witnesses appropriately,

interview any child client who is 4 years of age or older, and make recommendations to the court concerning the child's welfare. Welf & I C §317(e)(1), (2). The attorney must meet regularly with his or her client and must work with other counsel and with the court to resolve disputed aspects of the case. Cal Rules of Ct 5.660(d)(4). The attorney must also provide contact information to the caregiver and to the child if the child is 10 years old or older. Cal Rules of Ct 5.660(d)(5). See also *In re Jesse B.* (1992) 8 CA4th 845, 853, 10 CR2d 516 (because counsel for children must interview their clients to ascertain their wishes, judge may generally assume that attorney who advocates for a certain disposition has previously consulted the child regarding that disposition).

The attorney represents the child's legal interests and is not required to assume the responsibilities of a social worker. Welf & I C §317(e)(1), (3); Cal Rules of Ct 5.660(d)(4); see also Welf & I C §280 (duties of social worker). However, in assessing how to handle the litigation, the child's attorney, as well as the social worker, CASA, or guardian ad litem, must be notified of changes in the child's life, including changes in placement. See *In re Robert A.* (1992) 4 CA4th 174, 192, 5 CR2d 438.

A primary obligation of the child's attorney is to advocate for the protection, safety, and physical and emotional well-being of the child. Welf & I C §317(c)(2). The role of the child's counsel is not merely to express the wishes of the child if orders consistent with those wishes would endanger the child. *In re Alexis W.* (1999) 71 CA4th 28, 36, 83 CR2d 488. Because the child's attorney has an obligation to represent the child's interests, the attorney may have to present a position to the court that runs counter to both the parents' and the petitioning agency's position. See *Allen M. v Superior Court* (1992) 6 CA4th 1069, 1075, 8 CR2d 259 (child's counsel may properly request the petition not be dismissed despite agreement between DSS and parents regarding dismissal). And sometimes the attorney must even challenge the child's testimony and argue a position supported by the evidence although it is contrary to the child's stated position. See *In re Kristen B.* (2008) 163 CA4th 1535, 1542–1543, 78 CR3d 495 (child had recanted her claim of abuse).

Counsel for a child may disclose to someone being assessed for the possibility of placement pursuant to Welf & I C §361.3 the fact the child is in custody, the alleged reasons, and the projected likely date for return home, placement for adoption, or legal guardianship. Welf & I C §317(e)(4)(C).

Either the child or the child's counsel may invoke a privilege, such as the psychotherapist-patient privilege, and if the child invokes it, counsel may not waive it; but if counsel invokes it, the child may waive it. Welf & I C §317(f). If the child is neither old nor mature enough, counsel is the holder of the privileges. Welf & I C §317(f).

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

(3) [§100.20] Siblings

A court may appoint one attorney to represent all the siblings unless an actual conflict of interest exists at the time of appointment or it is reasonably likely that one will arise. Cal Rules of Ct 5.660(c)(1)(A)–(B); *In re Celine R.* (2003) 31 C4th 45, 50, 1 CR3d 432. These circumstances alone do not indicate a conflict (Cal Rules of Ct 5.660(c)(1)(C)):

- The siblings are different ages.
- The siblings have different parents.
- There is a purely abstract or theoretical conflict of interest among the siblings.
- Some of the siblings appear to be more likely than others to be adopted.
- The siblings have different permanent plans.
- There is abuse between the siblings.

An attorney who represents a group of siblings must assess whether a conflict may have arisen. Cal Rules of Ct 5.660(c)(2)(A)–(C). In addition to the factors listed above, a disagreement among siblings regarding wishes or differences in the siblings' version of events is not necessarily a conflict if the differences are not material to the case. Cal Rules of Ct 5.660(c)(2)(B)(vi)–(vii). It is the child's best interests, rather than the children's *wishes*, that are paramount. *In re Zamer G.* (2007) 153 CA4th 1253, 1265–1266, 1270–1271, 63 CR3d 769.

Each child in a family need not have his or her own counsel unless there is an actual conflict of interest (*In re Candida S.* (1992) 7 CA4th 1240, 1252, 9 CR2d 521) or a probable potential one (*Carroll v Superior Court* (2002) 101 CA4th 1423, 1429–1430, 124 CR2d 891). Whether there is an actual conflict must be assessed on a case-by-case basis. *In re Candida S.*, *supra*, 7 CA4th at 1253 (disagreements among siblings about visitation will not necessarily present conflict of interest). Because it is an actual conflict of interest, rather than an appearance of conflict of interest, that requires disqualification, one unit of a legal services agency may represent one sibling and another unit may represent another. *In re Jasmine S.* (2007) 153 CA4th 835, 843–844, 63 CR3d 593.

When a conflict arises, the court must relieve counsel from joint representation. Cal Rules of Ct 5.660(c)(2)(E); *In re Celine R., supra.* Moreover, an attorney may not accept representation of siblings in a dependency case if there is a reasonable likelihood that an actual conflict will arise. *Carroll v Superior Court, supra,* 101 CA4th at 1429–1430. If the attorney believes that an actual conflict has existed from the outset or has arisen, he or she must follow the steps set out in Cal Rules of Ct 5.660(c)(2)(D).

☛ JUDICIAL TIP: Potential and actual conflicts of interest for children's counsel have increased with the requirement for concurrent services planning and the enactment of the provisions for a "sibling petition" under Welf & I C §388(b), and the "interference with sibling relationships" exception to termination of parental rights under Welf & I C §366.26(c)(1)(B)(v). Judges therefore need to be aware of the possibility of future conflicts in making these appointments.

(4) [§100.21] Child's Choice

Under Welf & I C §349(b), the child is entitled to be represented by counsel of his or her own choice. When a child retains a particular attorney, the court may not deny child that counsel without having first ruled that the child was incapable of selecting an attorney or did not select a competent one. *Akkiko M. v Superior Court* (1985) 163 CA3d 525, 527, 209 CR 568. Even with appointed counsel, when a child is dissatisfied, the court may not deny a request for new counsel without inquiry into the cause of the dissatisfaction. *In re Ann S.* (1982) 137 CA3d 148, 150, 188 CR 1. If the complaint is valid, the judge must appoint new counsel. *In re Ann S., supra.*

d. [§100.22] Conflicts

The district attorney's office may represent the DSS. Welf & I C §318.5. It may also represent the child, or both DSS and the child if there is no conflict of interest. Welf & I C §317(c)(3). The district attorney's office may also pursue criminal charges against the parent while representing the child. Welf & I C §317(c)(3) (not an automatic conflict of interest). Finally, the district attorney may also represent children in some instances in which the office previously prosecuted the parents as long as it does not represent another party or agency whose interest conflicts with the child's. *In re Albert B.* (1989) 215 CA3d 361, 382, 263 CR 694. However, in any of these cases, the court must consider the facts of the case to determine if there is an actual conflict.

It is permissible for an agency to represent a child in a dependency proceeding when another part of the agency has formerly represented the

mother if the agency can adequately protect the mother's confidences; the agency must meet the burden of showing that it has measures in place to ensure such protection. *In re Charlisse C.* (2008) 45 C4th 145, 165–166, 84 CR3d 597.

e. [§100.23] Attorney's Fees; Training

The court may fix compensation for appointed counsel for the child. Welf & I C §317(c)(4). However, a court may not order one parent to pay the other parent's attorney's fees under the Family Law Act when those fees were incurred for a dependency proceeding occurring simultaneously with a dissolution action. *Marriage of Seaman & Menjou* (1991) 1 CA4th 1489, 1499, 2 CR2d 690 (dependency proceeding was not "related to" simultaneous family law proceeding, permitting an award of attorney's fees under Family Law Act).

Each party who is represented by an attorney is statutorily entitled to competent counsel. Welf & I C §317.5(a); see Cal Rules of Ct 5.660(d) (defining competence and discussing standards of representation, experience, and education). The court must establish a complaint process and inform parties of the procedure (Cal Rules of Ct 5.660(e)) and may require evidence of competency (Cal Rules of Ct 5.660(d)(2)). Once the court determines that an attorney has acted improperly, it must take appropriate action. Cal Rules of Ct 5.660(e). See also Welf & I C §317.6 (enabling legislation requiring establishment of standards and procedures with respect to counsel practicing in dependency court).

The juvenile court judge has an obligation to encourage local attorneys to practice in juvenile court over a substantial period of time, to raise the status of public attorneys who practice in juvenile court, and to establish minimum standards of practice for court-appointed attorneys who practice in juvenile court. Cal Rules of Ct, Standards of J Admin 5.40(c). The judge should also institute and encourage training programs for lawyers who serve as court-appointed attorneys in juvenile court, as well as set minimum training and continuing legal education standards. Cal Rules of Ct, Standards of J Admin 5.40(d). Each superior court must adopt or amend local rules governing representation of parties in dependency court after first consulting local offices of the county counsel, district attorneys, and others specified in Cal Rules of Ct 5.660(a)(1). Cal Rules of Ct 5.660(a). The rules must address issues relating to representation, such as training and appointment of attorneys, establishment of standards, and procedures for reviewing complaints, procedures for appointing a CAPTA guardian ad litem, as well as procedures relating to settlement, mediation, and discovery. Cal Rules of Ct 5.660(a)(2).

Appointed counsel must have training that ensures that the child is adequately represented. Welf & I C §317(c); Cal Rules of Ct 5.660(d).

7. [§100.24] Conduct of Hearing

At the initial or detention hearing, the court must first advise the parents and guardians of their rights and serve them with a copy of the petition. See Welf & I C §316; Cal Rules of Ct 5.668(a). See discussion in §100.25. The court must examine the child's parents, guardians, or others with pertinent knowledge and hear any relevant evidence that the child and the parents, guardians, or others would like to present; the court must also receive evidence from the social worker on any necessity for initial removal and continued detention. Welf & I C §§319(a), (b), 349(c) (court must allow child to address the court and participate in the hearing, if the child so desires). In making the findings necessary to an order of detention, the court may rely solely on documentary evidence, such as police reports or reports of the probation officer or social worker. Cal Rules of Ct 5.676(b); see §100.29. At this hearing, the court must also ask the mother and other appropriate persons about the identity and whereabouts of any possible alleged or presumed parents or fathers. Welf & I C §316.2; Cal Rules of Ct 5.668(b). See §§100.32–100.33. The court must also ask about American Indian ancestry. See discussion in §§100.49–100.57.

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

The court must also provide English language interpreters or interpreters for persons who are deaf or hard of hearing if necessary (see Evid C §§752, 754, 756, Govt C §68092.1) as well as accommodations for persons with disabilities (see Cal Rules of Ct 1.100 for procedural requirements).

Note: Related resources are available on CJER Online in the Access, Ethics & Fairness Toolkit: the Providing Disability Accommodations While Court Is in Session guide, and the Working with Court Interpreters bench card.

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

a. [§100.25] Advisement of Rights

At the initial or detention hearing, the court must inform the parties of the reason for the detention, let them know what to expect from juvenile court proceedings, and inform them of their rights, including the right to counsel at each stage of the proceedings unless waived. See Welf & I C §§311(b), 316; Cal Rules of Ct 5.534(c), (g), 5.668(a). A personal waiver by the parent is required. *In re Monique T.* (1992) 2 CA4th 1372, 1377, 4 CR2d 198.

☛ JUDICIAL TIP: It is common for judges to obtain waivers of formal advisement of these rights from parents who are represented by counsel.

Specifically, under Cal Rules of Ct 5.534(g), the court (or the parents' or guardians' attorney) must advise the child, parents, and guardians of the right to assert the privilege against self-incrimination. However, it may not be an abuse of discretion for a judge to omit this advisement because of the "use immunity" provided by Welf & I C §355.1(f) (testimony of parent or guardian in dependency proceeding may not be used against parent or guardian in any other action or proceeding). *In re Amos L.* (1981) 124 CA3d 1031, 1039, 177 CR 783.

Although the court may wish to inform the parents or guardians of the "use immunity" conferred by Welf & I C §355.1(f), the court is not required to advise parents of this immunity when parents are represented by counsel. *In re Candida S.* (1992) 7 CA4th 1240, 1250, 9 CR2d 521.

Under Cal Rules of Ct 5.534(g)(1), the court must also advise the child, parents, and guardians of the right:

- To confront and cross-examine witnesses, including preparers of reports submitted in court (see also Welf & I C §311(b));
- To use court process to obtain witnesses; and
- To present evidence to the court.

Under Cal Rules of Ct 5.668(a), the court must also inform the parents, guardians, and child of:

- The contents and meaning of the petition;
- The reasons for the detention and the goal and scope of the detention hearing if the child was taken into custody;
- The nature of juvenile court proceedings and the consequences of different hearings; and
- Maximum time limits for providing reunification services based on when the services were considered to have been offered or provided and the age of the child at the time of removal.

The child and parents are also entitled to future notice of all proceedings; to that end, they must provide permanent mailing addresses to the court and the DSS, and the court must advise them that, until further notice, the court and social services agency will use those addresses for purposes of notice. Welf & I C §316.1; Cal Rules of Ct 5.534(i). Judicial Council form Notification of Mailing Address (JV-140) must be delivered with the petition and made available in the courtroom. Cal Rules of Ct 5.534(i)(3). Thereafter, at each hearing in a dependency proceeding, the court must determine whether notice has been given as required by law. Cal Rules of Ct 5.534(h).

b. [§100.26] Who May Be Present

The child, who is the subject of the proceeding, is also a party. Welf & I C §317.5(b). If the child is present, the court must permit his or her participation if he or she desires to address the court or otherwise participate. Welf & I C §349(a), (c). If the child is 10 years old or older and is not present, the court must determine whether he or she was properly notified of the right to attend the hearing and inquire whether the child was given an opportunity to attend. Welf & I C §349(d). If the child was not properly notified or if he or she wished to be present and was not given an opportunity to be present, the court must continue the hearing only for that period of time necessary to provide notice and secure the child's presence, unless the court finds that it is in the best interest of the child not to grant a continuance. Welf & I C §349(d). The court may issue any and all orders reasonably necessary to ensure that the child has an opportunity to attend. Welf & I C §349(d).

Welfare and Institutions Code §349(a) and Cal Rules of Ct 5.530(b) permit anyone who is entitled to notice under Welf & I C §§290.1 and 290.2 to attend, including the following persons:

- The child or a nonminor dependent (see Cal Rules of Ct 5.502(26));
- A sibling in certain circumstances and/or his or her caregiver and attorney (see §100.12);
- Parents, guardians, or Indian custodians, or if none can be found or none reside within the state, any adult relatives residing within the county, or if none, any adult relatives residing nearest the court;
- Counsel for child, as well as counsel for parent or guardian, adult relative, Indian custodian, or Indian tribe;
- County counsel or district attorney in cases in which the district attorney has been appointed to represent the petitioner;
- Social worker (although the court has no authority to assign a particular social worker to a case (*In re Ashley M.* (2003) 114 CA4th 1, 10, 7 CR3d 237));

- Court clerk;
- Court reporter;
- Bailiff, at the court's discretion;
- Representative of the Indian child's tribe in a proceeding described by Cal Rules of Ct 5.480 (see Welf & I C §224.2(a));
- The child's CASA; and
- Any other person entitled to notice under Welf & I C §§290.1 and 290.2.

The court may also permit any of the child's relatives to be present at the detention hearing on a sufficient showing and to submit information to the court at any time. See Cal Rules of Ct 5.534(b). All others must be excluded from the courtroom unless a parent or guardian requests that the public be admitted and this request is consented to by the child or the child requests an open hearing. Welf & I C §346; Cal Rules of Ct 5.530(e)(1). The court may also admit anyone who it determines has a direct and legitimate interest in the case or in the work of the court. Welf & I C §346; Cal Rules of Ct 5.530(e). In any case, no person on trial, accused of a crime, or awaiting trial may be permitted to attend juvenile court proceedings except when testifying as a witness, unless that person is a parent, de facto parent, guardian, or relative. Welf & I C §345; Cal Rules of Ct 5.530(a).

☛ JUDICIAL TIPS:

- Even at a detention hearing, some judges permit participation from anyone who might provide information that could assist the court in making a decision regarding the child. Other judges only allow participation by the parties and exclude all others unless they are called as witnesses by one of the parties.
- Some judges occasionally permit attorneys who are not connected with the case being heard, but who are appointed in other cases, to stay in the courtroom as a learning experience; this practice may result in a better-trained bar, but should be carefully monitored. If a party or counsel for a party objects to the presence of those not connected to the case, the court should ask the visitors to leave.

In addition to the participants mentioned above, it is good practice for the court to allow the child a support person. Welf & I C §§100–110, 356.5 (setting forth the requirements governing the appointment and duties of a court-appointed special advocate or CASA volunteer) and Cal Rules of Ct 5.655 (implementing the statutory requirements). When that role cannot be fulfilled by the social worker or a CASA who is already present, the court may allow a support person to be present by using its discretion under Welf & I C §346 and its inherent authority to provide for the child's best interest.

Without statutory authority, the district attorney may not participate in juvenile dependency proceedings to represent state interests. *In re Dennis H.* (2001) 88 CA4th 94, 102, 105 CR2d 705. Moreover, the court may not appoint a guardian ad litem for a parent or guardian without holding an informal hearing and giving the parent an opportunity to be heard. *In re James F.* (2008) 42 C4th 901, 910–911, 915, 70 CR3d 358 (parent); *In re Joann E.* (2002) 104 CA4th 347, 357–359, 128 CR2d 189 (guardian). Even a parent who is under conservatorship must be given an opportunity to be heard, and the conservator should be given notice and served with the petition. *In re Daniel S.* (2004) 115 CA4th 903, 911–912, 9 CR3d 646.

If the parent's attorney believes that a guardian ad litem should be appointed, the attorney must ask the parent for consent and, if the parent does not consent, the attorney must approach the court directly. *In re Jessica G.* (2001) 93 CA4th 1180, 1187–1188, 113 CR2d 714. At an informal hearing on the issue, the court or counsel must explain to the parent the purpose of a guardian ad litem, the reason for the proposed appointment and the authority that the guardian ad litem would have if appointed and must give the parent an opportunity to respond. 93 CA4th at 1188; *In re Enrique G.* (2006) 140 CA4th 676, 684, 44 CR3d 724. Failure to explain or to give an opportunity to consent to the appointment or even to comment on it, along with a failure by the trial court to inquire regarding the mother's competence, is a violation of the mother's constitutional rights. *In re C.G.* (2005) 129 CA4th 27, 32–33, 27 CR3d 872, disapproved on other grounds, 42 C4th at 919 n2.

To appoint a guardian ad litem, the court must determine that the parent is unable to help counsel or to understand the proceedings because of mental disorder or developmental disability, using the same standards required in Pen C §1367 or Prob C §1801. *In re Sara D.* (2001) 87 CA4th 661, 667, 104 CR2d 909; *In re Jessica G., supra,* 93 CA4th at 1186. Basically, the court must determine whether the parent is competent and can assist the attorney in protecting his or her rights. *In re Enrique G., supra,* 140 CA4th at 684. When the court *knows* that the parent is incompetent, it has a sua sponte duty to appoint a guardian ad litem. *In re A.C.* (2008) 166 CA4th 146, 155, 82 CR3d 542.

Under CCP §372(c)(1)(B), a minor who is a parent may appear in a dependency proceeding without a guardian ad litem. However, if the minor parent is unable to understand the nature of the proceedings or to assist counsel in preparing the case, the court must appoint a guardian ad litem. Welf & I C §326.7; CCP §372(c)(2). The court must appoint the guardian ad litem on its own motion or on the motion of the minor parent or his or her attorney. CCP §372(c)(2).

☛ JUDICIAL TIP: When a minor presumed parent is not present, the court should appoint counsel for him or her to avoid due process problems, even if no guardian ad litem may be appointed.

Because the roles of the child's attorney and guardian ad litem are substantially similar, the child's attorney may serve as his or her guardian ad litem. *In re M.F.* (2008) 161 CA4th 673, 678–679, 74 CR3d 383.

c. [§100.27] Presentation of Testimony and Other Evidence

The court must consider evidence from the social worker regarding reasons for the initial removal from custody of the parent or guardian and the basis of the recommendation for continuing detention. Welf & I C §319(e); see Cal Rules of Ct 5.674(b). This evidence may be in the form of testimony or documents. See Welf & I C §319, Cal Rules of Ct 5.674(b), 5.676(b).

The court must also examine the parents, guardians, or others with relevant knowledge of the situation and hear any relevant evidence that they or the child would like to present. Welf & I C §319(a). When ruling on reasonable efforts (see §100.38), the court must read and consider any DSS reports and relevant evidence submitted by the parties and their counsel. Welf & I C §319(d)(1); see Cal Rules of Ct 5.678(c), 5.674(b).

The court must consider what services could be provided to the child that would enable the child to return home. See Welf & I C §319(d)(1). The court must also review whether the social worker has considered public assistance as a possible resource that would eliminate the need for detention or prevent further detention. Welf & I C §319(d)(1).

In addition, at the detention hearing or at any other dependency proceeding, any interested person may give the court information relevant to the child's interests or rights to be protected or pursued in other judicial or administrative forums. Cal Rules of Ct 5.660(g).

(1) [§100.28] Rights of Child, Parents, and Others During Testimony

At the detention hearing, the child, parents, and guardians are entitled to assert the privilege against self-incrimination. Cal Rules of Ct 5.674(c). A parent or guardian also has a right to confront and cross-examine any preparers of reports received by the court who are present and any other persons examined by the court under Welf & I C §319. Cal Rules of Ct 5.674(c). The right to confrontation is not a constitutional one because a dependency proceeding is not a criminal proceeding and therefore some of the formalities of a criminal proceeding are not applicable. *In re Kerry O.* (1989) 210 CA3d 326, 334, 258 CR 448.

(2) [§100.29] Documentary Evidence

The court may rely solely on written police, probation, or social worker reports or other documents in making findings that are prerequisite to an order of detention. Cal Rules of Ct 5.674(b), 5.676(b). Under Cal Rules of Ct 5.676(b), these reports must include:

(1) Statement of reasons why the child was removed from the parents' custody;

(2) Description of services already provided (including those provided at the time of prehearing detention) and indication of whether further services are available that would eliminate the need for further detention;

(3) If a parent is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent, information and a recommendation regarding whether the child can be returned to the custody of that parent; and

(4) Need for continued detention.

If continued detention is recommended, the reports should include a section on whether there is a noncustodial parent, relative, or other nonrelative extended family member (see Welf & I C §362.7) with whom the child may be detained. Cal Rules of Ct 5.676(b)(5).

(3) [§100.30] Child's Testimony

Although children rarely testify at detention hearings, when a child does testify, the court must first administer an oath to the child or obtain a satisfactory promise from the child to tell the truth. See *In re Heather H.* (1988) 200 CA3d 91, 95–97, 246 CR 38 (failure to administer oath rendered testimony inadmissible). See also Evid C §710 (witnesses under 10 years old need only promise to tell the truth). At the conclusion of the child's testimony, the judge may wish to state whether the testimony demonstrated that the child understood the questions and had the ability to be responsive. For a discussion of handling child witnesses in court generally, see THE CHILD WITNESS BENCH HANDBOOK (CJER 2016).

In addition, if the court determines that the child's testimony is necessary, the child may testify in chambers outside the presence of the parents if the parents' counsel is present and any one of the following conditions exists (Welf & I C §350(b)):

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

In determining whether to permit in-chambers testimony, the court may rely on the social worker's report, or other stipulated offers of proof. *In re Katrina L.* (1988) 200 CA3d 1288, 1297, 247 CR 754 (court properly relied on statements in social worker's report that child would probably be intimidated in courtroom setting; social worker was available for cross-examination). The presence of parents' counsel is essential; it may be prejudicial error for the court to question the child in chambers with only a reporter present. See *In re Laura H.* (1992) 8 CA4th 1689, 1697, 11 CR2d 285.

When the child testifies in chambers, the testimony must be recorded and the parent or guardian may request the reporter to read back the testimony. See Welf & I C §350(b).

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

☛ JUDICIAL TIP: To accommodate the needs of the child witness, some judges remove their robes, as robes can be frightening symbols of formality to the child, and take other steps to make the proceedings as informal as possible. See generally THE CHILD WITNESS BENCH HANDBOOK §§1.19, 3.20 (CJER 2016). In addition, some judges conduct "in-chambers" proceedings in the courtroom without the parents because some chambers become too crowded and therefore too frightening for the child.

Finally, when a child is unwilling to testify even at an in-chambers hearing because of the presence of so many adults (the judge, many attorneys, social worker, and court reporter), a court is entitled to use its inherent powers to carry out its duties and ensure the orderly administration of justice (derived from Cal Const art VI, §1) and may permit the testimony of the child by closed-circuit television even in the absence of any express statutory authority for this procedure. *In re Amber S.* (1993) 15 CA4th 1260, 1266–1267, 19 CR2d 404 (court may use this procedure to protect best interests of child because parents' rights are at least as protected as they would have been under Welf & I C §350(b)).

(4) [§100.31] Child's Out-of-Court Statements

There are a number of situations in which a child's out-of-court statements to others would not be made inadmissible by the hearsay rule, although this issue does not often arise in a detention hearing, since it is not conducted to determine the truth of the petition and requires only a prima facie showing. A child's hearsay statements may be admissible under a "child dependency hearsay exception" when there are indicia of reliability

even if the child is not competent to testify. See *In re Cindy L.* (1997) 17 C4th 15, 18, 69 CR2d 803.

Indeed, a child's out-of-court statements may be admissible even if they do not meet the requirements of the child dependency hearsay exception and even if the child has been ruled incompetent to testify. *In re Lucero L.* (2000) 22 C4th 1227, 1242–1243, 96 CR2d 56; but see *In re I.C.* (2018) 4 C5th 869, 875, 231 CR3d 712 (court may not base findings solely on hearsay statements of truth-incompetent child (child too young to separate truth from falsehood) unless child's statements bear "special indicia of reliability"). See discussion in California Judges Benchguide 101: *Juvenile Dependency Jurisdiction Hearing* §101.43 (Cal CJER).

d. Determination of Parentage

(1) [§100.32] In General

Under Welf & I C §§316, 316.2(a), Fam C §7540 and Cal Rules of Ct 5.635(a), (b), and 5.668(b), the court must inquire about the identity and address of any possible presumed or alleged parents or fathers at the detention hearing. It must engage in this inquiry even if a person claiming to be a father appears at the detention hearing. Welf & I C §316.2. It must engage in a parentage inquiry by asking at least the following questions as it deems appropriate (Welf & I C §316.2(a); Cal Rules of Ct 5.635(b)(1)–(8), 5.668(b)):

(1) Has there been a judgment of parentage?

(2) Was the mother married or did she have a registered domestic partner at or after the time of conception?

(3) Did the mother believe herself to be married or to have a registered domestic partner at or after the time of conception?

(4) Was the mother cohabiting with another adult at the time of conception?

(5) Did the mother receive support or promises of support during her pregnancy or after the child's birth?

(6) Has a man formally or informally acknowledged parentage, including by signing a declaration of parentage?

(7) Have genetic tests been administered and, if so, what were the results?

(8) Has the child been raised jointly with another adult or in any other co-parenting arrangement?

The court may ask whether the man qualifies as a presumed father under Fam C §7611 or any other Family Code provision. Welf & I C §316.2(a)(7). Sometimes the court may be called on to balance competing presumptions. See, *e.g., In re Kiana A.* (2001) 93 CA4th 1109, 1117–1118,

113 CR2d 669 (court chose man who had taken child into home rather than incarcerated husband of mother, although both were presumptive fathers).

A presumption under Fam C §7611 may be rebutted in an appropriate case only by clear and convincing evidence. Fam C §7612(a). When statutory presumptions conflict, the presumption which, on the facts, is founded on the weightier considerations of policy and logic controls. Fam C §7612(b). A judgment that establishes a child's parentage by another person rebuts a Fam C §7611 presumption. Fam C §7612(d). In other words, the prior judgment acts to preclude the issue of parentage from being redetermined. See *In re P.A.* (2011) 198 CA4th 974, 982, 130 CR3d 556. A man who holds a paternity judgment, however, still must satisfy Fam C §7611(d) by holding the child out as his own and taking the child into his home. *In re Cheyenne B.* (2012) 203 CA4th 1361, 1376–1377, 138 CR3d 267.

The court may also ask if the man has executed a voluntary declaration of parentage (or paternity) and filed it with the state DSS and whether his name is on the birth certificate. See Fam C §§7571–7574. If so, this declaration acts to establish parentage, has the same effect as a judgment of parentage, and establishes the man as a presumed father. *In re Liam L.* (2000) 84 CA4th 739, 746, 101 CR2d 13; Fam C §7573; Cal Rules of Ct 5.635(c). Once an alleged father has provided prima facie proof that he signed a voluntary declaration of parentage at the time of child's birth, he is entitled to rely on the presumption that the document was properly filed, and the burden is on DSS to disprove that fact. *In re Raphael P.* (2002) 97 CA4th 716, 738, 118 CR2d 610. Moreover, a man who has filed a declaration of paternity in another state should be treated as a presumed father in California. See *In re Mary G.* (2007) 151 CA4th 184, 201–203, 59 CR3d 703; Fam C §5604.

A court may refuse to set aside a voluntary declaration of paternity (VDP) under Fam C §7575 by a nonbiological father on the request of a biological father who was not a presumed father when it is in the child's best interest to keep the VDP intact. *In re William K.* (2008) 161 CA4th 1, 9–10, 73 CR2d 737.

Also, in appropriate actions the court may find that more than two persons with a claim to parentage are parents if recognizing only two parents would be detrimental to the child. Fam C §7612(c); see discussions in *In re Donovan L.* (2016) 244 CA4th 1075, 1092, 198 CR3d 550 (order granting third parent status reversed as it was potential, not existing, relationship); *Martinez v Vaziri* (2016) 246 CA4th 373, 384–385, 200 CR3d 884 (critical distinction is not living situation but whether parent-child relationship established; this relationship provides context for evaluation of detriment); *In re M.Z.* (2016) 5 CA5th 53, 64–66, 209 CR3d 397 (three parents is a rare situation; first determine if third parent can establish claim to parentage; if so, then determine if only two parents is detrimental).

The court may also be asked to resolve issues of the maternal relationship. A child has standing to bring an action under the Uniform Parentage Act (Fam C §§7600–7730) to determine the existence of a mother-child relationship. *In re Karen C.* (2002) 101 CA4th 932, 935–936, 124 CR2d 677 (presumed, but not biological, mother). A woman who is actually raising a child and whom the child believes is her mother may be that child's presumed mother; the presumption is not necessarily defeated by the fact that the woman has stated to the court, school authorities, and others, that she is not the biological mother. *In re Salvador M.* (2003) 111 CA4th 1353, 1358–1359, 4 CR3d 705. But once parental rights have been terminated, the mother cannot be designated a presumed mother in a subsequent dependency. *In re Cody B.* (2007) 153 CA4th 1004, 1011–1013, 63 CR3d 652.

A rebuttable presumption of maternity arises only in a limited class of cases, including surrogacy, relinquishment of a child for adoption by the natural mother, abandonment at birth, when there is no competing maternity claim, or when a non-biological parent in a same-sex relationship seeks to establish his or her parentage against a biological parent of a child. In all other cases, an action raising a rebuttable presumption of maternity against a woman who has given birth to a child and intends to raise the child as her own is not appropriate. *In re D.S.* (2012) 207 CA4th 1088, 1098–1102, 143 CR3d 918.

In the absence of a marital presumption, full parentage findings will not normally be made at an initial hearing. After conducting its inquiry, however, the court must at least note its findings in the court minutes. Welf & I C §316.2(f).

Generally, when conducting a parentage hearing, the court may establish parentage of a child who is the subject of a §300 petition either by blood or genetic tests or on presentation of evidence using procedures established by Cal Rules of Ct 5.635. See Cal Rules of Ct 5.635(a), (b). These procedures begin with a determination under Cal Rules of Ct 5.635(d) of whether a prior finding of parentage was made by:

(1) Asking the person alleging parentage whether there has been such a finding or whether a voluntary declaration was executed,

(2) Directing the clerk to request the child support agency to inquire whether parentage was established (using Judicial Council form Parentage Inquiry—Juvenile (JV-500)),

(3) Receiving copies of the completed form from the child support enforcement office, with certified copies of any parentage judgment or order attached, and

(4) Taking judicial notice of the prior parentage determination.

Under Cal Rules of Ct 5.635(e), if the child support agency reports or if the court determines through inquiry no prior determination of parentage, the court must undertake such a determination itself by:

(1) Receiving a completed Judicial Council form Statement Regarding Parentage (JV-505) (blank forms must be available in the courtroom) from the alleged father and his attorney,

(2) Ordering the child and any alleged parents to undergo genetic tests and proceed under Fam C §§7550–7558, or

(3) Determining parentage or nonparentage based on testimony, declarations, or statements of any alleged parents.

The court must advise any alleged parent that if he or she is declared a parent, he or she will be obligated to support the child, may be the subject of an action to recover support payments, and could be convicted of a felony if he or she is able to provide support and fails to do so (see Pen C §271a). Cal Rules of Ct 5.635(e)(3).

A court may reasonably deny an alleged father's request for genetic testing, concluding that the child would not benefit from having this person identified as the father, when he has no relationship to the child and has not demonstrated any commitment to the child's welfare, despite learning that he was an alleged father many years earlier. *In re Joshua R.* (2002) 104 CA4th 1020, 1026, 1028, 128 CR2d 241.

☛ JUDICIAL TIP: When the issue of parentage cannot be otherwise resolved, a court should not automatically deny a request for genetic testing at the outset of a case. The better practice is to allow genetic testing. It is important not to eliminate potential relative placements and deny the child a potential parental relationship.

A presumption of parentage under Fam C §7555 based on the blood test score may be overcome by evidence that the man had no access to the mother at the applicable time. *City & County of San Francisco v Givens* (2000) 85 CA4th 51, 55–56, 101 CR2d 859.

A man who has been named as a father and/or one who wishes to establish, deny, or question parentage must use Judicial Council form Statement Regarding Parentage (JV-505) to exercise a number of options including requesting or waiving an attorney, denying parentage, requesting genetic testing, or requesting a judgment of parentage. If a person requests a finding of parentage on JV-505 or appears in the dependency case and files an action under Fam C §7630, the court must determine if he or she is the biological parent. Welf & I C §316.2(d); Cal Rules of Ct 5.635(h)(1); *In re B.C.* (2012) 205 CA4th 1306, 1312–1313, 140 CR3d 881. The court must also determine whether a person requesting a parentage finding is a presumed parent, if that person asks for such a finding. Cal Rules of Ct 5.635(h)(2). A same-sex partner may petition to be declared a presumed parent. It is not necessary that she lives in the same house with her partner,

the biological parent, at birth. It is more important that the petitioner explain how her relationship with her partner demonstrates a commitment to the child and that the petitioner holds the minor out to be her natural child. *E.C. v J.V.* (2012) 202 CA4th 1076, 1086–1091, 136 CR3d 339; see *S.Y. v S.B.* (2011) 201 CA4th 1023, 1035–1036, 134 CR3d 1.

After a dependency petition has been filed, the juvenile court has jurisdiction over actions brought under Fam C §7630. Welf & I C §316.2(e).

Once the court determines parentage, it must direct the clerk to prepare and transmit Judicial Council form Parentage—Findings and Judgment (JV-501) to the child support agency. Cal Rules of Ct 5.635(f). The clerk must provide a copy of the petition, a notice of the next scheduled hearing, and Judicial Council form Statement Regarding Parentage (JV-505) to each alleged parent unless the petition has been dismissed, dependency has been terminated, the alleged parent has denied parentage (on form JV-505) and waived further notice, or the parent has relinquished custody to DSS. Cal Rules of Ct 5.635(g). See discussion in §100.12 of *In re Paul H.* (2003) 111 CA4th 753, 755, 761, 5 CR3d 1 for possible court and DSS responsibility in assisting alleged parents.

(2) [§100.33] When Presumed Father Status Sought

Courts may encounter situations in which a man who is not the biological father seeks custody of the child. Courts have held that a man should not lose his status as a presumed father merely by admitting that he is not the biological father. See *In re Nicholas H.* (2002) 28 C4th 56, 63, 120 CR2d 146. Presumed fatherhood status is not necessarily negated by evidence that the man is not the biological father (*In re Jerry P.* (2002) 95 CA4th 793, 797, 116 CR2d 123), nor does one man's biological parentage necessarily rebut the presumption of parentage under Fam C §7612(a) as applied to a second man (*In re Jesusa V.* (2004) 32 C4th 588, 606, 10 CR3d 205). If presumed father status were to be denied to nonbiological fathers, the anomalous result would be that Fam C §7611 and related dependency statutes would permit mothers who are unwilling and incapable parents to have reunification services, while denying such services to a man who is willing and capable. *In re Jerry P., supra*, 95 CA4th at 812.

But when a biological father voluntarily declares paternity, this declaration may rebut a rebuttable presumption of another man's paternity under Fam C §7611. *Kevin Q. v Lauren W.* (2009) 175 CA4th 1119, 1136–1137, 95 CR3d 477 (not a dependency case); *J.R. v D.P.* (2012) 212 CA4th 374, 387–391, 150 CR3d 882 (no abuse in resolving competing presumptions in favor of biological, *Kelsey S.* father).

Indeed, in the dependency context, biological fatherhood may be irrelevant to presumed fatherhood. See *In re Jerry P., supra*, 95 CA4th at 803–804. There is no policy that would support a requirement of rejecting a man who has acted as the child's *only* father, solely because he has been

determined not to be the biological father. *In re Raphael P.* (2002) 97 CA4th 716, 735–736, 118 CR2d 610. Conversely, a paternity judgment alone does not entitle a man to be a presumed father. *In re E.O.* (2010) 182 CA4th 722, 727, 107 CR3d 1. A man cannot be a presumed father when he comes within none of the categories of Fam C §7611. *In re E.O., supra*; see *In re D.M.* (2012) 210 CA4th 541, 554, 148 CR3d 349 (petitioner, who was prevented from receiving child into his home, must prove an existing familial relationship with the child such that his rights deserve the same level of protection as those of a biological mother); *In re D.A.* (2012) 204 CA4th 811, 824–826, 139 CR3d 222 (presumed father under *Kelsey S.*). When a child has both a presumed and a biological father, the court must hold an evidentiary hearing at which it reconciles the competing paternity interests to determine which of those interests are founded on the weightier considerations of policy and logic. *In re P.A.* (2011) 198 CA4th 974, 981, 130 CR3d 556; Fam C §7612(b).

☛ JUDICIAL TIP: The area of parentage in dependency cases, which has *always* had some confusion and uncertainty, is now fraught with further uncertainty as law develops to include some non-biological fathers in the class of presumed fathers. Because this further uncertainty may result in an increase in contested parentage hearings and additional new law, judicial officers should require attorneys to make a good record on parentage issues and to provide relevant points and authorities.

Presumed father status under Fam C §7611(d) that follows from a man receiving the child into his home and holding the child out as his own may be rebutted by the fact that the man is a registered sex offender who has molested the child. *In re T.R.* (2005) 132 CA4th 1202, 1211–1212, 34 CR3d 215.

In re Alexander P. (2016) 4 CA5th 475, 495–496, 209 CR3d 130, declined to extend *In re T.R.* The court in *Alexander P.* did not use a bright-line test to determine that a man who abused the mother was disqualified as a matter of law from being the presumed father. His conduct was not so "antithetical to a parent's role" and such a "blatant violation of parental responsibilities" that it "counterbalanced the factors favoring" presumed parent status. *In re Alexander P., supra.*

But when a father has supported the children and raised them in his home for their first few years and when his name is on the birth certificate as their father, the presumption of fatherhood under Fam C §7611(d) is not rebutted by later failure to keep in contact and to support them. *In re J.O.* (2009) 178 CA4th 139, 148–151, 100 CR3d 276.

Whether a delay in asserting fatherhood is an impediment to presumed father status is an open question. One court has held that when an unwed father comes forward 8 months into the dependency process, which is as

soon as he learns of the baby's existence, and demonstrates a full commitment to financial, emotional, and other kinds of support, he is entitled to presumed father status. *In re Baby Boy V.* (2006) 140 CA4th 1108, 1117–1118, 45 CR3d 198. Another court has held that a biological father who waited until 8 months after the dependency process had begun before even inquiring whether his sexual encounters with the mother ended in pregnancy is not automatically entitled to presumed father status. *In re Vincent M.* (2008) 161 CA4th 943, 959–960, 74 CR3d 755 (in that case, child had loving prospective adoptive parents).

Because a presumed father is entitled to services, visitation, and custody, while an alleged father is not, an attorney for an alleged father should ensure that his or her client is notified so that he may establish paternal status if possible. *In re O.S.* (2002) 102 CA4th 1402, 1408–1410, 126 CR2d 571.

e. [§100.34] Prima Facie Case; Burden of Proof

At the close of the hearing, the court must order the child's release unless a prima facie showing has been made that the child comes within Welf & I C §300 and that certain other conditions exist. Welf & I C §319(b); Cal Rules of Ct 5.676(a). The prima facie case for removal must be made by relevant evidence. *In re Raymond G.* (1991) 230 CA3d 964, 972, 281 CR 625 (reasoning by analogy to delinquency cases).

When the petitioning agency does not meet the burden of proof, the court may order whatever action is required on motion of the child, parent, or guardian or its own motion. Welf & I C §350(c). The court may take this action after weighing the evidence then before it. Welf & I C §350(c). However, if it denies the motion, the child, parent, or guardian may offer additional evidence without having first reserved that right. Welf & I C §350(c).

f. [§100.35] When Parent Admits Allegations, Submits, or Enters No-Contest Plea

Whether or not the child is detained, if the parent or guardian wishes to admit the allegations in the petition, plead no contest, or submit the jurisdictional determination based on information provided at the detention hearing and waives a separate jurisdictional hearing, the judge must proceed according to Cal Rules of Ct 5.682. See Cal Rules of Ct 5.674(a); see also California Judges Benchguide 101: *Juvenile Dependency Jurisdiction Hearing* (Cal CJER).

If the parent admits the allegations, the court must still find that there is a factual basis for the admission. Cal Rules of Ct 5.682(e)(6). Normally, this is made based on the court's reading of the social worker's report. If the parents submit and deny the allegations, or just submit, the judge should

voir dire the parents to ensure they understand they are waiving their right to have a trial on the issue of detention and confirm they understand the only evidence the court has is the report submitted by DSS. Then the court should use the report to make the requisite findings.

☛ JUDICIAL TIP: If all parents wish to submit, but the DSS wishes to present additional evidence, the case must be set for a jurisdictional hearing.

g. [§100.36] Findings

The court must order the child's release unless it finds that:

- There is a prima facie case that the child comes within Welf & I C §300;
- Continuing in the physical custody of the parent or guardian would be contrary to the child's welfare; and
- Any of the following circumstances exist (Welf & I C §319(b); Cal Rules of Ct 5.676(a), 5.678(a)):
  - — There is substantial danger to the child's physical health, or the child is seriously emotionally damaged and removal is the only way to protect the child.
  - — The child has left placement in which he or she was placed by order of the juvenile court.
  - — The parent, guardian, or custodian is likely to flee the jurisdiction with the child.
  - — The child is unwilling to return home, and it is alleged that the child has been physically or sexually abused by a person in the home.

If the child is ordered detained, the court must order that temporary placement and care is vested with the DSS, pending disposition or further court order. Cal Rules of Ct 5.678(d). The court must also make a determination that the child's continuing residence in the home of the parent or legal guardian is contrary to the child's welfare. Cal Rules of Ct 5.678(a)(2). Moreover, under Welf & I C §319(e) and Cal Rules of Ct 5.678(c)(3), when ordering detention the court must:

- Determine if there are any services that would enable the child to return home until the next hearing, and state the facts on which the decision is based;
- Specify why the initial removal was necessary; and
- Order reunification services to be provided as soon as possible, if appropriate.

If the court's findings do not justify detention, the child must be released. See Welf & I C §319(b); Cal Rules of Ct 5.676(a). However, unless DSS and the child otherwise agree to a dismissal of the petition, a jurisdiction hearing must still be held. See, *e.g., Allen M. v Superior Court* (1992) 6 CA4th 1069, 1074, 8 CR2d 259 (once a verified petition has been filed, it may not be dismissed by the DSS without notification to all interested parties so that each may have an opportunity to be heard and to object).

The court must also make a finding of whether notice had been given as required by law. Cal Rules of Ct 5.534(h).

The court must make findings on the record of whether reasonable efforts were made to prevent or eliminate the need for removal and/or whether the child might be able to be returned home if services were provided. Welf & I C §§306, 319(d)(1); Cal Rules of Ct 5.678(c). For discussion of services, see §100.38. If ordering detention, the court must find that there are *no* reasonable means that would prevent need for detaining child or that would allow the child to return home. Cal Rules of Ct 5.678(c)(2).

Whether the child is released or detained, the court must make one of the following reasonable efforts findings concerning efforts to prevent or eliminate the need for removal (see Cal Rules of Ct 5.678(c)(1)):

(1) Reasonable efforts have been made, or

(2) Reasonable efforts have not been made.

☛ JUDICIAL TIPS:

To be eligible for Title IV-E funding for a child's foster care placement, the county social services agency must have *provided reasonable efforts to prevent or eliminate the need for removal*. See 45 CFR §1356.21(b)(2)(ii). The court must determine for its finding that the level of effort made by the county social services agency to prevent or eliminate the need for removal was reasonable. The court must consider the evidence presented on the issue and make the appropriate finding. The county social services agency may have assessed the situation of the child and family and decided that *due to concern for the child's safety*, efforts beyond the initial response and assessment were not warranted. In that case, if the court determines that the department's assessment was accurate and its actions appropriate, it may make the reasonable efforts finding. If the court, however, determines that the department's assessment was inaccurate and its actions inappropriate, it should not make the reasonable efforts finding.

- Some courts require DSS workers to file a separate declaration of reasonable efforts at each stage of the proceedings. In many

counties, however, the social worker's statement of efforts is included within the normal DSS reports.

If the court orders the child detained, the court must also make the following findings in order to ensure eligibility for Title IV-E funding:

- Continuance in the home of the parent or guardian would be *contrary to the child's welfare*. Welf & I C §319(b); Cal Rules of Ct 5.676(a)(2), 5.678(a)(2). See also 42 USC §672(a)(1) (congressional intent in requiring this finding was to ensure that children are protected from unnecessary removals because the removal of a child from the home can have a severe and lasting impact on the child and the family).
- Temporary placement and care are vested with the child welfare agency pending disposition or further order of the court. Welf & I C §319(e); Cal Rules of Ct 5.678(d). See also 42 USC §672(a)(2).

All detention findings must be made on the record and in the written orders of the court. Cal Rules of Ct 5.674(b).

The court may not dismiss a dependency petition sua sponte and without notice at the conclusion of a detention hearing; instead the sufficiency of the petition should be considered at the jurisdiction hearing, or, if proper notice and opportunity for hearing is afforded, at an earlier date otherwise permitted by law. *Los Angeles County Dep't of Children & Family Servs. v Superior Court* (2008) 162 CA4th 1408, 1415–1421, 77 CR3d 52.

h. [§100.37] Orders

As in other juvenile court proceedings, the court may direct its orders to the parent or guardian as necessary for the best interests of the child, and these orders may concern the child's care, supervision, custody, conduct, maintenance, education, medical treatment, and support. Welf & I C §245.5. The court must also order each parent or guardian to complete Judicial Council form Your Child's Health and Education (JV-225) or to provide the social worker or court staff with the information necessary to complete the form. Welf & I C §16010; Cal Rules of Ct 5.668(c).

Regardless of the status of any related pending appellate proceeding, the court has the obligation to detain the child to protect his or her safety. *In re Anna S.* (2010) 180 CA4th 1489, 1501–1502, 103 CR3d 889; see CCP §917.7.

If the court orders detention, it must (Welf & I C §319(e)):

- State the facts on which the decision was based by referring to the social worker's report or other evidence on which it relied to make

its determination that having the child remain at home is contrary to his or her welfare;

- Order temporary custody to DSS;
- Explain why the initial removal was justified; and
- Order reunification services to be provided if appropriate.

As with findings, all detention orders must also be on the record and a part of the written orders of the court. Cal Rules of Ct 5.674(b). For spoken findings and orders, see §100.60. See also Judicial Council form Findings and Order After Detention Hearing (JV-410).

(1) [§100.38] Services

In making orders, the court must consider whether reasonable efforts were made to prevent or eliminate the need for removal of the child and whether there are available services or means that would prevent the need for further detention. Welf & I C §319(d)(1); Cal Rules of Ct 5.678(c). The court must order the child to be returned to the parent or guardian if that option is made feasible by virtue of these services or by changed circumstances. Welf & I C §319(d)(2); see Cal Rules of Ct 5.678(c)(2). Among the services that the judge may order to return the child home are (Welf & I C §319(d)(1)):

- Case management
- Counseling
- Emergency shelter care
- Emergency in-home caretakers
- Respite care
- Teaching and demonstrating homemakers
- Parenting classes
- Transportation
- Any other services authorized by Welf & I C §§16500 et seq

☛ JUDICIAL TIP: Because the child's safety is paramount, the court may make whatever orders are reasonably necessary to achieve this goal, including continued detention, in-home classes and services, medical counseling, transportation, or frequent checks by the social worker. When the court makes orders for intensive services, it should ensure that such services are not only reasonably necessary, but also reasonably feasible and practical. See *Elijah R. v Superior Court* (1998) 66 CA4th 965, 969, 78 CR2d 311 (the best possible services are not required; the standard is reasonable services under the circumstances).

The court can also consider whether a child can be returned to the custody of a parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with a parent. The fact that a parent resides in such a facility is not, for that reason alone, prima facie evidence of substantial danger. The court must specify the factual basis for its conclusion that the child's return to the parent's custody would or would not pose a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being. Welf & I C §319(d)(3).

If the court orders the child to be detained out of the home, it must order DSS to provide reunification services, which should begin as soon as possible. Welf & I C §319(e); Cal Rules of Ct 5.678(c)(3)(C). This is true even if the court anticipates that there will be a request at the disposition hearing to deny services under Welf & I C §361.5.

The court may also order mental health evaluation and treatment. Welf & I C §319.1. If the court believes that the child needs mental health treatment while detained, it must notify the director of the county mental health department in the county in which the child lives. Welf & I C §319.1. However, if the parent does not consent, the court may not order a psychological evaluation of that parent before the jurisdiction hearing is held, even if there is an allegation or evidence of a parent's mental illness. *Laurie S. v Superior Court* (1994) 26 CA4th 195, 202, 31 CR2d 506.

When a jurisdiction hearing has not yet been held, Welf & I C §369(b) authorizes a juvenile court to remove a breathing tube (because this may improve the child's condition), but not to issue a "Do Not Resuscitate" order. *J.N. v Superior Court* (2007) 156 CA4th 523, 533, 67 CR3d 384. But a juvenile court lacks jurisdiction under Welf & I C §369 to authorize blood transfusions over parents' objections unless DSS has filed a petition under Welf & I C §300(b). *San Joaquin County Human Servs. Agency v Marcus W.* (2010) 185 CA4th 182, 190, 110 CR3d 232.

(2) [§100.39] Visitation

If the child is to be detained, the court must consider whether visitation with other persons would be beneficial or detrimental and must order visitation unless it would be detrimental to the child. Cal Rules of Ct 5.670(c)(1). The court must also consider visitation with any sibling who was taken into custody with but not placed with the child, or is otherwise under the court's jurisdiction, and enter an order for sibling visitation unless the court finds by clear and convincing evidence that sibling interaction is contrary to either child's safety or well-being. Cal Rules of Ct 5.670(c)(2).

Although visitation normally must be ordered with the parent or guardian and siblings, it may be limited, modified, or supervised as the court deems necessary. Visitation may be denied, if necessary, to protect the child. *In re Daniel C. H.* (1990) 220 CA3d 814, 838–839, 269 CR 624. In certain cases, visitation may be curtailed until the parent is rehabilitated.

See *In re Cheryl H.* (1984) 153 CA3d 1098, 1133, 200 CR 789, abrogated on other grounds by 8 C4th at 748–749. Neither the social worker, the child, nor the child's therapist, if any, can be given the power to determine if visitation will occur. *In re S.H.* (2003) 111 CA4th 310, 317–320, 3 CR3d 465.

It is the court's obligation to determine whether visitation is to occur; however, in an appropriate case, the details of implementation of the court's visitation order may be delegated to the DSS. See *In re Moriah T.* (1994) 23 CA4th 1367, 1374, 28 CR2d 705.

The standards for denial of visitation at detention are similar to those for the suspension of visitation during the reunification period. Parental visitation can be denied at detention based on a basic detriment finding. *In re Matthew C.* (2017) 9 CA5th 1090, 1103, 216 CR3d 23.

(3) [§100.40] Placement

If the court cannot order the child returned to the custody of a parent or guardian, it must determine if there is a relative or nonrelative extended family member who has been assessed under Welf & I C §361.4 and who is willing and able to care for the child. Welf & I C §319(d)(2), (f)(1). Relatives must be given preferential consideration. Welf & I C §319(f)(2). See also Welf & I C §281.5 (DSS must recommend placement with relative if it is in child's best interest and is conducive to reunification). If feasible, the child must be placed with detained siblings or half siblings. See Welf & I C §306.5. To facilitate this process of relative placement, DSS has 30 days to conduct an investigation to identify and locate all adult relatives of the child to the fifth degree, such as grandparents or adult siblings. See Welf & I C §§309(e), 319(f)(2).

If the court cannot detain the child with a sibling, aunt, uncle, or grandparent, it may order detention with any other approved relative (*i.e.*, related by blood and affinity including "steprelative"), in an emergency shelter or licensed care center or other authorized placement, or in the approved home of a nonrelative extended family member as defined by Welf & I C §362.7; the period of placement must not exceed 15 judicial days. See Welf & I C §319(f)(1)(A); see Cal Rules of Ct 5.678(e). A runaway and homeless youth shelter licensed by DSS pursuant to Health & S C §1502.35 is not a placement option. Welf & I C §319(f)(1)(B).

☛ JUDICIAL TIP: Many judges use Welf & I C §319(f) to place the child with a nonrelated adult who has been assessed, who is known to the child, and with whom the child has a close relationship. This may include a family friend, a parent's domestic partner (registered domestic partners, however, have parent status; see Fam C §297.5(a), (d); §100.12), or some other adult who has been involved in the child's life.

In determining whether detention with a relative is appropriate, the court must consider the recommendations of DSS, which should have made an emergency assessment of the relative, including any prior reports of abuse and criminal records. See Welf & I C §§309, 361.4; Cal Rules of Ct 5.678(e)(1). The court must order the parent to disclose to the social worker the names, residences, and identifying information of any known relative. Welf & I C §319(f)(3); Cal Rules of Ct 5.678(e)(2).

The court may consider out-of-state detention. Placement with an out-of-state parent does not require compliance with the Interstate Compact on the Placement of Children (ICPC) (Fam C §§7900–7913). Cal Rules of Ct 5.616(b)(1)(A), (g).

Out-of-state placement may also be with nonparents, such as with an out-of-state relative or guardian. Cal Rules of Ct 5.616(b)(1). In this situation, the ICPC must be applied, except when the "placement" is for a short period, such as a school vacation or a period that is less than 30 days. Cal Rules of Ct 5.616(b)(1). See Cal Rules of Ct 5.616 generally for procedures to apply when placing the child out of state under the ICPC.

The court may not order the child removed from the custody of the parents and then physically detain or place the child back in the home with that parent under a "detention with parent" order. *In re Andres G.* (1998) 64 CA4th 476, 481, 75 CR2d 285 (placement occurred after disposition hearing). See also *In re Damonte A.* (1997) 57 CA4th 894, 899–900, 67 CR2d 369 ("trial placement" with parent following removal order is not authorized); *Savannah B. v Superior Court* (2000) 81 CA4th 158, 161–163, 96 CR2d 428 (60-day visit immediately following removal order is not authorized—disposition hearing). However, children taken into protective custody from both parents because of one parent's actions can be released into the sole custody of the other parent. *In re Yolanda L.* (2017) 7 CA5th 987, 996–998, 212 CR3d 839 (declining to extend *Andres G.* and *Damonte A.*); *In re Michael S.* (2016) 3 CA5th 977, 984–986, 207 CR3d 869.

(4) [§100.41] Orders of Referees

Any order by a referee ordering removal of a child from the home is not effective until approved by a juvenile court judge. Welf & I C §249; Cal Rules of Ct 5.540(b)(1). Presumably, this includes orders for continuing detention. Other orders of a referee are effective immediately, subject to the right of review by a juvenile court judge. Cal Rules of Ct 5.540(a). If no application for rehearing is made and the judge has not ordered a rehearing on his or her own motion (see Welf & I C §253; Cal Rules of Ct 5.542(d)), the order becomes final 10 calendar days after service of the order. Cal Rules of Ct 5.540(c).

When making findings and orders, the referee must (Welf & I C §248; Cal Rules of Ct 5.538(b)):

- Furnish a copy of the findings and orders to the juvenile court presiding judge;
- Furnish each child who is 14 years old or older (or to a younger child on request) with a copy of the findings and orders, as well as with a written explanation of the right to seek review by a juvenile court judge;
- Serve the parent and guardian as well as counsel for the parent, child, and guardian with a copy of the findings and orders, and a written explanation of the right to seek review by a juvenile court judge. Service must be made in court on the child, parent, or guardian if they are present or by mailing or electronic service pursuant to Welf & I C §212.5 to the last known address or electronic service address, or if that is unknown, by service in care of their counsel.

For a general discussion about commissioners and referees, see §100.15.

i. [§100.42] Educational and Developmental Services Decisions

At the hearing, the court must consider the educational and developmental services needs of the child, including the issues of (Cal Rules of Ct 5.651(b)):

- Who holds educational and developmental services rights,
- Whether or not the child is attending his or her school of origin (see Ed C §48853.5(g)), and
- Whether the parent's or guardian's educational or developmental services rights should be temporarily limited.

The court may temporarily limit the right of the parent or guardian to make educational and developmental services decisions and may instead appoint a responsible adult to make those decisions. Welf & I C §319(g)(1); Cal Rules of Ct 5.650(a). This responsible adult is an "educational rights holder" under Cal Rules of Ct 5.650. Cal Rules of Ct 5.534(f), 5.649.

The court must identify the educational rights holder at each hearing. Unless his or her rights have been limited, the parent or guardian holds these rights for the child. See Cal Rules of Ct 5.649.

This person might be the child's adult relative, nonrelative extended family member, or other adult known to the child who is available and willing to serve as the educational rights holder. If one of those adults is available and willing to serve, the court should consider appointing that person before appointing or temporarily appointing a responsible adult not known to the child. Cal Rules of Ct 5.650(c)(1).

The educational rights holder acts as the child's spokesperson, decision maker, and parent on educational issues. Cal Rules of Ct 5.502(13). The court must use Judicial Council form Order Designating Educational Rights Holder (JV-535) in making such an appointment. Cal Rules of Ct 5.650(a).

The court may make this appointment only if (Welf & I C §319(g)(1)(A)–(C)):

- The parent or guardian is unavailable, unable, or unwilling to take responsibility for the child's education and developmental services;
- DSS has made diligent efforts to secure the parent's or guardian's participation in educational and developmental services decision making; and
- The temporary appointment of a responsible adult is necessary to meet the child's educational and developmental services needs.

If the court limits a parent's educational rights, the court must determine whether there is a responsible adult who is a relative, nonrelative extended family member, or other adult known to the child who is available and willing to serve. Welf & I C §319(g)(2). If the child is eligible for special education, and the court cannot identify an educational rights holder for the child, the court must direct the local education agency to make reasonable efforts to assign a surrogate parent within 30 days. Cal Rules of Ct 5.650(d).

If the court is unable to name a responsible adult who can make educational decisions, and the appointment of a surrogate parent (see Educ C §56050(a)) is unwarranted, the court may make the educational decisions itself with the input of any interested person. Welf & I C §319(g)(3).

If the child is receiving services from a regional center, the provision of any developmental services must be consistent with the child's individual program plan and pursuant to the Lanterman Developmental Disabilities Services Act. If the court cannot identify a responsible adult to make developmental services decisions, the court may, with the input of any interested person, make these decisions for the child. Welf & I C §319(g)(3).

The court must specifically address the temporary appointment of a responsible adult in the court order. Welf & I C §319(g)(4). If there is no responsible adult, the court must issue appropriate orders to ensure that every effort is made to identify such a person for future educational and developmental services decisions. Welf & I C §319(g)(3). These orders will be in effect until the disposition hearing or until the petition is dismissed. Welf & I C §319(g)(4). See also Cal Rules of Ct 5.649.

Procedures for appointing a temporary representative and requirements for serving in that capacity are set out in Cal Rules of Ct 5.650. These procedures do not remove the obligation to appoint surrogate parents for students with disabilities who are without parental representation in special education procedures. Welf & I C §319(g)(5).

A person appointed to make developmental services decisions may access the child's information and records (see Welf & I C §§4514(u), 5328(a)(23)), and may act on the child's behalf for the purposes of the individual program plan process (see Welf & I C §§4646, 4646.5, 4648) and the fair hearing process (see Welf & I C §§4700 et seq). Welf & I C §319(g)(6).

j. [§100.43] Service of Findings and Orders

Written findings and orders must be personally served by the clerk or served by first-class mail, or by electronic service pursuant to Welf & I C §212.5, within 3 judicial days of issuance on the petitioning agency, the child or child's counsel, and the parent or guardian or parent's or guardian's counsel. Welf & I C §248.5.

☛ JUDICIAL TIP: Some smaller counties save on postage by giving mailboxes in the clerk's office to attorneys who represent children. The attorneys then sign an agreement that placement in their mailbox is equivalent to first-class mail.

8. [§100.44] Continuances

On the request of the child, parent, or guardian, the court must continue the detention hearing for 1 court day, during which time the child remains detained. See Welf & I C §322; Cal Rules of Ct 5.672(a). See also discussion in §100.11. A longer continuance may be granted on request of counsel for the parent, guardian, child, or petitioning agency if it would not be contrary to the child's best interests. Welf & I C §352. In determining whether to grant a continuance, the judge must give substantial weight to the need for prompt resolution of the child's custody status, the need to provide the child with a stable environment, and damage that could be caused by prolonged temporary placements. Welf & I C §352(a).

If a continuance is granted under Welf & I C §322 or for any other reason, the court must either order the child's release or find that remaining in the parent's or guardian's home is contrary to the child's welfare. Welf & I C §319(c); Cal Rules of Ct 5.550(c)(2), 5.672(a). The court may enter this finding on a temporary basis without prejudice and may reevaluate it at the time of the continued detention hearing. Cal Rules of Ct 5.550(c)(2), 5.672(a).

A grant of a continuance must be based on good cause, which is *not* shown by (Welf & I C §352(a); Cal Rules of Ct 5.550(a)(2)):

- Stipulation between counsel,
- Convenience of parties,
- Pending criminal prosecution, or

- Pending family law case.

To request a continuance, written notice must be filed at least 2 court days before the date set for hearing. Welf & I C §352(a). The party seeking a continuance must submit affidavits or declarations showing specific facts demonstrating that a continuance is necessary, unless the judge for good cause permits an oral motion. Welf & I C §352(a). When granting a continuance, the facts that form the basis for the continuance must be entered in the court minutes. Welf & I C §352(a).

☛ JUDICIAL TIP: There is rarely time for written motions for continuance at a detention hearing. Most requests for continuances are based on oral motions.

In any event, the continuance should last only for the time shown necessary by the evidence and only for good cause. Welf & I C §352(a).

☛ JUDICIAL TIP: A detention hearing is a critical one and should rarely be continued for more than a few days. Because a detention hearing is one at which the court makes only temporary orders pending further investigation and adjudication, it is not expected that the investigation should be completed or all relative placement possibilities explored before a detention hearing can be held. Most judicial officers will hold the detention hearing in a timely fashion and then reconsider those orders in conjunction with the jurisdiction and disposition hearings as more information becomes available.

If the child has not been detained, motions for continuance must be made and ruled on under Cal Rules of Ct 5.550. Cal Rules of Ct 5.672(b).

If the child was not properly notified of the right to be present at the detention hearing or was not given an opportunity to attend the hearing, the court may be required to continue the hearing to allow for the child's presence. Welf & I C §349(d). See discussion in §100.26.

D. Detention Rehearings

1. [§100.45] Rehearing for Lack of Notice

When a detention hearing is held, a parent or guardian who did not receive actual notice and therefore did not attend may request a rehearing by filing an affidavit setting forth these facts. Welf & I C §321. A parent's general appearance at a detention hearing waives that person's right to challenge adequacy of notice of the proceedings. *In re Raymond R.* (1994) 26 CA4th 436, 441, 31 CR2d 551. On receipt of the affidavit, the clerk must calendar a rehearing within 24 hours from the filing of the affidavit, excluding Sundays and nonjudicial days. Welf & I C §321. At this type of rehearing, the court must proceed in the same manner as in the original

hearing. Welf & I C §321. A rehearing for lack of notice is not the same as a prima facie rehearing.

2. [§100.46] Prima Facie Hearing

After a court has decided that a child should be further detained, the child, the parent or guardian, or the child's attorney or guardian ad litem may request evidence of the prima facie case, and the court must schedule a rehearing within 3 judicial days to consider evidence of the prima facie case. Welf & I C §321.

If the court determines that a hearing cannot be held within 3 judicial days because a witness is unavailable, it may continue the case for no longer than 5 judicial days. Welf & I C §321. If a prima facie hearing is held, the child must be released if no prima facie case is established. Welf & I C §321.

Instead of a prima facie hearing, alternatively, the court may schedule the jurisdiction hearing to commence within 10 calendar days of the detention hearing. Welf & I C §321.

☛ JUDICIAL TIP: Whenever there is a request for a prima facie rehearing, the judge should seriously consider denying the request and setting the case for a jurisdiction hearing within 10 calendar days. This alternative is an effective means of reducing the number of prima facie hearings, thereby enabling the court to move cases expeditiously to serve the best interests of children.

3. [§100.47] Proceedings Before Referees

At any time before the expiration of 10 days after the child, parent, or guardian is served with the written findings and orders of a referee, the child, parent, guardian, or DSS (in §300 hearings) may apply for a rehearing before a juvenile court judge. Welf & I C §252; Cal Rules of Ct 5.542(a). The application may be directed toward the entire order or a specified part and must contain the reasons for the request. Cal Rules of Ct 5.542(a). When the judicial officer is sitting as a temporary judge, however, there is no right to a rehearing, nor is there one when the party is represented by an attorney who fails to request such a rehearing. *In re Brittany K.* (2002) 96 CA4th 805, 816, 117 CR2d 813.

In addition, a juvenile court judge, on his or her own motion, may order a rehearing of any case heard by a referee within 20 judicial days of the hearing before the referee. Welf & I C §253; Cal Rules of Ct 5.542(d). All rehearings of proceedings heard by referees must be conducted de novo before a judge. Welf & I C §254; Cal Rules of Ct 5.542(e). When the court has granted a rehearing of a referee's order, the referee's order remains in

effect under Welf & I C §250 until a new order is issued. *Ricardo V. v Superior Court* (2007) 147 CA4th 419, 421, 54 CR3d 223.

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

E. [§100.48] Setting Petition for Jurisdiction Hearing

If the child is not detained, the jurisdiction hearing must be held within 30 calendar days of the date that the petition has been filed. Welf & I C §334. If the child is detained, the hearing on the petition must be set to begin within 15 court days from the date of the detention order. Welf & I C §334.

Under the UCCJEA (see Appendix II), DSS bears the burden of establishing California jurisdiction when a child has been taken to reside out of state; therefore, it is error to proceed with the jurisdiction and disposition hearings when the child is not present before the court and the nature of the child's living situation is unknown. *In re Baby Boy M.* (2006) 141 CA4th 588, 599–602, 46 CR3d 196. Even when a child has not lived in California the full 6 months required to give California home-state jurisdiction under the UCCJEA, California can still take and retain emergency jurisdiction under Fam C §3424 when (1) the child was in California when the harm occurred, (2) he or she needed protection from immediate harm, and (3) the risk of harm creating the emergency was ongoing. *In re Jaheim B.* (2008) 169 CA4th 1343, 1350–1351, 87 CR3d 504.

For more discussion of the UCCJEA, see California Judges Benchguide 200: Custody and Visitation §§200.12–200.32 (Cal CJER).

F. Indian Child Welfare Act

1. [§100.49] In General

Judges must comply with the Indian Child Welfare Act (ICWA) at the earliest stages of a dependency proceeding (see Cal Rules of Ct 5.480–5.482), although not all ICWA requirements apply in an emergency situation even when the child is living on a reservation (*In re S.B.* (2005) 130 CA4th 1148, 1163–1164, 30 CR3d 726). Compliance with ICWA notice requirements is necessary even when DSS does not initially seek removal and subsequent foster placement. *In re Robert A.* (2007) 147 CA4th 982, 988–989, 55 CR3d 74.

The ICWA (25 USC §§1901–1963) is federal legislation that applies to juvenile court dependency cases when a child is a member of an Indian tribe or eligible for membership in one and the biological child of a member. See 25 USC §1903; Welf & I C §224(c); Cal Rules of Ct 5.480(1).

In addition to the statute itself, in 2016 the federal government for the first time enacted comprehensive ICWA regulations at 25 CFR pt 23 which are binding upon state courts. Prior to 2016, the federal government had issued Guidelines for state courts which were advisory only, although California courts had always given the Guidelines "great weight." *In re Krystle D.* (1994) 30 CA4th 1778, 1801 fn 7, 37 CR2d 132; *In re Desiree F.* (2000) 83 CA4th 460, 474, 99 CR2d 688. When the new federal ICWA regulations were enacted, the federal government also revised and updated the Guidelines for state courts. See Guidelines at: www.bia.gov/sites/bia.gov/files/assets/bia/ois/pdf/idc2-056831.pdf (as of Sept. 25, 2018). Therefore, judges must be cautious of relying upon cases prior to 2016 to the extent that those decisions are inconsistent with the requirements of the new ICWA regulations and Guidelines.

Two main purposes of the ICWA are to protect Indian children's interests in their cultural and legal relationships to their tribe and to promote the stability and security of Indian tribes and families. See 25 USC §1902; Welf & I C §224(a)(1); *In re Kahlen W.* (1991) 233 CA3d 1414, 1421, 285 CR 507. Failure to make proper inquiry at the start of a case and give notice as required by the ICWA may cause great delays later in the proceedings and may preclude services to Indian children. See §§100.12–100.14 for discussion of notice requirements. See generally THE INDIAN CHILD WELFARE ACT BENCH HANDBOOK (CJER 2013).

If a child resides on a reservation, the tribe has exclusive jurisdiction over the dependency proceeding, unless federal law has otherwise vested jurisdiction in the state. 25 USC §1911(a). Congress has delegated to some states, including California, partial civil jurisdiction over Indian reservations located within the state's borders. See 28 USC §1360(a). This provision grants California concurrent jurisdiction with tribes over "child custody" cases governed by the ICWA. *Doe v Mann* (9th Cir 2005) 415 F3d 1038, 1058–1060 (California dependency proceedings come within Pub L 280's delegation of civil jurisdiction to California). Tribes in California may reassume exclusive jurisdiction through a petition process set forth in 25 USC §1918.

Note: Currently only one tribe in California (the Washoe Tribe of California and Nevada, located in Alpine County) exercises exclusive jurisdiction over ICWA cases. Nevertheless, Indian children located in California may still be under the exclusive jurisdiction of an Indian tribe if they reside outside California or they are already subject to tribal court jurisdiction when the dependency proceedings began.

When an Indian child who is a ward of a tribal court or who lives on a reservation of a tribe with exclusive jurisdiction over child custody proceedings has been removed from custody of the parents or Indian custodian, notice of the removal must be given to the tribe no later than the next working day. Welf & I C §305.5(a). If the tribe determines that the child is an Indian child, the custody proceeding must be dismissed and the tribal court must be expeditiously notified of the dismissal and all information regarding the proceeding including but not limited to the pleadings, which must be provided to the tribal court. 25 CFR §23.110.

Note: At the time of this update, Welf & I C §305.5 has not yet been revised and is in conflict with federal regulation on this point. As such, the regulation takes precedence.

If the child is not under the exclusive jurisdiction of a tribal court, the state juvenile court may hear the proceeding unless there is a request to transfer the case to the tribe. In that case, the court must make the transfer unless either parent objects, the tribe declines the transfer, or there is other good cause to the contrary. See 25 USC §1911(b); 25 CFR §§23.115–23.119; Welf & I C §305.5(b), (c); Cal Rules of Ct 5.483; *In re Larissa G.* (1996) 43 CA4th 505, 515, 51 CR2d 16.

Note: Federal regulations have limited the factors which may be considered in making the "good cause" determination. Courts should be cautious of relying upon cases involving "good cause" determinations made prior to 2016.

However, if the state court hears the case, it must ensure that the tribe is given notice and an opportunity to intervene at each stage. See Welf & I C §224.4; *In re Junious M.* (1983) 144 CA3d 786, 792–794, 193 CR 40.

☛ JUDICIAL TIP: When the court has reason to believe that the child may be an Indian child, the court should not grant a continuance to determine status; instead, the court must proceed as if the child is an Indian child until the tribe or the Bureau of Indian Affairs makes a determination to the contrary. 25 CFR §23.107(b)(2). See §100.51.

When an Indian child does not live on a reservation, or when an Indian child does live on a reservation but their tribe does not have exclusive jurisdiction over custody proceedings, the court must transfer the proceedings to the tribe if the tribe, parent, or Indian custodian petitions the court, unless the court finds good cause not to do so. Welf & I C §305.5(b). Good cause is discussed in 25 CFR §23.118.

At the first appearance of a parent, Indian custodian, or guardian in *any* dependency proceeding in which the child is in foster care or at risk of entering foster care, the court must order the parent, Indian custodian, or guardian to complete Judicial Council form Parental Notification of Indian Status (ICWA-020). Cal Rules of Ct 5.481(a)(2).

An alleged father who has not acknowledged or established his status as a father under 25 USC §1903(9) has no standing to challenge a violation of ICWA notice provisions. *In re Daniel M.* (2003) 110 CA4th 703, 709, 1 CR3d 897.

2. [§100.50] Inquiry

The court and county child welfare department share an affirmative and continuing duty to inquire whether a child is or may be an Indian child in all dependency proceedings. Welf & I C §224.3(a). Federal law states that at the first hearing the court must ask each participant on the record whether they know or have reason to know that the child is an Indian child. The court must also instruct the parties to inform the court if they subsequently receive information that provides reason to know the child is an Indian child. 25 CFR §23.107(a).

If there is reason to know the child is an Indian child the court must confirm, by way of report, declaration, or testimony that the agency or other party has used due diligence to identify and work with all the tribes to verify whether the child is a member or eligible for membership and the biological child of a member. 25 CFR §23.107(b)(1).

When there is reason to know, further inquiry is required including interviewing parents, Indian custodian, and extended family members and others who might reasonably have relevant information to gather the information necessary to make a determination of the child's status. Welf & I C §224.3(c).

3. [§100.51] When to Proceed as If ICWA Applies

When the court has reason to believe that the child who is the subject of a dependency proceeding is a member of an Indian tribe or eligible for membership and the biological child of a member, the court must proceed as if the child is an Indian child and hold the dependency hearings under the Welfare and Institutions Code timelines while complying with ICWA. See 25 CFR §23.107(b)(2); Welf & I C §§224.1, 224.2, 224.3; Cal Rules of Ct 5.480–5.482; *In re Samuel P.* (2002) 99 CA4th 1259, 1267, 121 CR2d 820. For example, when a mother answered ICWA questionnaire by stating that she might have had Indian ancestry through her father and her father said he had had conflicting information about the family Indian heritage, this information was tantamount to giving the court "a reason to know that an Indian child . . . may be involved" and triggered a duty to inquire further. *In re Damian C.* (2009) 178 CA4th 192, 199, 100 CR3d 110. Also, ICWA may apply when the presumed father's *adoptive* father has ancestry in a federally recognized tribe. *In re B.R.* (2009) 176 CA4th 773, 783, 97 CR3d 890.

Note: *In re D.C.* (2015) 243 CA4th 41, 196 CR3d 283, extended ICWA notice requirements to the situation where a child was adopted by a parent

claiming Indian heritage. "[I]t is preferable to err on the side of giving notice and examining thoroughly whether the juvenile is an Indian child." *In re D.C.*, *supra*, 243 CA4th at 63.

There are some situations, however, in which a suggestion of Indian heritage may not trigger a full-scale application of ICWA. Until parentage is established, an alleged father's claim of Indian ancestry does not trigger the application of ICWA. *In re E.G.* (2009) 170 CA4th 1530, 1533, 88 CR3d 871. Also, the bare assertion that a child might have some Indian heritage is not sufficient to invoke ICWA. *In re Jeremiah G.* (2009) 172 CA4th 1514, 1520, 1521, 92 CR3d 203. Similarly, when a grandmother could not provide the court with information on a possible connection with an Indian tribe and knew of no one who could, that information was too vague and tenuous to lead the court to believe that her grandchildren might be Indian children. *In re Jonah D.* (2010) 189 CA4th 118, 125, 116 CR3d 545.

Similarly, a statement by a relative, who was not a party to the proceeding, that a parent *may* have some Indian ancestry did not give the court any reason to believe the children *had* Indian ancestry. *In re O.K.* (2003) 106 CA4th 152, 156–158, 130 CR2d 276 (ICWA notice was sent to the Bureau of Indian Affairs (BIA), which returned it for insufficient identifying tribal information). In such a situation, when there is no other evidence that the child has Indian heritage, DSS can discharge its duty under Cal Rules of Ct 5.481(a) by checking "no" on the petition after an inquiry, and when this is followed by no suggestion to the contrary, there is no violation of ICWA. *In re Aaliyah G.* (2003) 109 CA4th 939, 942–943, 135 CR2d 680.

When it appears that a parent, Indian custodian, or Indian guardian desires counsel but cannot afford counsel, the court must appoint counsel under 25 USC §1912(b). Welf & I C §317(a)(2).

4. [§100.52] Notice Under ICWA

Notice is required when the DSS and the court know or have reason to know that an Indian child is involved. 25 USC §1912(a); 25 CFR §§23.11, 23.111; see Welf & I C §224.2(a); Cal Rules of Ct 5.481(b)(1); *In re Junious M.* (1983) 144 CA3d 786, 792–793, 193 CR 40. Because failure to give a tribe proper notice forecloses participation by the tribe, notice requirements are strictly construed. *In re Miguel E.* (2004) 120 CA4th 521, 549, 15 CR3d 530. Proof of notice must be filed with the court. Welf & I C §224.2(c). Small deficiencies in ICWA notices that cannot affect the outcome, however, are de minimus and therefore not prejudicial. *In re I.W.* (2009) 180 CA4th 1517, 1532, 103 CR3d 538.

The notice requirement of ICWA cannot be waived by the parents' failure to raise it. *In re Marinna J.* (2001) 90 CA4th 731, 739, 109 CR2d 267; *In re Isaiah W.* (2016) 1 C5th 1, 10, 203 CR3d 633 (as court has

ongoing duty to inquire as to whether child is an Indian child, failure of mother to raise issue at dispositional hearing does not waive her right to appeal a finding that no ICWA notice was required at termination of parental rights hearing).

Note: New ICWA regulations were enacted effective December 12, 2016, regarding when and how ICWA applies to cases. See 25 CFR §§23.101–23.144.

a. [§100.53] DSS Responsibility

When a dependency petition notes the possible application of ICWA, it is the responsibility of DSS to notify the tribe or the BIA at the time of the filing of the petition and to file proof of notice in the juvenile court. See 25 USC §1912; Welf & I C §224.2(a); Cal Rules of Ct 5.481(b)(1), 5.482(b).

Judicial Council form Notice of Child Custody Proceeding for Indian Child (ICWA-030) must be completed and sent by DSS to any and all identified tribes and to the BIA. *In re Gerardo A.* (2004) 119 CA4th 988, 996, 14 CR3d 798. DSS should also explain any apparent discrepancies between the names of the tribes provided by relatives and the names of the tribes it actually served. *In re Gerardo A.*, *supra*, 119 CA4th at 996–997.

Notice must be sent to (see Welf & I C §224.2(a)(3)–(4)):

- All tribes of which the child may be or is eligible to be a member (until the court determines which tribe is the appropriate tribe);
- The Sacramento Area Director, BIA, as agent of the Secretary of the Interior; and
- The Secretary of the Interior if the identification or location of the child's parents, Indian custodian, or tribe is not known.

Notice to a tribe must include information set out in the BIA regulations and Guidelines, such as the name of the child's direct lineal ancestors. *In re C.D.* (2003) 110 CA4th 214, 225–226, 1 CR3d 578. The notice must include (see Welf & I C §224.2(a)(5), 25 CFR §23.111(d)):

- The name, birthdate, and birthplace of the Indian child;
- All names known (including maiden, married, and former names or aliases) of the parents, the parents' birthdates and birthplaces, and tribal enrollment numbers if known;
- If known, the names, birthdates, birthplaces, and tribal enrollment information of other direct lineal ancestors of the child, such as grandparents;
- The name of each tribe in which the child is a member or may be eligible for membership;

- A copy of the dependency petition and, if a hearing has been scheduled, information on the date, time, and location of the hearing;
- A copy of the Indian child's birth certificate;
- The petitioner's name, contact information, and all contact information of the court and all notified parties; and
- A statement of the right of the parents, Indian custodian, or tribe to intervene in the proceeding.

As Welf & I C §§224–224.6 contains stricter requirements for notice than the federal standards, courts require more stringent notice requirements, including:

- *In re J.T.* (2007) 154 CA4th 986, 992–993, 65 CR3d 320 (even when the parents' specific tribe is unknown, notice under Welf & I C §224.2(a)(3) must be sent not only to the BIA but to all tribes of which the child may be a member or eligible for membership).
- *In re Alice M.* (2008) 161 CA4th 1189, 1198–1199, 1202, 74 CR3d 863 (under Welf & I C §§224.2 and 224.3 and Cal Rules of Ct 5.481(a)(5)(A), the suggestion that the child is an Indian child requires compliance with ICWA, specifically requiring notice to all federally recognized tribes within the general category identified by the parents).
- *In re S.B.* (2008) 164 CA4th 289, 302–303, 79 CR3d 449 (DSS must contact the BIA to determine if the child is eligible for membership in any other tribes in the nation of tribes to which the child may be connected).
- *In re O.C.* (2016) 5 CA5th 1173, 1188–1189, 210 CR3d 467 (all possible tribes must be given notice. Notice to only 2 of 22 Pomo-affiliated tribes was inadequate. Notice was required to all Pomo-affiliated tribes).

Even with stricter requirements, ICWA would not apply when the tribe identified by a parent is not a federally recognized tribe and when the parent does not provide the court with a reason to think there is a connection with a federally recognized tribes. *In re K.P.* (2009) 175 CA4th 1, 5, 95 CR3d 524.

It is preferable to err on the side of giving notice and then examining thoroughly whether the child is an Indian child. *In re Isaiah W.* (2016) 1 C5th 1, 15, 203 CR3d 633.

The social worker must provide the court with copies of the forms used to notify the BIA and tribe in accordance with ICWA. Welf & I C §224.2(c); Cal Rules of Ct 5.482(b); see *In re Asia L.* (2003) 107 CA4th 498, 508, 132 CR2d 733.

A court cannot determine whether ICWA applies unless it has received copies of inquiries and hearing notices sent to the BIA and to the relevant tribes, as well as all return receipts and responses. *In re Merrick V.* (2004) 122 CA4th 235, 247, 19 CR3d 490.

b. [§100.54] Court's Responsibility

It is the sua sponte duty of the juvenile court to ensure ICWA compliance. *In re Gerardo A.* (2004) 119 CA4th 988, 996, 14 CR3d 798. Moreover, although DSS has the responsibility to provide notice, the court must determine if the notice was proper. *In re Nikki R.* (2003) 106 CA4th 844, 852, 131 CR2d 256. Therefore, once there has been a suggestion of Indian heritage, courts must check to see whether proper notice was given and conduct the proceedings in accordance with ICWA until it is able to make a determination that ICWA does not apply. 25 CFR §23.107(b)(2); see *In re Nikki R., supra*, 106 CA4th at 853. The court must require evidence from DSS that the relevant tribes had sent responses. See *In re Mary G.* (2007) 151 CA4th 184, 209–212, 59 CR3d 703.

The court, at the earliest possible moment, must affirmatively order DSS to inquire whether the child is of Indian ancestry. When the reporter's transcript and the court's minutes both reflect this order, and when the social worker's reports consistently indicate that the ICWA did not apply, the court has met its duty of inquiry under Cal Rules of Ct 5.481(a). *In re Rebecca R.* (2006) 143 CA4th 1426, 1430, 49 CR3d 951.

Under Welf & I C §§224.2 and 224.3 and Cal Rules of Ct 5.481(a)(5)(A), the suggestion, however vague, that the child is an Indian child (based on the responses on Judicial Council form Parental Notification of Indian Status (ICWA-020) requires compliance with ICWA. *In re Alice M.* (2008) 161 CA4th 1189, 1198–1199, 74 CR3d 863.

c. [§100.55] Insufficient Compliance

There is insufficient compliance with ICWA notification requirements when DSS merely sends a "request for verification" to the relevant tribe; it is advisable to use the current official Judicial Council form Notice of Child Custody Proceeding for Indian Child (ICWA-030), which contains notice of the proceedings and of the right to intervene. See *In re Jeffrey A.* (2002) 103 CA4th 1103, 1108, 127 CR2d 314. Having no record before the juvenile court indicating that any ICWA notices were ever sent is insufficient compliance with the ICWA when the Department had notice of the mother's Indian heritage. Attempting to introduce evidence at the appellate level that notice was sent is inadequate. The juvenile court did not have any evidence to consider to determine whether the ICWA applied. See *In re I.G.* (2005) 133 CA4th 1246, 1253, 35 CR3d 427.

Notices to a tribe and the Bureau of Indian Affairs may be insufficient if they contain inaccuracies and misspellings (*In re Louis S.* (2004) 117 CA4th 622, 631, 12 CR3d 110), lack information that was reasonably available if proper inquiry had been conducted, or if the information is so minimal as to only include the names, birth dates, and birthplaces of the children and the parents. *In re D.T.* (2004) 113 CA4th 1449, 1454–1455, 5 CR3d 893. The social worker has an affirmative duty to make some inquiry regarding the information required in the ICWA notice. 113 CA4th at 1455. Notice sent to a tribe at the wrong address is definitely insufficient. *Nicole K. v Superior Court* (2007) 146 CA4th 779, 783–784, 53 CR3d 251.

Here are examples of omissions that may cause noncompliance with the ICWA: the relative's aliases, the places and dates of birth of parents, grandparents, great-grandparents or other relatives, places of death for deceased relatives, married and birth names of married female relatives, and relatives' current or former addresses. See *In re S.M.* (2004) 118 CA4th 1108, 1117, 13 CR3d 606. There is also insufficient compliance with the ICWA when DSS omits notices of hearings and identifying information, in communicating with some, but not all, of the tribes with whom the child might be connected. *In re Gerardo A.* (2004) 119 CA4th 988, 995, 14 CR3d 798. A letter from a tribe stating that the child is ineligible to become a member is insufficient proof of tribal notice because it does not show that the tribe actually received information about the relative through whom tribal ancestry is claimed; there must be some type of certified receipt or response and a copy of the ICWA notice. *In re Glorianna K.* (2005) 125 CA4th 1443, 1451, 24 CR3d 582.

Further examples of insufficient notice occurred when the ICWA notice went to an entity that did not appear to be a federally recognized Indian entity and did not go to others that might have been; when the notices lacked much of the required information; when there was no indication that the notice to the BIA was ever sent; and when there was no evidence that the notices were sent by registered mail with return receipt requested. See *In re Miguel E.* (2004) 120 CA4th 521, 550, 15 CR3d 530.

d. [§100.56] Consequence of Improper Notice

One court has stated that when the court is notified of a possible Indian connection and DSS does not provide the court with evidence or documentation of notice, tribal responses, or responses from the BIA, the court cannot properly proceed with the dependency case. See *In re Jennifer A.* (2002) 103 CA4th 692, 702–705, 127 CR2d 54. Therefore, when required notice to Indian tribes has not been given, the court's orders are voidable. *Justin L. v Superior Court* (2008) 165 CA4th 1406, 1410, 81 CR3d 884. Another court has held, however, that applying the notice requirements, even when there is no existing Indian family, does not take the child out of the existing placement; it just delays the proceedings so that

the tribe may respond. See *In re Suzanna L.* (2002) 104 CA4th 223, 236, 127 CR2d 860.

Note: This was decided before the enactment of the federal ICWA regulations in 2016. These regulations specifically require that the court apply ICWA, including the placement preferences, whenever there is reason to know that an Indian child is involved, until the court can make a determination that ICWA does not apply. 25 CFR §23.107(b)(2).

☛ JUDICIAL TIP: Unless the child's family is actively involved with a local tribe, it is almost never practical to continue a detention hearing pending notification of the proper tribe. Many judges will go forward with the detention hearing while simultaneously attempting to notify the tribe. If and when the tribe appears or takes a position, the judge may then reevaluate the procedures to be followed.

The court must, however, ensure that DSS used due diligence to verify the child's status. 25 CFR §23.107(b)(1). This requires DSS to be proactive in contacting tribes in advance of the initial hearing and not simply waiting to send out notices following the initial hearing. When DSS does not follow the two-step process of sending proper notice to all possible tribal affiliations and filing copies of the notices, along with return receipts and correspondence, dependency proceedings may be invalidated, including conditional reversal of termination of parental rights on the eve of an adoption (delaying the adoption until proper notice is given). See *In re Elizabeth W.* (2004) 120 CA4th 900, 906–908, 16 CR3d 514.

5. [§100.57] Determination of Tribal Membership

Indian tribes are independent political entities retaining natural rights in questions of self-government. See *Santa Clara Pueblo v Martinez* (1978) 436 US 49, 55, 98 S Ct 1670, 56 L Ed 2d 106. Determination by the tribe that a child is either a member of a tribe or eligible for membership in a tribe *and* a biological child of a member is conclusive and requires that ICWA be applied to the proceedings. Welf & I C §224(c). The child need not be formally enrolled in the tribe in order to invoke ICWA because the child is an "Indian child" for purposes of the ICWA if the child is eligible for membership in a tribe and a biological child of a member. See 25 USC §1903(4); Welf & I C §224.3(b)(1); *In re Desiree F.* (2000) 83 CA4th 460, 470, 99 CR2d 688. Conversely, when children were not members of a tribe (as determined by the tribe) nor biological children of a member, the court correctly determined that they were not Indian children, even when the tribe stated that they were eligible for membership. *In re Jose C.* (2007) 155 CA4th 844, 848–849, 66 CR3d 355; see also *In re Abbigail A.* (2016) 1 C5th 83, 204 CR3d 760.

When there is no determinative response to the notice within 60 days, California law states that the court may determine that ICWA does not apply unless further evidence is received later. Welf & I C §224.3(e)(3); Cal Rules of Ct 5.482(c). However, the newly enacted federal ICWA regulations state that the court must treat the child as an Indian child, unless and until it is determined on the record that the child does not meet the definition of "Indian child." 25 CFR §23.107(b)(2). And when there is a response from the BIA and some of the notified tribes within 60 days, but no evidence that the children were actually Indian children, a court need not wait the full 60-day period to hear from all of the tribes that were contacted. *In re N.M.* (2008) 161 CA4th 253, 266–267, 74 CR3d 138.

When the status of the tribe would disqualify a child from having Indian status, the court may nevertheless permit the tribe to participate in the proceedings. See Welf & I C §306.6 for procedures to follow in such a situation.

6. [§100.58] After Determining That ICWA Applies

The child's tribe has a right to intervene at any time in an Indian child custody proceeding. See 25 USC §1911(c); Welf & I C §224.4; Cal Rules of Ct 5.482(d). If the state fails to comply with certain provisions of the ICWA, the foster placement or adoption orders may be invalidated on petition of the parent or the tribe. 25 USC §1914; 25 CFR §23.136; Welf & I C §224(e); Cal Rules of Ct 5.486. In *In re Samuel P.* (2002) 99 CA4th 1259, 1267, 121 CR2d 820, it was reversible error to fail to notify the tribe that a dependency proceeding was underway when there had been clear indications of Indian ancestry.

If the child is to be placed in foster care or adoption, the court must comply with the ICWA placement preferences, which require placement with the child's extended family, another Indian family, or the tribe, unless good cause is shown for another placement. 25 USC §1915; Cal Rules of Ct 5.486.

Note: the newly enacted federal ICWA regulations and Guidelines clarify that the placement preferences are in descending order, with extended family as the first order of preference. Before authorizing a placement which is lower on the order of preferences, the court must have evidence before it that would justify deviating from the placement preferences. If a party asserts that no placements within the placement preferences were available, the court must find that a diligent search was conducted to find suitable placements within the placement preferences. Further, in assessing the suitability of a placement, the prevailing social and cultural standards of the child's tribe must be used. 25 CFR §§23.131–23.132.

Under Cal Rules of Ct 5.482(c), if the court has reason to know that the child is an Indian child, the court must proceed with all dependency

hearings, observing the timelines of the Welfare and Institutions Code, while complying with ICWA.

If the case is transferred to a tribal court and that court has accepted jurisdiction, the California courts will lose jurisdiction over the case. *In re M.M.* (2007) 154 CA4th 897, 912–913, 65 CR3d 273. The only way to appeal a transfer is for an attorney to request a stay and, if denied, to appeal that denial. 154 CA4th at 916.

IV. SAMPLE FORMS

A. [§100.59] Script: Conduct of Initial or Detention Hearing

(1) *Introduction*

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

Note: Often this step is omitted because in most counties parents speak through their attorneys, and social workers rarely testify at detention hearings.

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

[*If parents are unrepresented by counsel*]

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

☛ JUDICIAL TIP: Judges often explain to the parents the importance of hiring an attorney with experience in juvenile court.

[*Or*]

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

[*If parents waive counsel*]

This is a serious and important matter. If the court finds that grounds for detention exist, this hearing could result in [*name of child*] being placed [with [*name of parent or guardian*]*/in a foster home/in the shelter*] from today until the jurisdiction hearing on [*date*]. Ultimately parental rights may be terminated and the child may be placed for adoption. Do you have any questions about your right to have an attorney represent you at this hearing? Understanding this right and the possible consequences of this hearing, do you want to proceed at this time without an attorney?

☛ JUDICIAL TIP: Many judges also inform parents of the applicable time frames and emphasize the complexity of the law and the difficulty of the procedure before accepting a waiver.

[*When applicable, add*]

The court now finds that the parents have intelligently waived their right to counsel at this hearing.

(3) *Attorney for child*

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

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

The court finds, based on the facts of this case, that there is a need to appoint counsel for the child at this time. The court appoints [*name of attorney*] as the child's CAPTA guardian ad litem to represent the child.

[*Or*]

The court finds, based on the facts of this case, that there is no identifiable benefit to the child that would require appointment of counsel at this time because [*give reason*].

☛ JUDICIAL TIP: It is advisable to ask counsel for DSS if there are any potential conflicts of interest among the children (if multiple siblings are involved) and, if so, to appoint separate counsel for siblings. See discussion in §100.20.

(4) *Parentage inquiry, if applicable*

The court needs to know the name and address of the child's father, as well as names and addresses of any men who might claim to be fathers.

☛ JUDICIAL TIP: It is important to question the mother with as much delicacy as possible, possibly beginning with the question of whether she is or was married to the father.

[*If no answers appear to be forthcoming, the court may ask the mother or other participant who might know the answers (see Cal Rules of Ct 5.668(b), Welf & I C §316.2(a))*]

1. Has there been a judgment of parentage?
2. Were you [*the mother*] married or did you believe yourself to be married, at the time of conception?

3. Were you [*the mother*] living with a man at the time of conception or birth?
4. Did you [*the mother*] receive support or promises of support during the pregnancy?
5. Has a man formally acknowledged parentage, including by signing a voluntary declaration of paternity?
6. Have genetic tests been administered and, if so, what were the results?
7. Does any man otherwise qualify as a presumed father?

(5) *Explanation of procedure*

I am going to explain to you what happens at these juvenile court proceedings. These proceedings are divided into several separate hearings.

First, there will be an initial or detention hearing. That is what is happening here today.

[*If child is detained*]

The purpose of this hearing is for the court to inform you of the contents of the petition and of what to expect in juvenile court, as well as for the court to decide whether [*name of child*] should remain in protective custody [*in the shelter*] from today until the date of the jurisdiction hearing, which has been set for [*date*]. The jurisdiction hearing may be similar to a trial. It is the hearing at which the court decides whether what the petition says is true.

[*If child is not detained*]

The purpose of this hearing is for the court to inform you of the contents of the petition and of what to expect in juvenile court.

[*Continue*]

When you appear in court on [*date*] for the jurisdiction hearing, the court will decide whether the statements contained in the petition that has just been read are true. If the court finds them to be not true, the court will dismiss the petition. If the court finds them to be true, the court will conduct a disposition hearing.

The purpose of a disposition hearing is to decide what action, if any, the court should take in view of what has been found to have happened. If [*name of child*] is not able to be returned home at the disposition hearing, there may be later hearings that may culminate in the termination of parental rights.

If the court sustains the petition at the jurisdiction hearing and if [*name of child*] is declared a dependent of the court and removed from the custody

of [his/her] parent or guardian, court-ordered reunification services may not be provided for more than 12 months for a child who is over 3 years old at the time of removal or 6 months for [*a child who was/*all *the children if there was any one child who was*] under 3 years old at the time of removal if [the parent or guardian does/you do] not participate regularly in a court-ordered treatment program.

Note: Very often, the attorney for the parent(s) or guardian(s) will state that he or she has explained these matters to the parent or guardian and will waive formal advisement. Many judges encourage attorneys who appear in their courts to take this responsibility because it can be helpful in streamlining judicial proceedings.

(6) *Notice*

(a) *One parent not present:*

[*If one parent is not present, make sure that the absent parent received notice of the hearing. If so, state*]

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

(b) *Both parents present:*

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

(c) *One or both parents or guardian(s) not present and notice attempted:*

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

(d) *Insufficient attempts at notice:*

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

Note: Only rarely will a judge need to dictate to the DSS the search efforts that are needed.

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

[*To each counsel*]

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

(8) *Reading the petition*

[*If not waived, read the petition*]

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

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

(9) *Advisement re addresses under Welf & I C §316.1 and Cal Rules of Ct 5.534(i)*

The address that [is in the petition/you have given the court today] will be used by the court and the social worker for all further notices unless you advise the court or the social worker in writing of any changes in address. [*There is a form available in the courtroom for this purpose.*]

(10) *Advisement of rights*

As you are aware, [*name of child*] has been placed in protective custody because of the circumstances stated in the petition that was just read to you.

You have certain rights at this hearing. You have the right to:

1. Be represented by counsel as already explained;

2. See, hear, and question all witnesses who may be examined at this hearing;

3. Cross-examine, which means ask questions of, any witness who may testify at this hearing; and

4. Present to the court any witnesses or other evidence you may desire.

In the case of reports submitted by the Department of Social Services, you also have the right to cross-examine the social worker who prepared the reports. Further, you have the right to present evidence and to use the court's subpoena power to bring witnesses to court to testify on your behalf. Finally, you have a right against self-incrimination, which means that no one can force you to say anything that might be used against you as the basis for, or in connection with, criminal proceedings. I would advise you, however, that you also have "use immunity" for any testimony you give in

these proceedings. This means that your testimony here cannot be used in a criminal proceeding against you.

If you have any questions regarding immunity, I suggest that you discuss the issue further with your attorney. Now, do you understand each of these rights that I have explained to you?

(11) *Evidence*

[*Court reads any written reports, which the parties should have had an opportunity to review, and states for the record all material read by the court.*]

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

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

[*Court should orally examine child, if present, and parents or other persons for relevant knowledge bearing on grounds for detention. (Child is often not present at a detention hearing.) Court allows cross-examination of any witness who may testify.*]

Now is the time for you to present any evidence or make any statement you may wish to make before the court decides whether [*name of child*] should remain in protective custody.

B. [§100.60] Script: Findings and Orders

(1) *Introduction*

The court has read and considered [*name the documents,* e.g.*, the petition or the social worker's report of* [*date*]*, and attached documents, or local name for social worker's report,* e.g.*, social study*]. The court has also considered the testimony of the witnesses and their demeanor on the stand, as well as the arguments of counsel.

(2) *Parties*

The court finds that the legal status of [*name of party*] is [*describe*].

Note: The court may make a finding of whether each man who claims or is alleged to be the father is a biological, alleged, or presumed father (unless there is a legal father by virtue of the conclusive presumption of Fam C §7540) if the court has sufficient information to do so. See §§100.32–100.33.

(3) *Detention*

[*No prima facie case*]

The court finds that no prima facie case has been made that [*name of child*] is a person described by Welfare and Institutions Code section 300, nor do any of the circumstances outlined in Welfare and Institutions Code section 319 subsections (b)(1) through (4) apply. [*Name of child*] should not remain in protective custody in the shelter pending the jurisdiction hearing and is hereby released to the custody of [his/her] [mother/father/guardian(s)] on the following conditions: [*state conditions*].

[*Prima facie case*]

Good cause appearing, the court finds that a prima facie case has been made that [*name of child*] is a person described by Welfare and Institutions Code section 300 because of [*list facts*]. In addition, [this/these] circumstance(s) outlined in Welfare and Institutions Code section 319, subsections (b)(1) through (4), [applies/apply]: [*List one or more and provide reasons for the conclusions.*]

- [There is substantial danger to the physical health of the child/The child suffers from severe emotional damage] and there are no reasonable means by which the child's [physical/emotional] health may be safeguarded without removal.

Note: All findings must be made on the record and in the written orders. Cal Rules of Ct 5.674(b).

- There is substantial evidence that the [parent(s)/guardian(s)/ custodian(s)] [is/are] likely to flee the jurisdiction.
- The child has left placement in which [he/she] was placed by order of the juvenile court.
- The child is unwilling to return home, and it is alleged that [he/she] has been physically or sexually abused by a person in the home.

[*Under Cal Rules of Ct 5.678(a), (d) when ordering detention, the court must make these additional findings*]

- The initial detention was justified because [*state reasons,* e.g., *substantial danger to physical health*].
- The child's continuing residence in the home of the parent or legal guardian is contrary to the child's welfare.
- The child is ordered detained and temporarily placed in the care of the Department of Social Services pending disposition or further court order. [*The court approves placement with* [*emergency shelter/foster care/name of relative who is willing and available to take the child*].]

The following services are ordered as soon as possible. [*List services; see* §100.38.]

Note: (1) The court may also announce any temporary restraining orders granted. (2) It is possible to find that a prima facie case was made, but that there are no grounds for continuing detention.

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

(4) *Preplacement preventive services*

The court finds that preplacement preventive efforts were made to avoid removing the child from the home. [*State facts.*] This finding is based on the [*name of the document, such as Declaration of Efforts*], dated _____.

[*Or*]

Reasonable efforts have not been made.

(5) *Jurisdiction hearing*

The jurisdiction hearing is scheduled for [*date*] at _____ [a.m./p.m.], in Department _____.

Note: The court might want to ask whether time is waived, although under Welf & I C §352(c), waiver is implied if a party is represented by counsel and no objection is made to a continuance.

(6) *Settlement/readiness/status conference (if jurisdiction is not contested)*

You are ordered to be present at the [*name of conference or hearing,* e.g.*, settlement, readiness, status conference, or uncontested jurisdictional hearing*] on [*date*], at _____ [a.m./p.m.], in Department _____. If you fail to appear, your default will be entered and the court may make findings and orders affecting your parental rights.

Note: The judge should make it clear that, whatever this conference is called, it is also a jurisdictional hearing, and the court will be able to make jurisdictional findings even if the parties fail to appear.

C. [§100.61] Draft: Detention Hearing Minute Order

Prepared by the Center for Families, Children, and the Courts

The court has read, considered, and admits into evidence:
social worker's detention report dated _____,

[*List other reports*]

_____,

_____,

_____,

and has made all required inquiries. Based on the information contained in the report(s) and the responses to inquiries, the court makes the following findings and orders:

1. Notice has been given as required by law.

2. Attorney,_____, is appointed to represent the child and as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

[*Or*]

3. The child will not benefit from representation by an attorney and the court further finds:

(a) The child understands the nature of the proceedings;

The child is able to communicate and advocate effectively with the court, other counsel, other parties, including social workers, and other professionals involved in the case;

Under the circumstances of the case, the child would not gain any benefit by being represented by counsel; AND

(b) The court orders a Court Appointed Special Advocate appointed for the child and that person is appointed as the child's Child Abuse Prevention and Treatment Act guardian ad litem.

4. The court finds a prima facie showing has been made that the child comes within section 300 of the Welfare and Institutions Code.

5. The court finds that continuance in the parents' or guardians' home is contrary to the child's welfare AND (select at least one):

(a) There is a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's physical or emotional health may be protected without removing the child from the parents' or guardians' physical custody.

(b) There is substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court.

(c) The child has left a placement in which he or she was placed by the juvenile court.

(d) The child has been physically abused by a person residing in the home and is unwilling to return home.

(e) The child has been sexually abused by a person residing in the home and is unwilling to return home.

6. The court finds reasonable efforts were made to prevent or eliminate the need for removal of the child from his or her home.

[*Or*]

7. The court finds reasonable efforts were not made to prevent or eliminate the need for removal of the child from his or her home.

8. The court finds there are not available services that would prevent the need for further detention.

[*Or*]

9. The court finds there are available services that would prevent the need for further detention and orders the services provided and the child placed with his or her parent or guardian.

10. The court finds there is a relative who is able, approved, and willing to care for the child.

[*Or*]

11. The court finds there is not a relative who is able, approved, and willing to care for the child.

12. The court orders the child detained.

13. The court orders temporary placement and care of the child vested with the county child welfare department pending the hearing held pursuant to section 355 of the Welfare and Institutions Code or further order of the court.

14. The court orders services to be provided as soon as possible to reunify the child and his or her family.

15. The court orders the parent(s) to disclose to the social worker the names, residences, and any known identifying information of any maternal or paternal relatives of the child.

The child is ordered placed in:

___ An approved home of a relative.

___ An emergency shelter.

___ Another suitable licensed place.

___ A place exempt from licensure designated by the juvenile court.

___ An approved home of a nonrelative extended family member as defined in section 362.7 of the Welfare and Institutions Code.

The facts on which the decision to order the child detained are:

_____

The initial removal of the child from the home was necessary because:

_____

Visitation orders

— with parents

— with siblings

Order _____appointed as guardian ad litem.

D. [§100.62] Advisements and Inquiries at Detention Hearing

Prepared by the Center for Families, Children, and the Courts

1. Advise of right to be represented by counsel at each stage of proceedings (see §§100.16–100.18).

2. Advise of following hearing rights (see §100.25):

- Right to assert privilege against self-incrimination.
- Right to confront and cross-examine preparer of report/document submitted to court and witnesses called to testify.
- Right to subpoena witnesses.
- Right to be present in court.

3. Advise and inform generally of (see §100.25):

- Contents of the petition.
- Nature and possible consequences of juvenile court proceedings.
- Reason child taken into custody and purpose/scope of detention hearing.
- Time limitations on reunification services.

4. Parentage inquiry—order mother to identity and provide address of all presumed or alleged fathers (see §§100.32–100.33).

5. Designated mailing address (see §100.25):

- Order parents to provide designated mailing address.

- Advise that it be used for purposes of notice of hearing and mailing of all documents.
- Advise that it will be used until and unless written notification of change of mailing address is provided.

6. Relatives (see generally §100.40):

- Order parent to provide to social worker name, address, other known identifying information for paternal and maternal relatives.
- Advise of possible placement of child with non-custodial parent pursuant to section 361.2 of the Welfare and Institutions Code, if child removed from the custodial parent's care.

7. Indian Child Welfare Act (25 CFR §23.107) and Cal Rules of Ct 5.480–5.482 (see §§100.49–100.57).

- Ask each participant on the record whether they know or have reason to know the child is or may be an Indian child.
- Instruct each party to inform the court if they subsequently receive information that provides reason to know the child is an Indian child.
- Probable cause to believe child may be Indian child. The court must proceed as if child is Indian child and must confirm by way of report, declaration, or testimony on the record that the agency or other party has used due diligence to identify and work with all tribes of which the child may be a member.

8. May make an emergency removal of a child under applicable state laws in order to prevent imminent physical damage or harm to the child (see §100.36).

- If the case involves an Indian child, emergency removal can only be authorized to prevent imminent physical damage or harm to the child. In addition, the petition must contain specific information set out in the federal regulations and the court must make specific findings, including that the emergency removal is necessary to prevent imminent physical damage or harm to the child. The emergency removal or placement must end as soon as the emergency situation has ended and should not last more than 30 days. 25 CFR §23.113.

V. [§100.63] ADDITIONAL REFERENCES

Seiser & Kumli, Seiser & Kumli On California Juvenile Courts Practice and Procedure (Matthew Bender 2018).

California Juvenile Dependency Practice (Cal CEB 2018).

VI. APPENDIX I: PREHEARING DETENTION

This appendix sets out the grounds for a police officer or social worker taking the child into temporary custody and the procedure that is followed until the detention hearing is held.

A. Grounds for Initial Detention

1. [§100.64] By Peace Officer

Under Welf & I C §305(a), a peace officer may detain a child who, the officer has reasonable cause to believe, is a person described by Welf & I C §300, and in addition:

- Has immediate need for medical care;
- Is in immediate danger of sexual or physical abuse;
- Is in a physical environment that imposes an immediate threat to the child's health or safety; or
- Has been left unattended, which poses an immediate threat to the child's health or safety.

In cases in which the child has been left unattended, the peace officer must attempt to contact the parent or guardian, and if that is not possible, the officer must notify a social worker from the county child welfare department to assume custody. Welf & I C §305(a).

In addition, an officer may detain a child when:

- The child is in the hospital and release of the child to the parent, a prospective adoptive parent, or representative of a licensed adoption agency poses an immediate threat of danger to the child's health or safety. Welf & I C §305(b); see also Welf & I C §305.6.
- The officer has reasonable cause to believe that the child has violated a juvenile court order or left a placement when that child had been a dependent child or has been the subject of an order under Welf & I C §319. Welf & I C §305(c).
- The child is found on a street or in a public place, suffering from a condition that requires medical treatment, hospitalization, or other care. Welf & I C §305(d).

2. [§100.65] By Social Worker

Under Welf & I C §306(a), a social worker in a county welfare department (or Indian tribe that has entered into an agreement under Welf & I C §10553.1) may receive and maintain temporary custody of a child in any of the following circumstances:

- The child has been delivered by a peace officer, pending investigation.

- The child has been declared a dependent child under Welf & I C §300.
- The social worker has reasonable cause to believe that the child comes under Welf & I C §300(b) (parent unable to protect child from serious physical harm) or Welf & I C §300(g) (child left without provision for support, or physical custody of the child has been voluntarily surrendered under Health & S C §1255.7 and the child has not been reclaimed during the specified 14-day period), and that the child (1) has immediate need for medical care, (2) is in immediate danger of physical or sexual abuse, or (3) lives in a physical environment that poses an immediate threat to health or safety.

Because social workers may detain a newborn under Welf & I C §306(a)(2) if the child is in immediate danger, a newborn may be detained when both the child and mother test positive for drugs, the mother suffers from long-term substance abuse, and the mother behaves erratically at the hospital. See *M.L. v Superior Court* (2009) 172 CA4th 520, 527, 90 CR3d 920.

Before taking a child into custody, the social worker must consider whether there are reasonable services that, if made available to the child's parent or guardian, would eliminate the need for detention. Welf & I C §306(b).

B. [§100.66] Grounds for Continuing Detention

When a child has been detained, the social worker must immediately investigate the circumstances and release the child to the custody of the parent, guardian, or responsible relative, regardless of the parent's, guardian's, or relative's immigration status, unless (Welf & I C §309(a)):

- There is no parent, guardian, or relative willing to provide care for the child;
- Continued detention is needed for the protection of the child and there are no alternative ways to protect the child in the home;
- There is substantial evidence that a parent, guardian, or custodian may flee the court's jurisdiction;
- The child has left a placement in which he or she had been placed by the juvenile court; or
- The parent or other custodian had voluntarily surrendered custody under Health & S C §1255.7 and did not reclaim the child during the specified 14-day period.

C. Notification re Detention

1. [§100.67] In General

Any peace officer or social worker who takes a child into temporary custody under Welf & I C §§305–307 must immediately inform the parents (or guardian or responsible relative if appropriate) that the child has been detained and inform them that a written statement explaining their procedural rights is available. Welf & I C §307.4(a). Under Welf & I C §308(a), regular telephone contact between the parent and child must be instituted unless the contact would be detrimental to the child. If the peace officer determines that the child need not remain in custody, the officer may prepare a written notice to appear before a social worker. On execution by the parents of a promise to appear, the officer must release the child to the parents. Welf & I C §307(b). See also Welf & I C §310 (as a condition for child's release, social worker may require child, as well as parent, guardian, or responsible relative, to sign a written promise that either or both of them will meet with social worker).

An operator of a community service program that has temporary custody of the child must also attempt to notify the parents (Welf & I C §307.5), and the person in charge of a day-care facility from which the child has been taken must provide the officer who detains the child with the parents' names and addresses so that the parents may be notified (Health & S C §1596.876). A child taken into detention has the right to make telephone calls. Welf & I C §308(b).

Failure to notify the proper parties as required, if due to circumstances beyond the control of the peace officer or social worker after good faith efforts, shall not be the basis of an objection to juvenile court jurisdiction. Welf & I C §307.4(b).

2. [§100.68] Court Order re Notification

The confidentiality of the foster family's address must be maintained until the disposition hearing, at which time the judge may authorize disclosure of the address on a showing of good cause. Welf & I C §308(a). If the disposition hearing is to be delayed beyond 60 days, the court may order the foster family's address released to the parent or guardian. Welf & I C §308(a).

3. [§100.69] Written Statement of Procedural Rights

The written statement of procedural rights required to be provided by the officer or social worker should explain the preliminary stages of the dependency proceeding and should include (Welf & I C §307.4):

- Conditions under which the child can be released, ways of obtaining further information about the child's case, and information on required hearings.
- Right to counsel and appeal (for child and parents, guardian, or responsible relative) and privilege against self-incrimination.

D. [§100.70] Placement Options for Initial Detentions

Children who are taken into custody and suspected of or adjudicated as being abused or neglected (Welf & I C §300) must be detained in a separate location from children who are alleged or found to be described by Welf & I C §601 (status offenders) or §602 (delinquents). Welf & I C §206. An officer who detains a child under Welf & I C §300 may take the child to a community service program for abused or neglected children. Welf & I C §307.5. Under these circumstances, the admitting organization must immediately attempt to notify the child's parent, guardian, or responsible relative of the place to which the child was taken. Welf & I C §307.5.

The officer must give preference to the alternative that least interferes with the parents' custody if compatible with the child's safety, and must also consider the child's needs for the least restrictive environment and the need to protect the community. Welf & I C §307.

E. [§100.71] Time Limitations on Detention

Under Welf & I C §313(a), detention must not exceed 48 hours, excluding noncourt days, unless a petition has been filed within the 48 hours to declare the child a dependent child. However, if a petition is filed after the 48-hour period, Welf & I C §313 does not preclude the court from continuing the detention. *Los Angeles County Dep't of Children's Servs. v Superior Court* (1988) 200 CA3d 505, 508, 246 CR 150. Once a petition has been filed, the controlling statute becomes Welf & I C §315 (requiring the holding of a detention hearing), which is directed to the juvenile court and is mandatory. 200 CA3d at 508–509.

However, if no petition is filed, the agency must release the child. 200 CA3d at 508.

VII. [§100.72] APPENDIX II: UCCJEA

The following appendix has been taken from a memo to the Judicial Council Family and Juvenile Law Advisory Committee, prepared by Corby Sturges of the Center for Families, Children & the Courts.

In 1973, California adopted the Uniform Child Custody Jurisdiction Act (UCCJA) (now former), in part to avoid jurisdictional conflict and promote interstate cooperation in custody proceedings involving multiple

states. Stats 1973, ch 693, §1 (codified as CC §5150 et seq (now former)). The UCCJA was incorporated into the Family Code on its enactment. Stats 1992, ch 162, §10 (codified as Fam C §§3400 et seq). In 2000, California adopted the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), which superseded the UCCJA and clarified many of its provisions. Stats 1999, ch 867, §3 (codified as Fam C §§3400 et seq).

The UCCJEA is the exclusive jurisdictional basis for making a child custody determination in California. Fam C §3421(b). Satisfaction of the UCCJEA's requirements is a necessary prerequisite to a custody determination under substantive family or juvenile law.

If it appears that the child has lived out of state, the court may wish to ask the parents, the social worker, or even the child the following questions to elicit the information sought by Fam C §3429:

1. Where does the child live now? If the child has been detained, where did the child live before he or she was detained? If the child has no address, where is the child now or where was the child when he or she was detained?

2. What is the address of every place the child has lived for the past 5 years?

3. What is the name of every person with whom the child has lived for the past 5 years?

4. Have you ever participated as a party or a witness or in any other capacity in another case or custody proceeding, in California or elsewhere, concerning the custody of a child in this proceeding?

5. Do you know about any custody proceedings, other than those we've already talked about, going on in any court concerning a child in this proceeding?

6. Do you know of any person who is not a party to this proceeding who has physical custody or who claims to have custody or visitation rights concerning any child in this proceeding?

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