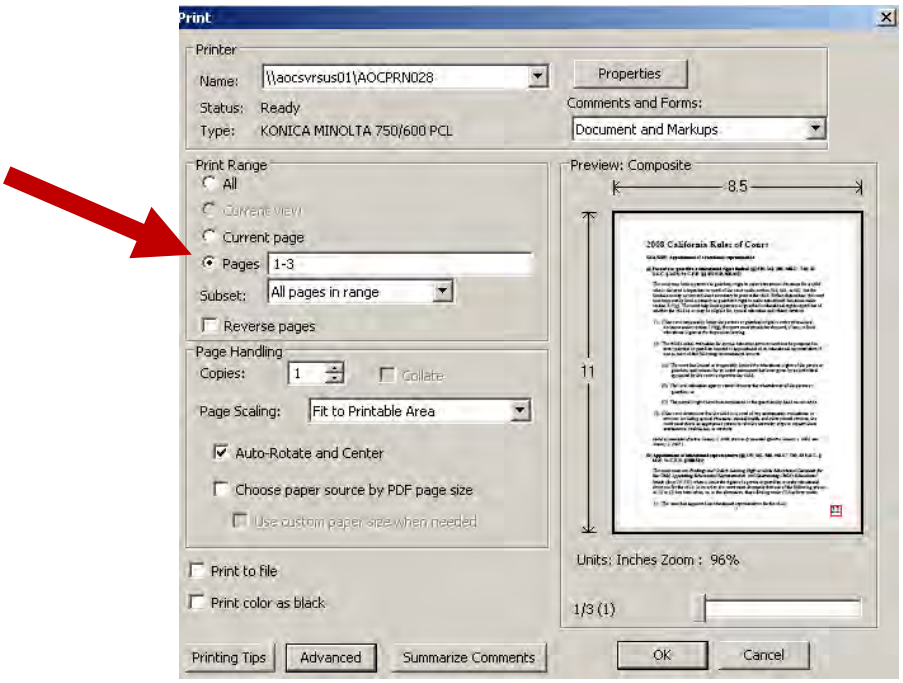
Dear Colleague:

Enclosed are Beyond the Bench 2010 handouts, PowerPoint slides, articles, and other resources made available by faculty.

In keeping with the efforts of going “green”, we encourage you to read from the electronic document rather than print hundreds of pages.

If you choose to print these materials, please make sure to **specify the range of pages**.



Thank you.

Beyond the Bench conference staff

This *PDF* of workshop materials is to be used only for non-commercial reference purposes, to supplement the trainings presented at Beyond the Bench 20. We thank the conference faculty and their colleagues for their contributions to this CD.

The highlighted workshops below provided handout materials:

THURSDAY – JUNE 3, 2010

11:00 am – 12:15 **Workshop Session II**

II.A. **A Collaborative Approach to the Challenge of Helping Commercially Exploited Children**

II.B. **Applying Evidence-Based Principles: Successful California Case Studies**

II.C. **Collaboration Versus Zealous Advocacy in Dependency Law**

II.D. **Courts Catalyzing Change**

II.E. **Dependency Legal Update**

II.F. **Family Law Case Management: The View from 2010**

II.G. **Invisible Beliefs: Confidentiality, Privilege and Technology in Juvenile Court**

II.H. **Juvenile Collaborative Courts: Special Courts or a Model for All Juvenile Courts**

II.I. **Making it Work: Applying Standard 5.20 in Juvenile Dependency & Family Law Supervised Visitation Cases**

II.J. **No Funding for Mental Health Services for Foster Youth? Build *A Home Within* in Your Community**

II.K. **Expanding Reentry Courts in California**

II.L. **Statewide Leadership Group on Domestic Violence**

II.M. **SHARE Tolerance Program (Stop Hate And Respect Everyone)** ***[*Y]***

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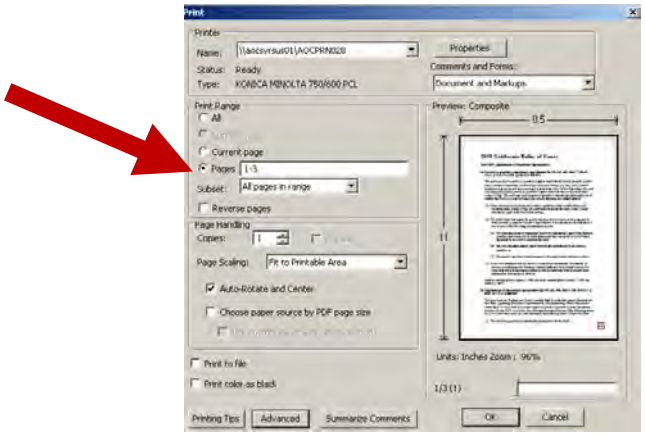

THURSDAY – JUNE 3, 2010

11:00 am – 12:15 **Workshop Session II**

II.B.

target audience:
attorneys
judges
probation officers
social workers

Applying Evidence-Based Principles (EBPs): Successful California Case Studies

This workshop will focus on what works in reducing recidivism among juvenile offenders. Participants will learn about the principles of effective intervention, how they were derived, and how they are applied. Probation systems and programs that are effective in reducing recidivism have certain characteristics. These include factors related to program development, implementation and leadership, classification and assessment practices, use of effective treatment models, matching offenders, staff, and services, use of behavioral strategies, the quality of staff, evaluation and quality assurance activities, and organizational stability. Successful examples from several California probation departments will be highlighted to demonstrate the practical application of these principles.

Learning Objectives:

- Understand what EBP is and learn how to apply the principles in one's own jurisdiction.
- Recognize the factors that can sustain EBPs in an organization.
- Become familiar with efforts of CA probation departments who have successfully implemented EBPs.

Faculty:

- **Sean Hosman**
  CEO, Assessments.com
- **Wesley Forman**
  Chief Probation Officer, Mendocino County Probation Department
- **Martin Krizay**
  Chief Probation Officer, Imperial County Probation Department
- **Marjorie Rist**
  Chief Probation Officer, Yolo County Probation Department
- **Jim Salio**
  Chief Probation Officer, San Luis Obispo County Probation Department

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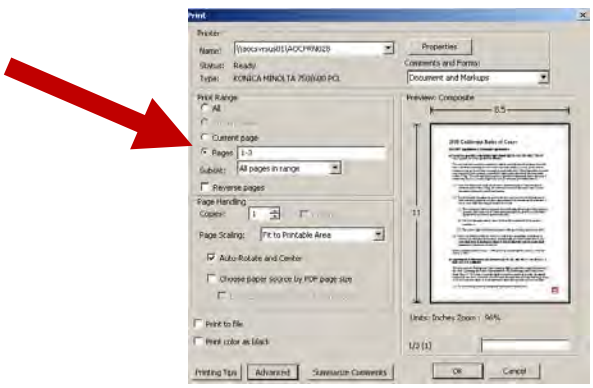
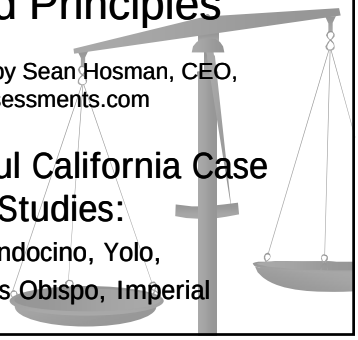


Applying Evidence-Based Principles

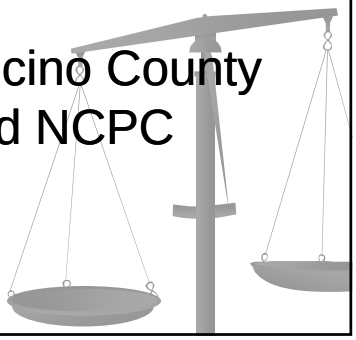
moderated by Sean Hosman, CEO, Assessments.com

Successful California Case Studies:

Mendocino, Yolo,
San Luis Obispo, Imperial

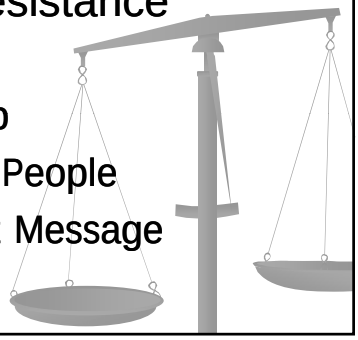


Mendocino County and NCPC



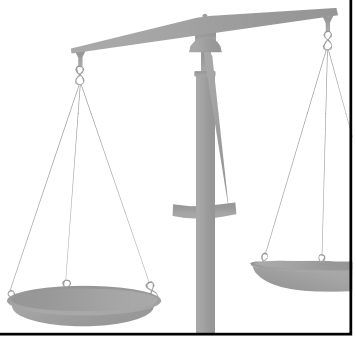
How To Overcome Resistance

- Leadership
- The Right People
- Consistent Message



Opportunity

- Vision
- Patience
- Timing



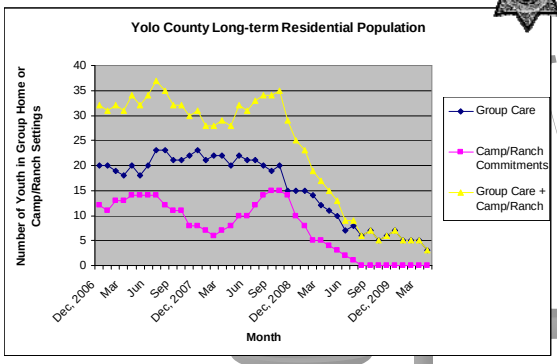
Mendocino County

- MTFC
- PACT
- ART
- STRONG

NCPC

- Advantages
- Challenges

Yolo County Probation



Yolo County Probation

YCCP	2007	2009	Diff
Arrest rate:	43%	26%	39%
Probation Completion:	3%	34%	1,000%
Incarceration:	36%	26%	27%
Restitution paid:	41%	68%	67%
Completion of Program:	41%	51%	26%

Juvenile Drug Court	2007	2009	Diff
Incarceration rate:	54%	43%	20%
Restitution Paid:	30%	45%	50%
Completion of Program:	36%	58%	60%

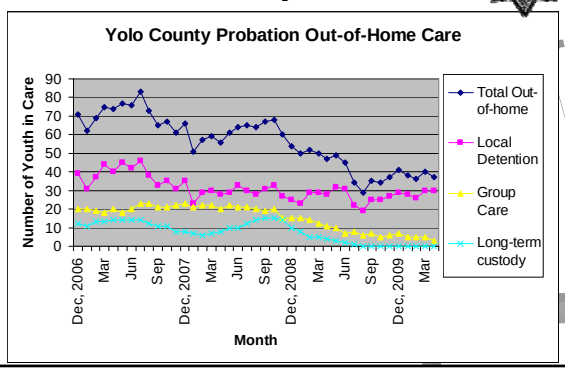
Yolo County Probation

1. Implemented risk/needs assessments
2. Focused resources on moderate through high risk youth
3. Examined current programs
   a. Restructured or eliminated the ineffective
   b. Kept those that had merit
4. Ensured that programs/interventions adhered to risk principle
5. Examined aggregate criminogenic needs

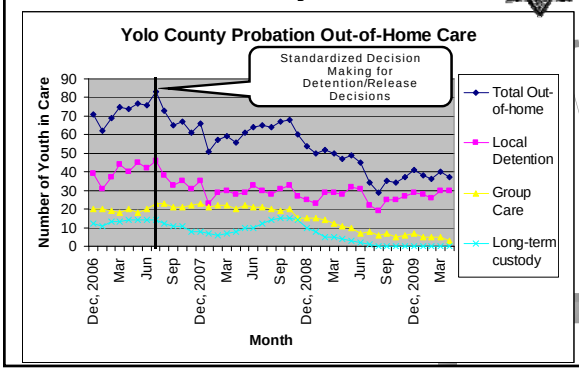
Yolo County Probation

6. Selected interventions
7. Implemented interventions
8. Integrated interventions into programs to eliminate “one size fits all” programming
9. Bolstered case planning skills and process for staff
10. Functional Family Probation Supervision

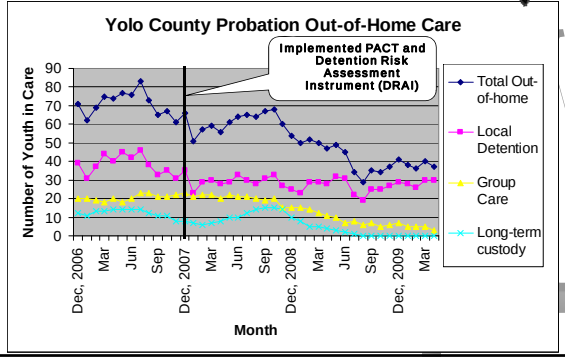
Yolo County Probation



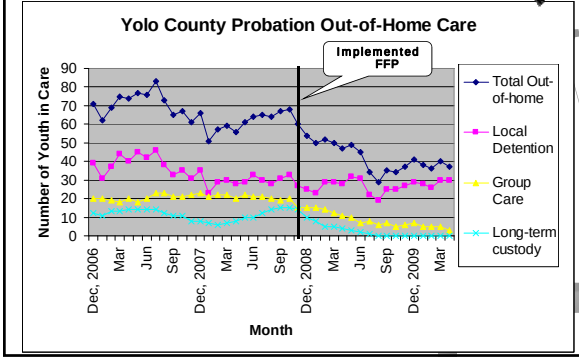
Yolo County Probation



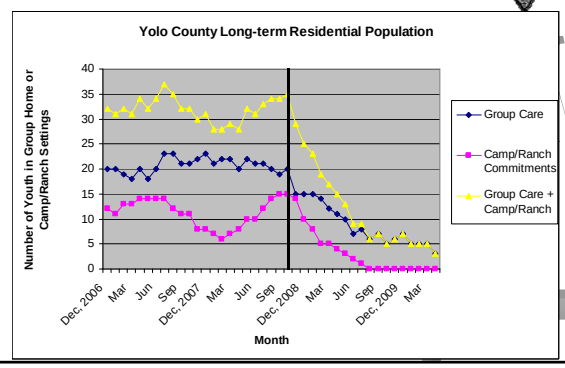
Yolo County Probation



Yolo County Probation



Yolo County Probation



Yolo County Probation

Functional Family Probation (FFP)

- Adaptation of Functional Family Therapy (FFT) for Probation/Parole Officers
- Developed/supported by FFT, Inc.
- Used by WA JRA for all youth leaving residential care on parole
- In CA, used by Yolo County (system-wide) and LA County for youth returning from group care

Yolo County Probation

Functional Family Probation (FFP)

- Uses engagement and motivation skills drawn from FFT
  - Balanced alliance
  - Relentlessness
- In-home meetings
- Referral to interventions
- Work with the family on a relational basis

Yolo County Probation

Within two years of implementing EBP, Yolo…

- Decreased community supervision caseload sizes by 38%
- **Reduced their total juvenile budget expenditures by 16%***

**This reduction is inclusive of all implementation costs and a doubling of the juvenile community treatment (program/intervention) budget.*

San Luis Obispo County Probation Department

Strategic Plan To Implement Evidence Based Practices

Project Launch

San Luis Obispo County Probation Department embarked on a project to develop a strategic plan to implement evidence based practices in November 2009.

- Workgroup formed using a cross section of staff
- Volunteers and chosen employees
- Formal and informal leaders

Likert Study

A study was done to determine the temperature of the agency.

144 staff invited to take survey, 75 completed, 52% response rate

- Strengths
  - Involvement in decision making contributes to motivation
  - Accurate communication with Management
  - Low informal group resistance
  - Management shows confidence in staff
- Challenges
  - Perception that rewards not offered as motivational tool
  - Perception that Management not aware of problems of staff
  - Perception that decision are made at the top of the agency
  - Oversight and quality functions concentrated at the top of the organization

Leadership Retreat

- Management met with Nancy Campbell along with two other counties to discuss the results of the Likert study
- 360 evaluations
- Myers-Briggs Type Indicator

Process

- Force Field Analysis done to determine positive, negative and other forces
- Looked at the Key Themes from the Strategic Planning Group
- Performed a SWOT analysis
- Development of strategic plan matrix

Goal #1

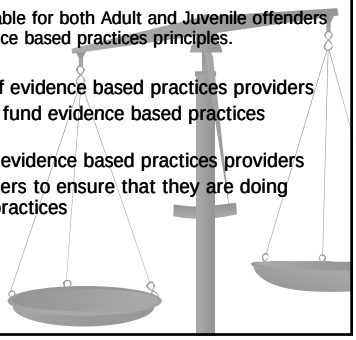
Base supervision decision making for Adult and Juvenile Probation on evidence based practices risk assessment.

- Risk and Needs assessment score for all
- Establish case loads by score
- Re-score and move offenders as criminojenic factors decrease

Goal #2

Treatment is available for both Adult and Juvenile offenders based upon evidence based practices principles.

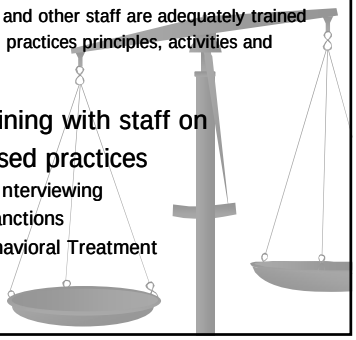
- Establish cadre of evidence based practices providers
- Funding will only fund evidence based practices providers
- Will only refer to evidence based practices providers
- Evaluating providers to ensure that they are doing evidence based practices



Goal #3

Probation officers and other staff are adequately trained in evidence based practices principles, activities and processes.

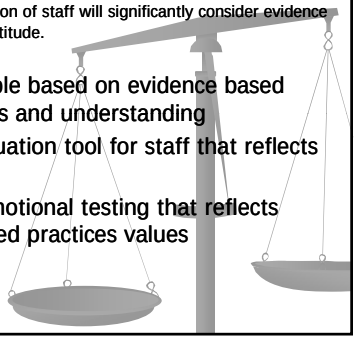
- Increase training with staff on evidence based practices
  - Motivational Interviewing
  - Graduated Sanctions
  - Cognitive Behavioral Treatment



Goal #4

Hiring and promotion of staff will significantly consider evidence based practices aptitude.

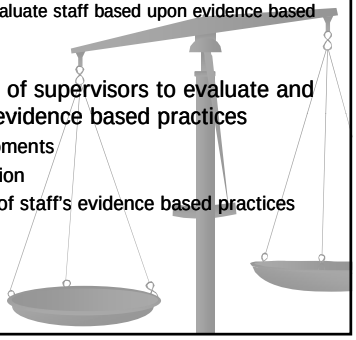
- Will hire people based on evidence based practices skills and understanding
- Develop evaluation tool for staff that reflects these values
- Develop promotional testing that reflects evidence based practices values



Goal #5

Supervise and evaluate staff based upon evidence based practices.

- Develop skills of supervisors to evaluate and train staff in evidence based practices
  - Teaching moments
  - Staff evaluation
  - Assessment of staff's evidence based practices skills



Goal #6

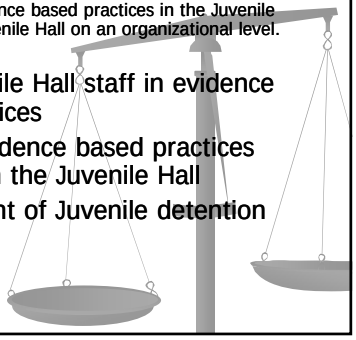
The Department incorporates quality assurance measures in our activities.

- Administration of risk and assessment tool
- Train to proficiency in Motivational Interviewing
- Provide feedback to staff regarding outcomes measurements

Goal #7

Implement evidence based practices in the Juvenile Division and Juvenile Hall on an organizational level.

- Train Juvenile Hall staff in evidence based practices
- Develop evidence based practices programs in the Juvenile Hall
- Development of Juvenile detention alternatives



Goal #8

All Department infrastructure, policies and practice documents, drive evidence based practices.

- Organizational Development is aligned with evidence based practices
- Review of Department policies ensure they are consistent with evidence based practices
- Policies will support evidence based practices

EBP=COMMUNITY SAFETY

Evidence Based Practices = Community Safety

~Erin Norton, Deputy Probation Officer
3/25/1970 - 2/4/2010

"The science behind public safety"

~Gary Joralemon, Adult Division Manager

Imperial County Probation

The EBP Challenge…

Shift Organizational Culture from:

……subjective assessments, treat everyone the same, compliance/enforcement orientation, zero tolerance policies, "catch them doing something wrong", service broker, focus solely on offender, high accountability (public safety)

To:

……objective assessments, differential (individual) case management, behavior change orientation, flexible policies, service broker **AND** provider, focus on offender/engage those around him, "catch them doing something right", high accountability (public safety)

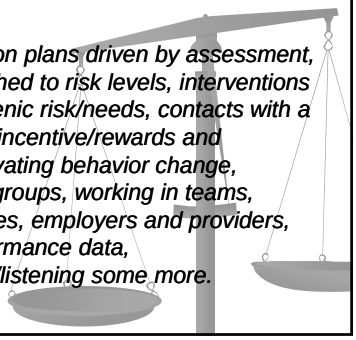
New Look: EBP Compliant Officers

Used to be

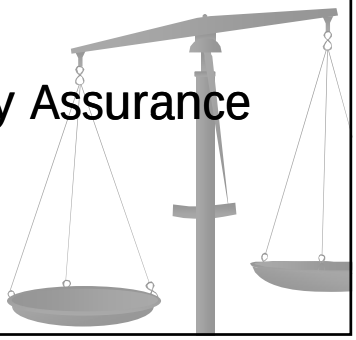
… working solo, counting contacts, reacting, ordering, directing.

Now:

… case/supervision plans driven by assessment, staff skills matched to risk levels, interventions target criminogenic risk/needs, contacts with a purpose, using incentive/rewards and sanctions, motivating behavior change, facilitating cog groups, working in teams, engaging families, employers and providers, analyzing performance data, communicating/listening some more.



Quality Assurance



THURSDAY – JUNE 3, 2010

11:00 am – 12:15 **Workshop Session II**

II.C.

target audience:
attorneys
CASAs
judicial officers
social workers

Collaboration Versus Zealous Advocacy in Dependency Law

All lawyers swear an oath promising to be "zealous advocates" for their clients. But lawyers practicing dependency law are often also asked to be involved in "collaboration" with other counsel, the court, the social services agency, and other stakeholders to work toward resolution of cases and achieve one view of what is best for the child and the family. What is meant by "collaboration", and what is expected of professionals practicing "collaboratively" in dependency court? Where does the line between collaboration and zealous advocacy cross? Are there situations in which the practitioner cannot do both? And how should the practitioner deal with this conflict ethically? This workshop will examine these questions and suggest ways through which these issues can be addressed in our dependency courts.

Learning Objectives:

- Apply the standards of ethics when representing parents.
- Distinguish between a collaborative opportunity and a time to zealously advocate for a client.

Faculty:

- **Hon. Leonard Edwards** (Ret.)
  Judge-in-Residence, Administrative Office of the Courts, Judge of the Superior Court of Santa Clara County
- **Kevin Thurber**
  Executive Director, South Bay Dependency Attorneys for Parents
- **Abigail Roseman**
  Attorney, Private law practice in El Dorado County
- **Berta Mackinnon**
  Public Defender, San Diego County Department of the Alternate Public Defender
- **Gary Seiser**
  Supervising Deputy, Juvenile Dependency Division, San Diego County Office of County Counsel

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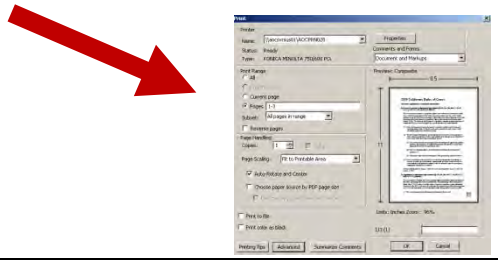

Informal and Nonadversary Atmosphere

The law requires dependency proceedings to be conducted in as informal and nonadversary an atmosphere as possible, except where there is a contested issue of law or fact [Welf. & Inst. Code § 350(a)(1)]. The goal of conducting dependency proceedings in such a manner is to maximize the cooperation of all persons interested in the child's welfare, including the child, in working with the court in any orders it may make in the case, especially in those orders for the care of the child [Welf. & Inst. Code § 350(a)(1)]. Attorneys are still required to represent their clients zealously. But zealous advocacy does not require rudeness or unreasonableness. Further, zealous advocacy in the dependency context includes helping the client to fully understand options, what is realistic, and what is best for the child and family both short term and long term. To this end, mediation programs are encouraged [Welf. & Inst. Code § 350(a)(2)]. Thus, while dependency proceedings often become "adversarial in nature" [In re Kristin H. (1996) 46 Cal. App. 4th 1635, 1662, 54 Cal. Rptr. 2d 722], such is neither the goal of, nor the intention for the system. Even when matters go to a contested hearing, everyone benefits from a professional and balanced demeanor by all participants.

PRACTICE TIP: The Need To Work Together. Although the law is clear that dependency proceedings are to be nonadversary proceedings to the maximum degree possible, the way in which the law is practiced by social services agencies, attorneys and the courts is often much different. In some counties, these various participants merely dislike each other or fail to work well together. In other counties, they appear to be in a constant state of "war." Where such animosities exist everybody suffers, including the children and families the dependency system is designed to serve. While contested hearings are inevitable, they often signify the parties and the court have failed to work together to resolve the matter, consistent with the evidence, in a manner which protects the child while also respecting the needs and desires of the family where appropriate. Resolution rarely requires formal mediation if the participants are reasonable and truly desire to resolve the matter.

The most effective litigants in dependency proceedings, be they on the side of the agency, the child or the parent, are rarely those who consistently draw the hardest line or take the most cases to contested hearings. Instead, they are usually those who work with knowledge, insight, and a spirit of cooperation to achieve realistic and reasonable goals for their clients both inside and outside the courtroom. Litigants who achieve the best result regardless of their role in the proceedings strive to protect the child and to maximize the involvement of the family in decision making and services. Those litigants who focus on problem solving enjoy the greatest likelihood of success and the least degree of hostility. All agencies, attorneys and courts should evaluate their own approach to dependency proceedings in light of these guiding principles.

Seiser & Kumli, California Juvenile Courts Practice and Procedure (2010 ed.) § 2.10[3], pp. 2-23 to 2-24.

Model Rules of Professional Conduct

Client-Lawyer Relationship
Rule 1.1 Competence

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

Rule 1.2 Scope Of Representation And Allocation Of Authority Between Client And Lawyer

(a) Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation. A lawyer shall abide by a client's decision whether to settle a matter. In a criminal case, the lawyer shall abide by the client's decision, after consultation with the lawyer, as to a plea to be entered, whether to waive jury trial and whether the client will testify.

(b) A lawyer's representation of a client, including representation by appointment, does not constitute an endorsement of the client's political, economic, social or moral views or activities.

(c) A lawyer may limit the scope of the representation if the limitation is reasonable under the circumstances and the client gives informed consent.

(d) A lawyer shall not counsel a client to engage, or assist a client, in conduct that the lawyer knows is criminal or fraudulent, but a lawyer may discuss the legal consequences of any proposed course of conduct with a client and may counsel or assist a client to make a good faith effort to determine the validity, scope, meaning or application of the law.

Rule 1.4 Communication

(a) A lawyer shall:

> (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
>
> (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter;

(4) promptly comply with reasonable requests for information; and

(5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.6 Confidentiality Of Information

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to prevent the client from committing a crime or fraud that is reasonably certain to result in substantial injury to the financial interests or property of another and in furtherance of which the client has used or is using the lawyer's services;

(3) to prevent, mitigate or rectify substantial injury to the financial interests or property of another that is reasonably certain to result or has resulted from the client's commission of a crime or fraud in furtherance of which the client has used the lawyer's services;

(4) to secure legal advice about the lawyer's compliance with these Rules;

(5) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved, or to respond to allegations in any proceeding concerning the lawyer's representation of the client; or

(6) to comply with other law or a court order.

Counselor
Rule 2.1 Advisor

In representing a client, a lawyer shall exercise independent professional judgment and render candid advice. In rendering advice, a lawyer may refer not only to law but to other considerations such as moral, economic, social and political factors, that may be relevant to the client's situation.

Advocate
Rule 3.1 Meritorious Claims And Contentions

A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established.

Rule 3.2 Expediting Litigation

A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

Rule 3.3 Candor Toward The Tribunal

(a) A lawyer shall not knowingly:

> (1) make a false statement of fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;
>
> (2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or
>
> (3) offer evidence that the lawyer knows to be false. If a lawyer, the lawyer’s client, or a witness called by the lawyer, has offered material evidence and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

California Business and Professions Code

6068. It is the duty of an attorney to do all of the following:
(a) To support the Constitution and laws of the United States and of this state.
(b) To maintain the respect due to the courts of justice and judicial officers.
(c) To counsel or maintain those actions, proceedings, or defenses only as appear to him or her legal or just, except the defense of a person charged with a public offense.
(d) To employ, for the purpose of maintaining the causes confided to him or her those means only as are consistent with truth, and never to seek to mislead the judge or any judicial officer by an artifice or false statement of fact or law.
(e) To maintain inviolate the confidence, and at every peril to himself or herself to preserve the secrets, of his or her client.
(f) To advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he or she is charged.
(g) Not to encourage either the commencement or the continuance of an action or proceeding from any corrupt motive of passion or interest.
(h) Never to reject, for any consideration personal to himself or herself, the cause of the defenseless or the oppressed.

THURSDAY – JUNE 3, 2010

11:00 am – 12:15 **Workshop Session II**

II.D.

target audience:
attorneys
CASAs
judicial officers
social workers

Courts Catalyzing Change

The National Council of Juvenile and Family Court Judges (NCJFCJ) and the Victims Act Model Courts, in collaboration with Casey Family Programs (CFP) have adopted a national goal to reduce racial disproportionality and disparate treatment in foster care. The Courts Catalyzing Change Initiative (CCC) brings together judicial officers and other systems experts to set a national agenda for court-based training, research, and reform initiatives aimed at reducing the disproportionate representation of children of color in the dependency court system. This session will highlight the goal of this bold and exciting initiative and its progress to date.

Learning Objectives:

- Identify the progress of the CCC Initiative and the national agenda.
- Know how to use associated judicial tools including a newly created bench card.
- Review local and national efforts and strategies to reduce racial disproportionality and disparities in the dependency court system.

Faculty:

- **Hon. Michael Nash**
  Presiding Judge of the Juvenile Court, Superior Court of Los Angeles County
- **Hon. Katherine Lucero**
  Supervising Judge of the Dependency Court, Superior Court of Santa Clara County

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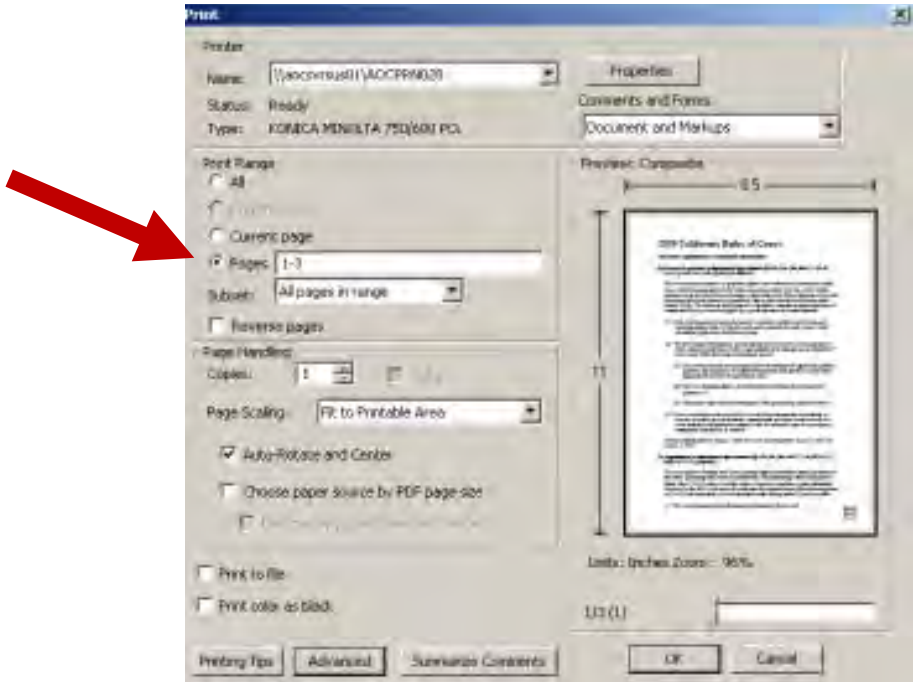


NCJFCJ
NATIONAL COUNCIL OF JUVENILE AND FAMILY COURT JUDGES
est. 1937

casey family programs
fostering families. fostering change.

Courts Catalyzing Change

Putting the Tools to the Test

Beyond the Bench 20: *Collaboration Works!*

Honorable Katherine Lucero, San Jose, CA
Honorable Michael Nash, Los Angeles, CA

Defining the Problem

Disproportionality

a particular racial or ethnic group is represented at a rate or percentage higher than their representation in the general population

Disproportionality in Child Welfare

- African Americans: up to 3.5 times the proportion of general population
- Native Americans: can constitute between 15% to 65% of the children in foster care depending on location
- Hispanic/Latino children may be significantly over-represented based on locality

Defining the Problem

Disparity

unfair or unequal treatment of one racial or ethnic group as compared to another racial or ethnic group

Disparities in Child Welfare

- African Americans: investigated twice as often as Caucasians
- African Americans: 36% more to be placed in foster care
- Caucasian children: permanency outcomes at a higher rate than children of color

Courts Catalyzing Change: Achieving Equity and Fairness in Foster Care

- Casey Family Programs and OJJDP

Mission

- To create a national agenda reduce racial/ethnic disproportionality and disparities for children and families in the dependency court system.

Courts Catalyzing Change Principles

- ***FAMILY INVOLVEMENT***
- ***JUDGES AS LEADERS***
- ***ALLIANCES AND TRUE COLLABORATION***
- ***ELIMINATING INSITUTIONAL AND STRUCTURAL RACISM***

CCC National Agenda

I. Engage stakeholders
II. Transform judicial practice
III. Policy and law advocacy
IV. Research and data
V. Service array and delivery

Benchcard Development

TRANSFORM JUDICIAL PRACTICE

- CCC Steering Committee, Call to Action Workgroup, PPCD Advisory Committee
- Enhancing the *Resource Guidelines*
- Preliminary Protective Hearing

Benchcard Basics

INTERNAL REFLECTION QUESTIONS

Effects of implicit bias,
cultural context, foster care as a last resort

QUESTIONS TO THE PARTIES

Ensure the family's perspective is solicited

Key Focus Areas

- Reasonable efforts to prevent placement
- Minimally adequate standard: foster care is not a place for children to grow up
- Safety threat: what prevents the child from going home today?
- Cultural considerations: unique to each family

Promoting Attendance

- Children in court
- Documentation of notice
- Diligent searches
- Incarcerated parents
- Attendance via phone or video conference

Reviewing the Petition

- Factual information to support any conclusions drawn
- Allegations as to both parents
  - If the petition does not contain allegations against a legal parent or legal guardian, the child should be placed with or returned to that parent or legal guardian unless it is determined that there is a safety threat to the child.

ICWA Determination

- ICWA must be determined as a threshold inquiry
  - *clear and convincing evidence*
  - s**erious emotional or physical damage to the child.** 25 U.S.C. § 1912(e).
- NCJFCJ ICWA Checklist as a resource
  - Placement Preference, Active Efforts, etc.
  - ICWA Inquiry at EVERY hearing

Engaging the Family: The Opening Questions

Race and Cultural Identity

Never assume

Courts are encouraged to ask the family with what race and cultural background they identify

Due Process

- Notice to all parties
- Diligent searches for parents and/or relatives
- In-depth paternity inquiry
- Separate attorneys
- Certified court interpreters

Can the Child Return ***Today?***

- Linked with the safety threat AND the 'Minimally Adequate' standard
- In-Home Safety Plan

Appropriateness of Placement

- Appropriate placement: First/Last
- Kinship Care: first option if available and safe
- Visitation is linked to speedier reunification: Need for supervision

Services, Interventions, Support

- AVOID bumper to bumper check ups
- Individually tailored for the family's needs
- Culturally appropriate
- Evidence-based

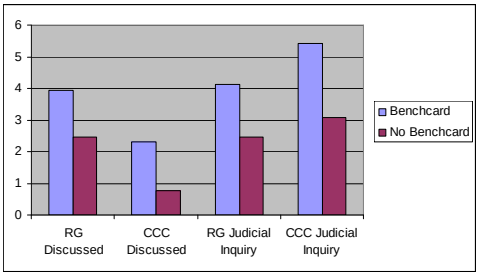
Research Process

- Pilot and Evaluation
- Decision-point analysis by race

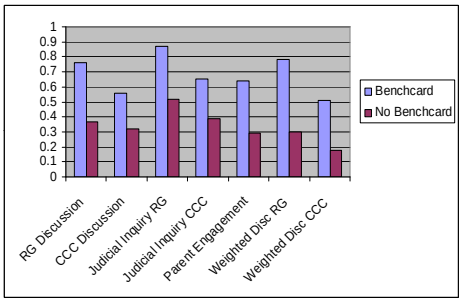
Short-Term Impact
- Longer, more in-depth hearings

Long Term Impact
- Increased equity in placement and services

Increases the Number of Items Discussed



Increases the Amount of Discussion and Judicial Inquiry



Overall Court Observation Findings

- Increase in discussion of RG and CCC Items
- More judicial inquiry leads to greater discussion
- More parental engagement

OUTCOME FINDINGS ANTICIPATED IN MAY, 2010

Courts Catalyzing Change

- For More Information:
  - http://www.ncjfcj.org for details on the CCC Initiative and to sign up for the Courts Catalyzing Change e-newsletter
  - Crystal Soderman, MPA, Model Court Liaison, Permanency Planning for Children Department, National Council of Juvenile and Family Court Judges csoderman@ncjfcj.org or (775) 327-5303

Courts Catalyzing Change:
Achieving Equity and Fairness in Foster Care

Mission

The Courts Catalyzing Change Initiative brings together judicial officers and other child welfare system experts to set a national agenda for court-based training, research, and reform initiatives to reduce the disproportionate representation of children of color in dependency court systems. The Initiative will create and disseminate judicial tools, policy and practice guidelines and associated action plans that dependency court systems can use to reduce disproportionality and disparities for minority children and families. The Initiative will re-evaluate federal, state and local policy and make recommendations for changes or improvements. The Initiative will define and evaluate all decision points in the dependency court system to determine where action can be taken.

National Agenda for Reducing Racial Disproportionality and Disparities in the Dependency Court System

Statement of Principles

- Minority children and families must be an integral part of the planning problem-solving process.
- Judges – as the final arbiters of justice - must be leaders in their communities on the issue of disproportionality and disparity in the child welfare system.
- Broad-based, multidisciplinary alliances and honest collaboration must be formed to effectively and comprehensively reduce disproportionality and disparate treatment.
- Reducing minority overrepresentation in the child welfare system must be linked with a broader effort to eliminate institutional and structural racism
- Accomplishing this mission requires that each judicial leader examine his or her personal beliefs and biases through a comprehensive facilitated process and work to minimize the role he or she plays in perpetuating disproportionality and disparate treatment of families of color.

Key Components

NCJFCJ, Casey and NCJFCJ VAMC Lead Judges will take the lead at the local, state and national level to promote the following Key Components and implement the associated Strategies to reduce disproportionate representation and disparate treatment of children of color in the child welfare system.

I. Engage national, state, local and tribal stakeholders, community partners and children and families
II. Transform judicial practice from the bench
III. Participate in policy and law advocacy
IV. Examine and employ research, data and promising practices
V. Impact service array and delivery

I. ENGAGE NATIONAL, STATE, LOCAL and TRIBAL STAKEHOLDERS, COMMUNITY PARTNERS and CHILDREN and FAMILIES

NCJFCJ & Casey leadership will…

- Take the lead to establish partnerships with national organizations in the field and encourage them to pursue reducing disproportionality and disparities in the child welfare system as a top priority.
- Serve as a clearinghouse for judges and courts nationwide regarding information and activities related to this effort.
- Learn from and build upon the work of other national organizations who have developed successful approaches to reducing the overrepresentation of minority children and families in the child welfare system.
- Reach out to federal policy makers and federal entities to educate, garner support and bring attention to this issue.

NCJFJC VAMC Lead Judges will…

- Engage local and state judicial leaders and court administrators to promote the reduction of disproportionality through action-oriented and solution-driven statewide advisory committees, task forces and educational forums.
- Lead their local community in developing a plan to reduce the disproportionality and disparate treatment of minority children and families in the child welfare system.
- Raise awareness about disproportionality and disparate treatment by communicating with national, state and local media about the pervasiveness of the problem as well as efforts and initiatives to reduce disproportionality and disparate treatment.

II. TRANSFORM JUDICAL PRACTICE

NCJFCJ & Casey Leadership will…

- Re-examine the NCJFCJ *RESOURCE GUIDELINES* through a racial equity lens and develop a specific set of judicial decision-making tools directed at reducing disproportionate representation.
- Develop and promote judicial education, training and guidance on the issue of disproporationality and disparity in the child welfare system.
- Develop formal feedback processes for children, families and other parties and participants involved with child welfare proceedings.

NCJFJC VAMC Lead Judges will…

- Examine personal bias and prejudice to understand and moderate its impact on judicial decision-making.
- Practice and promote principles of therapeutic jurisprudence through family engagement both in court and in the child welfare case planning process.
- Conduct thorough hearings and examine all decisions where disparate treatment may disadvantage children and families of color.
- Commit to training and education regarding disproportionality and disparate treatment for themselves and their colleagues who have jurisdiction over child protection matters.
- Promote the provision of culturally appropriate services.

III. PARTICIPATE IN POLICY & LAW ADVOCACY

NCJFCJ & Casey Leadership will…

- Identify and examine state and federal laws and policies that drive children into the child welfare system in a racially disproportionate manner and identify model laws that combat this problem.
- Seek the active participation of federal lawmakers, administrators and relevant government agencies and departments to develop a cross-systems and collaborative approach to amend laws and policies that perpetuate disproportionality and disparities.
- Work to ensure that CFSR outcomes and performance measures assess disproportionality and disparities in the child welfare system and that program improvement plans (PIPs) require solutions to negative findings in this area.
- Work with HHS to ensure that Court Improvement Projects (CIPs) provide incentives and funding to jurisdictions working to reduce disproportionality and disparate treatment.

NCJFJC VAMC Lead Judges will…

- Seek the active participation of state and local lawmakers and relevant government agencies and departments to develop a cross-systems and collaborative approach to dismantling state and local laws and policies that perpetuate disproportionality and disparity for minority children and families.
- Seek statewide uniform ethical guidelines regarding the judiciary engaging in community advocacy to encourage the judiciary to fully participate as active members of systems and community reform and improvements efforts.
- Promote open child welfare hearings and encourage community members to become aware of the decision-making process.
- Work within their state and jurisdiction to promote retaining judges who have demonstrated expertise and/or who have been trained in disproportionality and disparities in juvenile court and advocate against policies that rotate judges through juvenile court.
- Promote the full scale (hotline to permanency), statewide implementation of Structured Decision Making processes and tools by sharing research that clearly shows the nexus between SDM and the reduction of disporportionality and disparities.

IV. EXAMINE & EMPLOY RESEARCH, DATA & PROMISING PRACTICES

NCJFCJ & Casey Leadership will…

- Promote a multi-disciplinary, multi-level approach to data analysis to ensure a jurisdiction's ability to effectively analyze barriers, challenges, successes and opportunities to reduce disproportionality and disparate treatment of children and families of color in the child welfare system.
- Develop and define measures of well-being, safety and permanency in relationship to reducing disproportionate representation and disparate treatment for minority children and families in the child welfare system.
- Promote uniform use and acceptance of these measures on a local, state and national level (CIP, SANCA, CFSR).
- Identify and answer critical data-related questions about disproportionality and disparities.

- Incorporate information and provide to forums from all organizations for ongoing education and technical assistance to local, state and national leaders and key decision-makers by national research entities that have examined and analyzed data related to disproportionality and disparate treatment.

NCJFJC VAMC Lead Judges will…

- Improve understanding of local child welfare system and court data around the issue of disproportionality and disparate treatment.
- Assess and improve local jurisdictions' capacity to collect and analyze data related to disproportionality and disparate treatment within each child serving entity and within the court system.
- Collect and evaluate data at the case level, by judge and by jurisdiction.
- Create opportunities within own jurisdiction for discussing the meaning of the data and underlying causes of disproportionality and disparate treatment.
- Select outcome measures and develop strategies to improve permanency-related outcomes for children of color in the child welfare system.

V. IMPACT SERVICE ARRAY & DELIVERY

NCJFCJ & Casey Leadership will…

- Collect and disseminate literature and information on promising practices and services that effectively reduce disproportionate representation in the child welfare system.
- Examine the impact of specific services on outcomes for children and families of color.

NCJFJC VAMC Lead Judges will…

- Promote early intervention and prevention approach to service delivery in order to reduce removals and support timely reunification.
- Require culturally competent, linguistically appropriate, effective, high-quality services for children and families of color involved with the child welfare system.
- Encourage communities in their jurisdiction to develop community-based resources and information that are specific to their cultural and community needs.
- Convene Community forums of community members, leaders and service providers to assess service gaps specific to that community and to build capacity among service providers.
- Ensure that quality, appropriateness and effectiveness of services are objectively assessed.
- Recommend termination of contracts that are not effective or are adding to the problem of disproportionate representation.

Courts
Catalyzing
Change

Achieving Equity and Fairness in Foster Care

Model Courts National Agenda Implementation Guide

NCJFCJ
NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES
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OJJDP
Office of Juvenile Justice and
Delinquency Prevention

IMPLEMENTING THE CCC NATIONAL AGENDA

Part I: Getting Started

The *Courts Catalyzing Change: Achieving Equity and Fairness in Foster Care* Initiative (CCC) brings together judicial officers and other systems' experts who have set a National Agenda to reduce the disproportionate representation of and disparate outcomes for children of color in dependency court systems.[1] On October 3, 2007, the Lead Judges of the 29 participating dependency court jurisdictions in NCJFCJ's Model Courts Project determined that reducing racial disproportionality and disparities in child abuse and neglect court systems would be a national goal for all Model Courts and that each Model Court would be expected to implement the CCC National Agenda.

Funded by Casey Family Programs and the OJJDP, the CCC Initiative's mission is to create and disseminate judicial tools, policy and practice guidelines, and associated action plans that jurisdictions can use to reduce disproportionality and disparities for children and families of color on the local, statewide, and national levels. This *Implementation Guide* is the first of a series that is designed to assist Model Court jurisdictions in their implementation of the National Agenda.

National Agenda for Reducing Racial Disproportionality and Disparities in the Dependency Court System

Key Components

I. Engage national, state, local and tribal stakeholders, community partners, and children and families.
II. Transform judicial practice from the bench.
III. Participate in policy and law advocacy.
IV. Examine and employ research, data, and promising practices.
V. Impact service array and delivery.

Step 1: Develop the Collaboration

Before attempting to implement the CCC National Agenda, it is critical to build a collaboration of stakeholders who will bring their constituencies to the table and partner in the court's effort to reduce disproportionality and disparities. Often, the Model Court team is the natural place to start, especially those teams that have agency, advocacy, and community leaders involved. A special committee of a larger collaborative entity can be developed to lead the planning and implementation around the National Agenda. Parents and children who have experienced the system are critical stakeholders that must be involved in the process.

Key Components:

- The Lead Judge should convene the collaborative group.
- All aspects of child welfare and the larger community should be at the table, including representatives from the following: judiciary, agency, advocacy (lay and legal), court administration, community service providers, community advocacy organizations (i.e. NAACP, La Raza, etc.), researchers/universities and funders.
- Parents and children who have experienced the foster care system must be involved in any way the court can to facilitate their voices being heard.
- The invitation to participate in the implementation effort can be written or verbal. It should introduce the CCC initiative as the Model Court national goal and provide additional references and resources about the CCC Initiative.
- Efforts should be made to build the collaborative upon a pre-existing Model Court team structure or other stakeholder collaborative or committee.

[1] To learn more about the CCC Initiative and its development please visit http://www.ncjfcj.org/content/blogcategory/447/580/.

YOUR MODEL COURT LIAISON CAN:

- Advise about which individuals and entities from the jurisdiction should be invited to collaborate in implementing the National Agenda.
- Assist in strategizing about the most effective way to ensure key people are brought into the collaborative.
- Investigate and/or advise about other relevant collaborative groups that may exist in the jurisdiction or at the state level.
- Link the Lead Judge with other collaborations or groups working on this issue.
- Connect local judicial leaders with key individuals at the state level to investigate statewide efforts to reduce disproportionality and disparities.
- Facilitate linkages between the court and local or state researchers or universities.

Step 2: Host an Informational and Information-Sharing Meeting

Once the Lead Judge has identified the key stakeholders, entities, and individuals for the collaborative and has invited those individuals to be the driving force of the jurisdiction's work to reduce disproportionalities and disparities, the Lead Judge should host an informational meeting. The purpose of the meeting is to explain the CCC Initiative and National Agenda and to give an overview of data demonstrating disproportionality rates in your jurisdiction. The meeting can also be an opportunity for invitees to share their organization's activities related to this issue.

KEY COMPONENTS:

- A clear agenda for the meeting that includes desired outcomes of the meeting and the purpose of the collaborative.
- The National Agenda and key publications (such as the TODAY magazine article and/or the Race Equity Scorecard) should be made available.
- The agenda should include an overview of the CCC Initiative and National Agenda, data regarding disproportionality nationally and locally (if available), and time for the group to discuss other efforts locally and statewide to reduce disproportionalities and disparities.
- Discussion of the next steps in the National Agenda implementation planning process.

YOUR MODEL COURT LIAISON CAN:

- Develop the agenda in partnership with the Model Court team.
- Provide reference materials from the NCJFCJ, PPCD, and other organizations, including the Race Equity Scorecard.
- Present about CCC and the National Agenda at the meeting.
- Facilitate a discussion at the meeting.
- Provide a perspective about implementation of the CCC Initiative at the local, statewide, and national level.

Step 3: Initiate a 'Courageous Conversation' about Institutional and Structural Racism

This step involves a training or facilitated dialogue with key stakeholders aimed at gaining awareness and understanding about the context within which disproportionalities and disparities emerged, and continue to exist, in the child welfare system. It is essential that this 'courageous conversation' occur *before* your jurisdiction proceeds with further planning to implement the National Agenda. Through the process of examining the history of institutional and structural racism, each individual involved in the collaborative will be asked to examine his/her own biases and belief systems. This conversation can take a variety of forms; however, it must be facilitated by an expert on the issue. Additionally, a 'safe space' must be created for people to speak openly about their thoughts, feelings, and experiences with racism and bias.

KEY COMPONENTS:

- The history of structural and institutional racism should be the framework for understanding the problem of disproportionalities and disparities in the child welfare system.
- An expert must facilitate and be involved with planning the training.
- The room should be comfortable and private and the setup should encourage discussion.
- Ground rules for interactions should be clearly laid out.
- The Lead Judge should set the tone of the day and make clear that this is the beginning of the jurisdiction's conversation about race, not the end, and that there will be future opportunities for ongoing discussion (see Step 5).
- The Model Court Liaison should be involved in all planning and implementation of this step.

YOUR MODEL COURT LIAISON CAN:

- Analyze and assess the current status and determine the type of training that would best fit the needs and dynamics of your jurisdiction.
- Connect your group with the right expert presenter/facilitator for your jurisdiction.
- Provide funding through the PPCD to bring the expert in for the day and serve as a liaison between your jurisdiction and the expert. The jurisdiction may need to provide funds as well, depending on the number of attendees.
- Facilitate the development of the training agenda, including consultations between judicial leaders and the expert.
- Provide a perspective about 'courageous conversations' in other jurisdictions, including planning for dealing with challenges and barriers that may arise.
- Develop training evaluations and feedback opportunities.

DISPROPORTIONALITY – the difference in the percentage of children of a racial or ethnic group in a population as compared to the percentage of children of the same racial or ethnic group in the child welfare system.

DISPARITY – unfair or unequal treatment of one racial or ethnic group as compared to another racial or ethnic group.

Step 4: Develop A Strategic Plan

After initiating a 'courageous conversation' about structural and institutional racism in your jurisdiction, the Model Court Lead Judge should work with his/her Model Court Liaison and Model Court team to develop a CCC Initiative Strategic Plan. The PPCD has tools and resources to guide this process. Although an action plan should be developed for each of the National Agenda items, not all jurisdictions will be in a position to take on the entire agenda at once. Through the strategic planning process, each site should assess their jurisdiction's strengths and opportunities, and prioritize the implementation process.

KEY COMPONENTS:

- Discuss and document your jurisdiction's priorities, strategies, actions and a timeline for implementing the National Agenda.
- Strategic Planning should be a group process involving members of the CCC Initiative collaborative and facilitated by someone outside of the collaborative (i.e. your Model Court Liaison).
- Set attainable goals that are linked to specific timelines and activities.
- The planning process may take several meetings and will require the Lead Judge to keep pushing the group forward.

YOUR MODEL COURT LIAISON CAN:

- Coordinate pre-meeting planning by gathering necessary information, working collaboratively to develop an agenda or obtaining a facilitator if necessary.
- Provide forms and tools for use at or before the meeting.
- Identify connections between CCC activities and other work being undertaken within the jurisdiction (for example: if the court is developing or revising a data tracking system – the Liaison will identify this as an area that connects and should be coordinated with the National Agenda item to track data).
- Identify linkages and natural overlaps between the jurisdiction's other Model Court goals and the National Agenda.
- Facilitate the Strategic Planning meeting and/or record and track information shared at the meeting.
- Finalize the Strategic Plan with the Model Court leadership team.

Step 5: Follow Up and Follow Through

The Model Court jurisdictions that have had the most success in implementing the National Agenda ensure that their collaborative group meets on a regular basis to review progress on the Strategic Plan and to continue discussing racial inequities and disproportionality in the child welfare system. Such ongoing meetings allow these sites to stay on task with implementing their action plan to reduce disproportionalities and disparities, review data and modify plans as needed. Opportunities for ongoing conversation about race in a variety of forums is essential in keeping the lines of communication open, and to maintain the jurisdiction's focus on the ultimate goal of reducing disproportionalities and disparities.

KEY COMPONENTS:

- The Lead Judge should host monthly or quarterly meetings with the members of the CCC collaborative.
- Meeting agendas should focus on National Agenda items or strategies currently being implemented as well as those that are in the Strategic Plan but have not yet begun.
- The Lead Judge, or his/her designee, should ensure that the conversation about structural and institutional racism continues past the initial training by developing regular workshops or discussions that encourage multiple stakeholders to attend (i.e. offer CLEs, hold them at lunchtime at the courthouse, etc.).
- Form partnerships with local and state level public and private funders (i.e. Court Improvement Project, Community Foundations, etc.)

YOUR MODEL COURT LIAISON CAN:

- Assist with tracking progress on the Strategic Plan and offer recommendations when barriers to implementation are encountered.
- Develop a plan for a 'brown bag' series in collaboration with local leadership to keep the conversation about reducing disproportionality moving forward.
- Provide cutting edge information, research, and publications to guide the conversation and answer questions.
- Link the jurisdiction with the PPCD research department if a need arises for further investigation or information on a topic.
- Connect jurisdictions with local and national speakers to facilitate the ongoing conversation about race.

RECOMMENDATIONS FOR SUCCESSFUL IMPLEMENTATION

- Think broadly about who to involve in the implementation process.
- Embrace the National Agenda boldly on multiple levels.
- Do not let a lack of data delay getting started with implementation efforts. The process is not about collecting data.
- Connect with a researcher or university early in the planning process.
- Think BIG and explore rolling-out implementation at the state level.
- Take full advantage of the expertise and resources offered by PPCD and the Model Court Liaisons.

IMPLEMENTATION HIGHLIGHTS

The following Model Court reports highlight a variety of ways to begin implementation of the National Agenda. The key is to get started, keep moving forward with implementation, and continue to engage partners and work collaboratively at all levels.

Los Angeles, CA

► Developed a task force to address disproportionality and disparate treatment of children and families of color co-chaired by the Lead Judge and head of the child welfare agency (DCFS).

► Provided a four-hour training for 40 participants focused on the video "Race: The Power of an Illusion" facilitated by an expert. Attendees included 22 judicial officers, attorneys, and the leadership of DCFS.

► Developed a collaboration with Dr. Barbara Needel from UC Berkeley to review and discuss the data as it relates to specific decision points.

► Two weeks after initial training, stakeholders were brought together to form a Policy Work Group that has developed a plan for reducing disproportionality.

► The Policy Work Group meets regularly and is guided by purposeful meeting agendas.

Portland, OR

► Began at the state level with a statewide conference to explore bias in decision-making. The conference involved 350 stakeholders, including the Chief Justice, juvenile court judges from around the state, attorneys, and social workers as well as representatives from the law enforcement, juvenile justice and education systems.

► The Portland court and system partners formed two committees to specifically work on the National Agenda. One committee is focused on strategic planning to implement CCC and one is working on training for child welfare workers.

► Six months after the statewide conference, a similar training was held in Portland to continue the conversation and further improve practice to reduce disproportionality and disparities.

► The Governor formed a statewide task force to work on this issue and the Presiding Judge from Portland is the judicial representative.

Charlotte, NC

► Has been working on implementation for a number of years and has had multiple trainings and conversations about race. The Lead Judge has emerged as a local, state, and national leader and speaker on reducing disproportionalities and disparities.

► Developed a Juvenile Judges Partnership that meets regularly and is working to implement the National Agenda.

► As part of its ongoing conversation about race, hosted a full-day training for the community, court partners, and staff centered around the "Race: The Power of an Illusion" video and the "Race Matters" curricula. Similar trainings and discussions were held early on in the implementation process.

► Has collaborated with the North Carolina Court Improvement Project and Family Court Committee and has been supported by the NCJFCJ and the North Carolina Chief Justice to develop and implement a statewide initiative to reduce disproportionalities and disparities.

Essex County, NJ

► Is a key partner in the statewide kickoff of the CCC Initiative that involves a presentation on implicit bias, an overview of the data, and a local and national perspective on the problem of disproportionality and disparities.

► The initial training will include time for strategic planning about implementation of the National Agenda.

Omaha, NE

► Most stakeholders in this jurisdiction have participated in a training on cultural competence provided by the co-Lead Judge who is trained to provide such training.

► This site is now planning a training specifically covering structural racism for approximately 100 stakeholders including all juvenile judges, court staff, Model Court team members, child welfare agency leaders and others.

► A strategic planning session will take place at some point soon after the training to discuss local implementation of the National Agenda.

NATIONAL COUNCIL OF
JUVENILE AND FAMILY COURT JUDGES

est. 1937

Permanency Planning for Children Department
P.O. Box 8970, Reno, Nevada 89507
www.ncjfcj.org

THURSDAY – JUNE 3, 2010

11:00 am – 12:15 **Workshop Session II**

II.E.

target audience:
attorneys
CASAs
judicial officers
probation officers
social workers

Dependency Legal Update

This session summarizes 2009 legislation, rules of court, and Judicial Council forms relevant to dependency and provides an overview of significant appellate and Supreme Court cases.

Learning Objectives:

- Analyze recent legislation, rules of court, and new forms relevant to dependency practice.
- Identify significant new case law in dependency.

Faculty:

- **Hon. Jacqueline Lewis**
  Commissioner, Superior Court of Los Angeles County
- **Hon. Anthony Trendacosta**
  Commissioner, Superior Court of Los Angeles County

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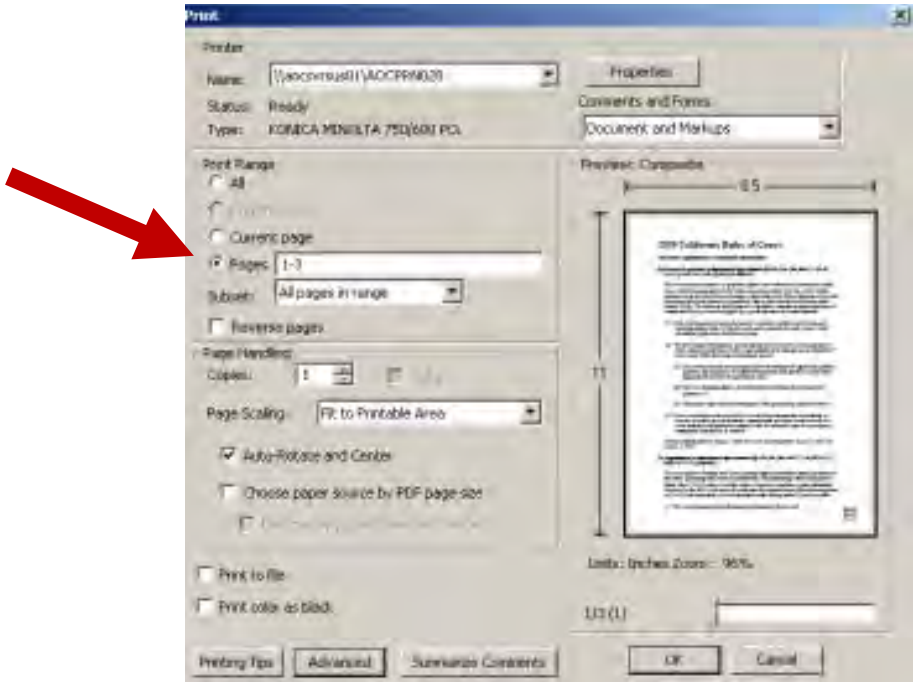

In re Adam D. et al (3/30/10)
Second Appellate Dist, Division Three

Issue

Does an order for informal supervision entered under Welfare and Institutions Code §360(b) deprive the appellate court of jurisdiction to address issues of whether substantial evidence support the sustained petition as raised by the parents? Good discussion of WIC 360(b).

Facts

In May 2009, the Agency detained the five and a half month old child, Amy, who weighed only 10 pounds. The normal weight for a child that age was 16 pounds. The baby had not received recent immunizations. The Emergency Room doctor diagnosed the baby with failure to thrive with dehydration and admitted the baby to the pediatric unit. The baby's siblings were also detained because they had fallen behind on their immunizations as well. One Dr. believed that Amy's failure to thrive was due to a low calorie intake because the mother didn't have enough breast-feeding knowledge. The three oldest children were released to the parents one week after their detention. After a multi-disciplinary assessment of Amy, the doctor concluded that Amy did not suffer from failure to thrive syndrome but her low weight was based on the parent's lack of knowledge. Two months after detention, the trial court released Amy (who was now 17 pounds) to her parents with numerous conditions. After the release of all the children, the social worker noted that the parents had not participated in counseling and were resistant to family preservation services. At the adjudication, the court sustained two counts indicating that Amy was dehydrated due to being underfed and undernourished and being fed an inadequate dies which was neglectful by her parents and that the parents failed to obtain necessary medical care for Amy's lack of weight gain and dehydration. At disposition, the juvenile court found Amy was a person described under WIC 300(b) and then ordered the case "dismissed" under §360(b). The parents appealed.

Holding

The appellate court held that an order for informal supervision is tantamount to a disposition which is an appealable order. In explaining WIC §360(b) the appellate court stated "the court may also determine on its own or following a request by one of the parties that even though it has jurisdiction, the child is placed in the home, and the family is cooperative and able to work with the social services department in a program of informal services without court supervision that can be successfully completed within 6 to 12 months and which does not place the child at an unacceptable level of risk. In such cases the court may order informal services and supervision by the social services department *instead of* declaring the child a dependent. If informal supervision is ordered pursuant to WIC §360(b), the court 'has no authority to take any further role in overseeing the services or the family unless the matter is brought back before the court' pursuant to WIC §360(c)."

"If the court agrees to or orders a program of informal supervision, it does not dismiss the dependency petition or otherwise set it aside. The true finding of jurisdiction remains. It is only the dispositional alternative of declaring the child a dependent that is not made."

Therefore if a family is unwilling or unable to cooperate with the services provided by the social worker, the agency can institute proceedings pursuant to WIC 332 alleging that a previous petition has been sustained and that informal supervision was ineffective (WIC 360(c)). After hearing that petition, the court may either dismiss it or order a new disposition hearing…

The appellate court found that as to the sufficiency of the evidence, the fact that Amy was seriously underweight and developmentally delayed, and mother and father's refusal to acknowledge her medical condition or accept any responsibility for it was sufficient to support the jurisdictional findings.

A.H. v. Superior Court (3/11/2010)
182 Cal. App. 4th 1050
Fourth Appellate District, Division Three

Issue:

In deciding whether to terminate reunification services, how is the trial court to "harmonize" W and I Code § 361.5(a)(2) requiring the court to take into consideration barriers to reunification due to incarceration, with 366.21(g)(1) requiring the court to make a finding of the substantial probability of return without reference to its application to incarcerated parents.

Facts:

Father has four children. From the time of detention to jurisdiction/disposition, father was in and out of custody. While out of custody, father and the mother were living in deplorable conditions, he was testing positive for drugs, he continued to engage in criminal activity and was associating with gang members. He also failed to comply with the case plan. At jurisdiction/disposition, he was again incarcerated pending trial on numerous criminal charges. Reunification services were ordered, including visits while incarcerated. During the first six months, the children visited him in jail and the visits were appropriate. The Social worker gave him a parenting work book, which he completed, but there were no other services available to him.

At the 366.21(e) the agency reported that although father was cooperative while incarcerated, he was not when he was out of custody. The agency recommended six more months of reunification to determine if father was truly motivated to reunify and comply with the case plan while out of custody.

At the 366.21(f) hearing, the agency recommend termination of FR in that father had not shown he was able to comply while out of custody and he could not show a substantial probability of return of the children in that father would be able to obtain a job and provide a safe home for the children once released. The trial court terminated FR and set a 366.26 hearing. Father appealed.

Holding:

Writ denied. Section 361.5(a)(2) applies to a parent who is incarcerated and requires the court to take into account the special circumstances of an incarcerated parent. In those situations, the court may extend reunification services for an additional six months. However, 366.21(g) requires the court to find: (A) that the parent has consistently and regularly visited; (B) that the parent has made significant progress in resolving the problems which led to removal; and (C) has demonstrated the capacity to both complete the case plan and provide for the safety and well being of the children.

Father argued that 366.21(g) is incompatible with the recently enacted incarcerated parent amendments and should never apply to an incarcerated parent because that parent could never comply with 366.21(g).

The Court of Appeal disagreed. There is no reason to infer from the current statutory scheme the legislature intended to toll timelines, or automatically extend reunification services to 18 or 24 months for incarcerated parents. To the contrary, the statutory provisions calling for special considerations do not suggest the incarcerated parent should be given a free pass on compliance with his/her service plan or visits. That there are barriers unique to incarcerated parents is but one of many factors the court must take into consideration when deciding how to proceed in the best interest of the dependent child.

The Court reasoned that dependency provisions must be construed with reference to the whole system of dependency law, so that all parts are harmonized. (In re David H. 33 cal.app.4th 368).

(Note: Suggest you read the whole decision. It is the best and most concise discussion of the reunification time frames and the effect of incarcerated parents amendments on the reunification scheme.)

In re Anna S. (1/15/10)
180 Cal. App. 4th 1489
Fourth District, Division One

Issue

May the trial court rely on a Court of Appeal decision before the remittitur issues to shape the outcome of ongoing proceedings in the same case.

Facts

11/05 minors removed from parent's custody
3/07 HOPs
6/07 Removed again
9/08 at .26, §388 granted and HOP(mother)
1/09 attorney for minor files §388 seeking removal
Without detaining, court sets this §388 for hearing on 3/09

Meanwhile

3/13/09 Court of Appeal reverses the 9/08 decision granting mo's §388
3/20/09 Trial court detained minor based on Court of Appeal decision and NOT on minor's §388, which had been continued for further hearing.

Holding

Trial Court cannot use the non-final appellate decision to influence the outcome of the matter before it.

Trial Court IS authorized to continue to decide issues concerning child's placement and well-being during the pendency of the appeal – BUT: decision must be based on current evidence and the law and NOT on the anticipated appellate decision.

In re Andrew A. (3/30/10)
Fourth Appellate District, Division One

Issue

Did the trial court have the legal authority to entertain mother's motion for reconsideration of its jurisdictional finding and dismiss the petition prior to disposition?

Facts

- Mother, with history of scoliosis, learning disabilities, bi-polar, schizophrenia and multiple personalities, gave birth to Andrew in June 2009.
- After working with mother and her sister, Agency files a petition on July 1 alleging that mother is unable to provide regular care for the child due to her physical limitations and developmental disability.
- At a continued detention hearing 5 days later, the mother waived her trial rights and pled no contest to a three count petition with the agreement that the child would be placed with her. The court accepted the mother's no contest plea and waiver of rights and continued the matter for disposition.
- Less than a month later and prior to the disposition hearing, the Agency filed a 342 petition and redetained Andrew.
- At the jurisdictional hearing for the 342 petition, the trial court dismissed the 342 petition.
- The trial court then, after an 18 minute break, dismissed the original 300 petition based on mother's motion for reconsideration of its jurisdictional finding.
- This appeal ensued.

Holding

The appellate court concluded on two separate grounds that the juvenile court lacked the authority to reconsider its jurisdictional finding: (1) Mother's plea of no contest barred her from bringing a motion for reconsideration; and (2) the juvenile court was barred from reconsidering its jurisdictional finding at the hearing on the section 342 petition because the parties were not provided with prior notice that the issue would be addressed at the hearing.

The appellate court states that "a plea of 'no contest' to allegations under section 300 at a jurisdictional hearing admits all matters essential to the court's jurisdiction over the minor." Like the act of filing an appeal of a jurisdictional finding for insufficiency of the evidence, the act of making a motion for reconsideration of a jurisdictional finding serves to *contest* that finding, which is an action inconsistent with a plea of no contest. The mother could have filed a motion to set aside her no contest pleas and made a showing of circumstances that rendered the plea involuntary or unknowing but a motion for reconsideration was the wrong vehicle.

In addition, neither the Agency nor the child was provided prior notice (18 minutes is not notice) that a motion for reconsideration was going to be considered at the hearing and therefore it was improper for the trial court to hear it on that date even if it was the correct vehicle.

Finally, the appellate court noted that a juvenile court may, at a disposition hearing, dismiss the petition on whatever valid grounds it finds to be applicable. However, this hearing was clearly not a disposition hearing on the section 300 petition.

In re Andy G. (4/20/10)
Second Appellate District, Division Eight

Issue

Did sufficient evidence support the trial court's finding that father's 2 ½ year old son was at risk of being sexually abused by his father when the court found that the father had molested his girlfriend's two daughters?

Facts

The trial court found that the father if Andy had molested two of his girlfriend's girls when he fondled Maria's breast and Janet's vagina, exposed his penis and exposed Maria to a pornographic movie and masturbated in her presence. One of the times that father exposed himself to Janet, Andy was in the same room although he wasn't watching and in fact the father had asked Janet to take Andy to the store and then asked her to approach the bed to get the money when he exposed himself to her. The court found the girls credible and found that Andy was "at risk of physical and emotional harm, damage, sexual abuse, danger and failure to protect under WIC 300 (b)(d)&(j). The trial court removed Andy from father's custody and ordered the father to participate in sex abuse counseling amongst other things. Father appealed.

Holding

The court examined three of the cases that address risk to the male sibling of a sexually abused female sibling. (In re Rubisela E.(2000) 85 Cal.App.4th 177, In re Karen R.(2001) 95 Cal.App.4th 84 and In re P.A.(2006) 144 Cal.App.4th 1339.) This appellate court agreed with the court in P.A. and reiterated that "aberrant sexual behavior by a parent places the victim's siblings who remain in the home at risk of aberrant sexual behavior". The only difference between this case and P.A. was the fact that Andy was only two and one-half years old at the time of the court's orders, so he was not "approaching the age at which [his sisters] were abused (age 11). However, the appellate court noted that while Andy may have been too young to be cognizant of father's behavior, the father exposed himself to Janet while Andy was in the same room and in fact used Andy to get Janet to approach him so that he could expose himself to her. "This evinces, at best, a total lack of concern for whether Andy might observe his aberrant sexual behavior."

The appellant court held that substantial evidence support the juvenile court's jurisdictional findings and dispositional orders.

In re Christopher C (2/2/10)
182 Cal.App.4th 73
Second District, Division Four

Issue:

1) Does a party forfeit the right to appeal the issue that the petition failed to state a cause of action if that party fails to object, demur and/or waived notice of the trial court's proposed amendments to conform to proof;

2) Are there circumstances where the trial court may make jurisdictional findings under 300(b) and (c) that the extent and nature of a family law dispute places the children at risk of physical or emotional harm?

Facts:

The mother and father in this case have seven children, including a set of twins and a set of quadruplets. Since 2000, there have been over thirty (30) referrals to the Department (DCFS), three of which led to voluntary maintenance agreements and one to a 300 filing in 2004. The parents have also been in and out of family law courts for years on various contested issues related to the children. The current filing in 2008 resulted from referrals alleging, *inter alia*, sexual abuse by the father, inappropriate sexual contact amongst the siblings, as well as physical abuse by the mother. The social worker and the police officers investigating the various allegations were confronted with a series of wildly inconsistent statements some of which occurred within the same interview. The police investigators opined that the children alleging sexual abuse were coached by the mother and the Dependency Investigator (DI) noted that it was difficult to tell which if any of the allegations were true. The DI did note that the ongoing "bitter custody battle" over the last eight years had an obvious emotional effect on the children.

During the course of the jurisdictional hearing and after some of the children had testified, the trial court conferred with counsel and advised that the court's tentative was to amend the petition to conform to proof: "that there exists a severe dysfunction within this family resulting in an ongoing and severe family law conflict, resulting in cross-allegations of sexual abuse, physical abuse [and] 'coaching' and there also exists evidence of the failure of the mother and father to properly supervise the children, all of which places the children at risk of serious physical and emotional harm." Counsel and the parties were willing to submit on the court's tentative. At that point the trial court asked all parties if they would stipulate to the court conforming the petition consistent with its findings and to waive any notice as to the petition as amended. All parties stipulated. The court then made its orders.

Father appealed, alleging that the petition as amended failed to state a cause of action and that there was no proof that the parents actions placed the children at risk.

Holding

Affirmed. The Court of Appeal found that by failing to object or demur and by stipulating to waiver of notice to the amendments, the father forfeited his right to appeal. Although there is one case that supports father's position based upon the Code of Civil Procedure § 430.80, the C of A noted that the greater weight of authority finds that the application of the CCP in this instance is inconsistent with the dependency scheme regarding the expeditious resolution of dependency matters. Enforcing the forfeiture rule forces the parties to promptly resolve all issues at the earliest opportunity for the best interests of the children.

The C of A also found there was overwhelming evidence that the children were suffering as a result of the parents ongoing "tug-of-war" for the children's affections. The gauntlet these children endured from the numerous referrals, interviews, medical examinations, "psychological" warfare and testimony in court "cannot help but subject the children to a substantial risk of emotional harm" within the parameters of 300(c).

Thus, two points are clear from this case:

1) When conforming to proof, the trial court should make the appropriate record eliciting waivers and stipulations; or, in the alternative, the parties must raise these objections in the trial court or they are forfeit; and,

2) Although the general rule that "[t]he juvenile courts must not become a battleground by which family law war is waged by other means" (*In re John W.* 41 Cal.App.4th 961) there are situations where juvenile court intervention is necessary.

In re Desiree M. (1/26/10)
181 Cal. App. 4th 329
4th District, Division One

Issue:

The mother does not have standing on appeal to challenge the judicial officer's failure to address notice to the children and failure to inquire about the absence of the children at a continued 366.26 hearing.

Facts:

Notice was proper at the first 366.26 hearing. The children were not present but they were represented by counsel. The matter was continued two months. At the next 366.26 hearing the children were not present. The Court found that notice had been made and preserved. The Court did not inquire regarding the absence of the children. The Court terminated parental rights.

The mother appeals, contending that the children were not properly noticed and the Court did not inquire as to the reason for their absence.

Holding:

The Court of Appeal affirmed the trial Court. (1) The mother did not raise the issue at the trial level, (2) the mother did not have standing to raise the issue on appeal (this is different from asserting the sibling relationship exception) and the children did not appeal, (3) the Court could infer notice since counsel was present at the properly noticed first hearing and remained silent when the second notice finding was made by the Court, and (4) any error in failing to inquire of the children's absence was harmless.

Note: *WIC 349(d) and WIC 366.26(h)(2) require the Court to determine whether a child over 10 was properly noticed, inquire whether the child was given an opportunity to attend, and inquire why the child is not present. WIC 349(d): "If that minor was not properly notified or if he or she wished to be present and was not given an opportunity to be present, the court shall continue the hearing to allow the minor to be present unless the court finds that it is in the best interest of the minor not to continue the hearing."*

In re E.B. (4/9/10)
Second Appellate District, Division One

Issue

Did the fact that mother was the victim of domestic violence mean that nothing she did or is likely to do endangers the children?

Facts

After a trial, the juvenile court sustained allegations that the mother had an alcohol problem and that both parents' conduct in domestic "altercations" endangers the children's physical and emotional health. The court also sustained allegations against the father regarding sexual abuse of the daughter and physical abuse of the children among other things. The children remained with their mother at disposition. Mother appealed everything other than the children remaining with her.

Holding

The appellate court held that "mother's remaining in the abusive relationship, and her record of returning to Father despite being abused by him, supports the juvenile court's finding that her conduct in the domestic violence altercations endangered the children."

The court noted that a prior court in Heather A (1996) 52 Cal.App.4th 183 stated that "domestic violence in the same household where children are living… is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it." The court went on to cite from Heather A stating that children can be "put in a position of physical danger from [spousal] violence" because "for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg…"

The appellate court goes on to cite from various cases and articles regarding domestic violence, the many ways a child can be adversely affected from domestic violence in their home including "studies show that violence by one parent against another harms children **even if they do not witness it**." {Cahn, *Civil Images of Battered Women: the Impact of Domestic Violence on Child Custody Decisions* (1991) 44 Vand.L.Rev. 1041) That article goes on to say "first, children of these relationships appear more likely to experience physical harm from both parents than children of relationships without woman abuse. Second, even if they are not physically harmed, children suffer enormously from simply witnessing the violence between their parents… Third, children of abusive fathers are likely to be physically abused themselves."

The appellate court believes that father's past violent behavior toward the mother is an ongoing concern. "Past violent behavior in a relationship is 'the best predictor of future violence.' Studies demonstrate that once violence occurs in a relationship, the use of force will reoccur in 63% of those relationships… Even if a batterer moves on to another relationship, he will continue to use

physical force as a means of controlling his new partner." (Comment, *Beating Again and Again and Again: Why Washington Needs a New Rule of Evidence Admitting Prior Acts of Domestic Violence* (2000) 75 Wash.L.Rev. 973)

In this case, the appellate court noted that the facts that mother admitted to the Agency that the father abused her emotionally and physically, the latter within hearing of the children, that when father berated mother after the daughter was born, the mother would sometimes leave but she always returned when he apologized and that after he struck her four times and the children heard her screaming, she stayed with him another 7 months, was substantial evidence to sustain the 300(b) allegation that mother's conduct in the domestic altercations endangered the children.

In re E.O. (3/3/10)
182 Cal. App. 4th 722
First Appellate District, Division Five

Issue

Once a paternity judgment is entered, does that equate to presumed father status?

Facts

The two children in this case were 14 and 7 years old when the petition was filed. Their biological father had no contact with the children until about three months prior to the petition filing. The father had never lived with the mother. He had learned that the older child was his several years after she was born when he dated mother for a year. He did not establish a relationship with the girls at that time because he thought he was unable to visit the girls because he hadn't paid child support. In 2002, a judgment of paternity was entered finding him to be the father of both children and stating that he had the obligation to pay child support. Although he asked the dependency court for presumed father status, the trial court denied his request concerned that he was aware of the childrens' existence but had done nothing to establish a relationship with the children.

Holding

The appellate court held that a paternity judgment, as the name implies, is a judicial determination that a parent child relationship exists. It is designed primarily to settle questions of biology and provides the foundation for an order that the father provide financial support. Presumed father status, by contrast, is concerned with a different issue: whether a man has promptly come forward and demonstrated his full commitment to his parental responsibilities – emotional, financial and otherwise. They do not equate.

In this case, although a judgment of paternity had been entered, it was only to establish child support and did not rise to the requirements necessary to establish presumed father status as defined in FC §7611.

In re G.M. (1/27/10)
181 Cal. App. 4th 552
Fifth Appellate District

Issue: Whether legal impediment evidence is relevant and therefore admissible when the social worker's opinion that the child is likely to be adopted is based in part on the identified prospective adoptive parent's willingness to adopt?

Facts: G. (eight years old) and L. (six years old) had been in and out of foster care since 2004 due mostly to mother's drug abuse. After reunification failed, a first 366.26 hearing was held in January 2008. At that hearing it was determined that Long Term Foster Care was the appropriate permanent plan, mostly because the relative caregiver was not able to commit to a plan of adoption. It was also determined at the first .26 hearing that termination of parental rights would be detrimental to the children. She was visiting regularly and other siblings who were older objected to termination because it would interfere with sibling relationships. An adoption assessment was never ordered.

Months later the Department filed a 388 petition asking that another 366.26 hearing be held. A department panel had determined that a plan of adoption would be in the children's best interest. The children now wished to be adopted by their caretaker who was also their great-aunt. The great aunt had also decided she was willing to adopt. Further it was determined that the mother no longer had a strong bond with the children and all but one of the older siblings was now in agreement with adoption.

Mother filed a statement of contested issues prior to the second .26 hearing. She questioned whether the department had assessed the aunt's marital status. She contended that the aunt was separated from her husband and not divorced. She stated that the department had not properly evaluated the prospective adoptive parent's lifestyle. The trial court did not allow questions pertaining to the aunt's lifestyle, agreeing with the department that it was not a proper issue for trial.

Holding: Affirmed. Mother never raised the legal impediment to the adoption at trial. She only raised the aunt's "lifestyle" and not the impediment of spousal waiver. Evidence of the legal impediment to adoption is relevant at a 366.26 hearing when it is the social worker's opinion that the children were likely to be adopted based solely on the existence of a prospective adoptive parent who is willing to adopt. In this case the evidence did not support the mother's claim that these children were only adoptable by their aunt. The trial court could properly find that it was likely adoption would be realized within a reasonable time. (specifically v. generally adoptable). (Court also said that most cases are on a continuum of specific to general adoptability.)

H.S. et al v. Superior Court of Riverside County (4/22/10)
Fourth Appellate District, Division Two

Issue

Did the trial court err when it ordered genetic testing in a paternity action when real party in interest had no standing as a presumed father other than a voluntary declaration of paternity that was executed and subsequently rescinded by a married woman?

Facts

- Husband and wife remarried in 2002.
- In 2005 husband and wife living apart during work week but spending the weekends together, wife has affair with S.G.
- Wife gets pregnant.
- Husband and wife separate prior to child's birth. Wife hid pregnancy from husband and S.G. pressured her to get an abortion.
- At child's birth, S.G. accompanies mother to hospital and he and mother sign declaration of paternity. (Hospital gave obsolete form instead of revised form that states that the procedure is only available to unmarried mothers.)
- Two weeks after child's birth, husband and wife reconcile.
- Within 60 days of child's birth, wife executed rescission of the declaration of paternity. S.G. admits to receiving rescission although proof of service is defective.
- Husband has accepted child as his daughter and husband and wife have lived together since. A father-daughter relationship has developed between husband and child.
- Husband and wife allow S.G. to visit two times per month for about three years, then stop allowing the visits.
- S.G. files petition to establish paternity and requested genetic testing
- Wife files motion to quash the proceedings and motion to set aside Declaration of paternity.
- Trial court denied the motion to quash the proceedings, granted the motion to set aside the declaration of paternity (finding that it was not void on its face). Trial court also found husband to be presumed father under FC7611(a) and (d) and not FC7540 (because husband and wife not cohabitating at time of conception). Trial court granted the request for genetic testing and the husband and wife petitioned appellate court for a writ of supersedeas, mandate or prohibition.

Holding

The appellate court held that the trial court erred when it ordered genetic testing in a paternity action when real party in interest had no standing as a presumed father other than a voluntary declaration of paternity that was executed and subsequently rescinded by a married woman. When the trial court granted the motion to set aside the declaration, it should have found that the declaration was void and had no effect. The POP (Declaration of Paternity) was meant to establish a simple procedure so that children of unmarried mother's can be assured of having

child support and other benefits. The marital presumptions under FC 7540 and 7611(a) do allow the mother and her husband to prevent the biological father from ever establishing parental rights over a child. However, the state's interest in preserving marriage will not necessarily outweigh the interests of a man and a child with whom the man has established a paternal relationship. Recognizing a POP declaration executed by a married woman does undermine the state's interest in preserving marriage at least under some circumstances though and this appears to be one of those cases because the husband and wife were raising this child in a stable family.

In re Jackson W. (4/29/10)
Fourth Appellate District, Division One

Issue

1) Can a parent who waives the right to have the juvenile court appoint counsel trained in juvenile dependency law in order to retain counsel who does not meet those qualifications claim privately retained counsel provided ineffective representation?
2) Is a section 388 petition the proper mechanism by which to raise a claim of ineffective assistance of counsel?

Facts

The case came into the system when two-month-old Trenton was discovered to have multiple injuries, including a fractured femur and several fractured ribs in various stages of healing. When the case first came into court, the parents appeared in court with their appointed counsel and the matter was set for trial. A month later, the mother informed the court that she wanted to hire her own attorney. When the mother appeared in court with her retained counsel, the trial court inquired as to whether he was a certified specialist in juvenile dependency law and learned that he was not. The court verified that the mother knew that he was not a specialist and yet that she still wanted him to represent her. The allegations were sustained and no reunification services were ordered for either parent. Mother filed a notice of intent to file a writ petition that day. The next day, the mother filed a substitution of attorney substituting herself in as counsel. When the writ petition was not timely filed, the appellate court dismissed the matter. At the 366.26 hearing, the trial court relieved mother's retained counsel and appointed counsel for her. The mother told the court that she had "fired" her retained counsel because he was not "child dependency qualified" and this was not helping her case. Prior to the contested 366.26 hearing, the mother filed a 388 petition seeking to have the court vacate the jurisdictional and dispositional findings and orders on the grounds of ineffective assistance of counsel by retained counsel. The court denied setting the 388 petition for a hearing because the IAC issue was an appellate issue and that there was not showing that the outcome would have been different. This appeal ensued.

Holding

1) The appellate court held that, after proper advisement, a parent may knowingly, intelligently and voluntarily waive the statutory right to be represented by appointed counsel meeting the definition of "competent counsel" under California Rules of Court, rule 5.660(d). Once that right is waived, the parent is precluded from complaining about counsel's lack of juvenile dependency qualifications.

"Competent counsel" is defined by CRC 5.660(d) as "an attorney who is a member in good standing of the State Bar of California, who has participated in training in the law of juvenile dependency, and who demonstrated adequate forensic skills, knowledge and comprehension of the statutory scheme, the purposes and goals of dependency proceedings, the specific statutes,

rules of court, and cases relevant to such proceedings, and procedures for filing petitions for extraordinary writs."

Because mother knowingly, intelligently and voluntarily waived the right to competent counsel, she cannot thereafter complain that he was not competently representing her precisely because he was not "child dependency qualified".

2) The appellate court held that a parent who has a due process right to competent counsel can seek to change a prior court order on the ground of ineffective assistance of counsel by filing a section 388 petition, although the customary and better practice is to file a petition for writ of habeas corpus in the juvenile court.

To raise the issue in a 388 petition, however, the petitioner must show that there is a change of circumstances or new evidence and that the proposed change is in the child's best interests. In determining whether the petition makes the necessary showing, the court may consider the entire factual and procedural history of the case.

In this case, even assuming that mother's counsel did not competently represent her, there was no prima facie showing that the proposed modification would be in the child's best interest. Therefore, mother was not entitled to an evidentiary hearing on the WIC 388 petition.

In re Jennifer O. (5/6/10)
Second Appellate District, Division Four

Issue

Does the Hague Convention apply to service of notice of review hearings in Dependency?

Facts

Prior to the jurisdictional hearing in this case, the case worker had located the appellant in Mexico and spoken with him. The juvenile court assured that the caseworker served multiple notices of the hearing on him in English and Spanish by certified or registered mail. Copies of the 300 petition were attached to the notices also in both English and Spanish. Counsel was appointed for the appellant. The caseworker left detailed messages for the appellant concerning the upcoming court dates. A DIF investigation was initiated although no response was ever received. The juvenile court found notice good and sustained a WIC 300(g) allegation against the appellant for failure to provide. Reunification services were offered to the father. Over the next six months, caseworkers were never again able to reach appellant by telephone and he did not contact the Agency. Caseworkers sent letters to his last known address. At the six month review hearing, the Agency recommended that the father's reunification services be terminated. They sent him notice of this recommendation by first class mail (in English and Spanish) to his last known address (as required under WIC 293). The juvenile court found notice good and terminated appellant's reunification services. This appeal followed. Father contends that the Hague Service Convention required the Agency to serve notice of the six-month review hearing by "international registered mail, return receipt requested".

Holding

The appellate court held that the Hague Convention does not apply to service of notice of review hearings in Dependency. Prior court decisions [Jorge G 164 Cal.App.4th 125 and Alyssa F 112 Cal.App.4th 846] concluded that when a parent is a resident of Mexico or other signatory nation, the petition and notice of jurisdictional and dispositional hearings must be served pursuant to the Convention's requirements. The appellate court held that once the juvenile court acquires "personal jurisdiction" over the non-resident parent in this manner at the jurisdictional hearing, that subsequent notices only need to comply with California law. In this case, the juvenile court assured that appellant was properly served with the petition and notice of the jurisdictional hearing (by registered international mail with a copy of the petition all translated into Spanish). In addition the juvenile court knew that appellant was aware of the pendency of the juvenile court proceedings involving his three children pursuant to the telephone call and he had made more than one general appearance including filing a notice of appeal.

In re J.N. (1/6/10)
181 Cal.App.4th 1010
Sixth Appellate District

Issue:

Was there sufficient evidence to support the Juvenile Court taking jurisdiction under WIC §300(b) where the parents' excess use of alcohol occurred one time and there was no evidence of ongoing substance abuse problem?

Facts:

Santa Clara County DCFS detained 3 children (8-year old J.N., 4-year old Ax.B, and 14-month old As.B) after the parents were involved in an alcohol-related car accident. The family went to dinner where the parents drank alcohol; the father had about 6 beers. The mother told a social worker that she was a little drunk and the father may be drunk. Because the family lived nearby the father decided to drive home rather than walk. On the way home, the father struck another car, drove away from the scene with the other car following them, lost control of the minivan and struck a street light signal. Two of the children were hurt in the accident. According to the family, the parents did not drink much at home and both parents acknowledged fault. DCFS recommended the court sustain the petition and ordered HOP-mother. The Court entertained the idea of informal supervision but ended up sustaining a (b) count to reflect that the father was currently incarcerated and that both parents "*appear to* have a substance abuse problem that negatively impacts their ability to parent the children." The Court indicated there was no pattern of past risk but found the one incident to be significant and severe enough to find future risk.

Holding:

No. The Juvenile Court cannot take jurisdiction under §300(b) where the evidence shows a lack of current risk. The Court of Appeal disagreed with *In re J.K.* (2009) 174 Cal.App.4th 1426, to the extent that *In re J.K.* found that §300(b) authorizes dependency jurisdiction based on a single incident resulting in physical harm absent current risk. (*In re J.K.* was a Second Appellate District decision that found the father's rape of his daughter, although remote in time, was sufficiently serious to find that J.K. was at substantial risk of physical and emotional harm.) This Court of Appeal reasoned that while past harmful conduct is relevant to the current risk of future harm, the evidence as a whole must be considered. Here, even though the accident was serious, there was no evidence from which to infer there is substantial risk such behavior will recur or that either parent's parenting skills, general judgment, or understanding of the risks of inappropriate alcohol use is so materially deficient that the parent is unable to adequately supervise or protect the children.

In re K.C. (4/26/10)
Fifth Appellate District

Issue

Does the father have appellate standing to contest the denial of WIC §388 by paternal grandparents asking for placement just prior to WIC §366.26 hearing?

Facts

At the disposition hearing, the court denied family reunification services to both parents under various code sections. The matter was set for a WIC 366.26 hearing. In the meantime, the paternal grandparents requested placement of their grandchild but placement was denied by the Agency. The grandparents subsequently filed a 388 petition asking for placement. The court denied the WIC 388 after a hearing and then proceeded with the WIC 366.26 hearing. The court proceeded to terminate parental rights after finding that the parents had had no visitation with the child since his detention. The father and the grandparents then filed this appeal based on the court's denial of the 388 asking for placement with the paternal grandparents. Father contended that he had standing to challenge the trial court's denial of the grandparent's placement request because 1) he still had a fundamental interest in his son's companionship, custody, management and care at the time of the court's ruling even though family reunification was no longer a goal of the proceedings and 2) relative placement had the potential to alter the trial court's determination of the appropriate permanent plan for the child and thus might affect the father's interest.

Holding

The appellate court held that a parent does not have appellate standing to challenge an order denying a relative placement request once a permanency planning hearing is pending unless the parent can show his or her interest in the child's companionship, custody, management and care *is*, rather than *may be* "injuriously affected" by the court's decision. A decision that has the "potential" to or "may affect" the parent's interest, even though it may be "unlikely" does not render the parent aggrieved. In this case, even if the relative placement had been made, nothing would have stopped the trial court from terminating parental rights at the 366.26 hearing based on the lack of visitation by the parents. Therefore, under the circumstances in this case, it was not the court's decision on the placement request that directly impacted the father's interest and so the father was not entitled to an on-the-merits review of the trial court's ruling on the relative placement request.

K.C. v. Superior Court (3/18/10)
182 Cal. App. 4th 1388
Third Appellate District

Issue

Mother argues the juvenile court abused its discretion in denying her services pursuant to section 361.5(b)(10) and (11), because she did make reasonable efforts to treat the problems which led to the removal of the half siblings.

Facts

This case involves a newborn removed from mother's custody in September 2009 due to the risk of neglect. Mother had a history of addiction and had failed to reunify with the minor's half siblings and her parental rights were terminated for those half-siblings. The minor was also at risk of sexual abuse because the father had a conviction for violation of Penal Code § 288(a), involving a five-year-old child. Mother was aware of the father's conviction but did not appear to recognize the danger he posed to the minor.

A sibling born in 2003 had complications due to withdrawal from caffeine and nicotine. Mother's continued abuse of nicotine was a factor which led to her neglect of the siblings. The mother had been counseled not to smoke while pregnant with the minor due to the negative effects her smoking had on a half sibling, but petitioner did not stop smoking. This minor was also born testing positive for nicotine

In the prior case, evidence of mother's neglect of her children was based, in part, on her behavior which put her own needs, including smoking, ahead of their needs, i.e., she left the infant half sibling unattended to go outside and smoke, neglecting the infant's care, and ignored the infant's distress to attend to her own comfort first. A psychological evaluation in the prior case concluded mother was caffeine and nicotine dependent. The evaluation noted that she rationalized her neglect and laziness and resisted taking responsibility for herself or the half siblings.

Mother continued to smoke. Additionally, the father's probation officer did not think mother a suitable responsible adult to supervise the father's contact with children because she had a history of neglecting her children and of being molested as a child yet chose the father as a partner.

At the jurisdiction hearing, the social worker testified petitioner's fingers and teeth were always stained from tobacco. The social worker agreed that quitting smoking was not a service objective of the previous dependency, but smoking was related to lack of supervision of the half siblings. While pregnant with the minor, the issue was discussed frequently with the mother and she was offered services. However, she consistently downplayed her dependence on nicotine and resisted any and all services or programs.

The court sustained the petition, noting that mother had a long history of nicotine abuse, was made aware of the dangers of smoking, and chose to do nothing about it. The court cited

evidence of mother's tobacco stained fingers, the minor's positive test for nicotine at birth, and mother's ongoing positive tests for nicotine as indicative of failure to protect the minor and noted it was consistent with the prior psychological evaluation that she rejected assistance and lacked commitment to her children.

The court denied services, finding mother came within the provisions of 361.5 (b)(10) and (11). The court found mother rejected treatment for nicotine addiction in the prior dependency case and while pregnant with the minor. The court stated mother's behavior said a lot about her willingness to comply with services and that it was not up to mother to pick the plan she intended to follow. It was disturbing to the court that she was unsure whether to keep the minor rather than take effective steps to become a responsible parent.

Holding

Affirmed. The juvenile court did not abuse its discretion in denying services pursuant to 361.5(b)(10) and (11).

In this case, the problems which led to removal of the half siblings were severe neglect resulting from mother's lack of concern about their welfare and characterized by her extreme dependence upon nicotine which she pursued to the exclusion of caring for the half siblings' needs. Mother was provided services to address her neglect and inadequate parenting, as well as her dependence upon nicotine. However, as the psychological evaluation concluded, mother resisted taking responsibility for herself or her children. One of the minors in the prior case was born dependent on nicotine and suffered withdrawal symptoms.

Overall, her efforts to address the issues which caused her to neglect the half siblings were, at best, lackadaisical. In short, the issues which led to the prior removal remained and had actually worsened due to her relationship with the minor's father and her inability to recognize the risk he posed to the minor.

Manual C. v. Superior Court (1/26/10)
181 Cal. App. 4th 382
Second Appellate District, Division Four

Issue

Can a party to an action file a 170.6 where case had previously been in front of same bench officer?

Facts

The original dependency petition filed on January 27, 2009, raised issues of domestic violence and parenting with respect to the father. The commissioner terminated dependency jurisdiction in that case with family law orders on October 7, 2009. Then, on October 30, 2009, a new dependency petition was filed, alleging that the father had sexually abused one of the children; that the mother knew or should have known of the abuse, but failed to take action to protect the child; and that the children were at risk of physical and emotional harm from the conduct of both parents. The current dependency petition arose out of events which occurred after the conclusion of the original dependency case. This was an original petition, not a supplemental petition in a pending case. In a dependency proceeding filed pursuant to Welf. & Inst. Code, § 300, respondent, the Los Angeles County Superior Court, California, denied petitioner father's peremptory challenge to a court commissioner on the ground that it was untimely pursuant to Code Civ. Proc., § 170.6, subd. (a)(2). The father filed a petition for a writ of mandate challenging the denial of his peremptory challenge.

Holding

The appellate court held that the §170.6 filed by the party was timely. The instant court concluded that the juvenile court erred in denying the father's peremptory challenge as untimely. Because the peremptory challenge was filed within 10 days of the father's appearance in the new proceeding, it was timely under § 170.6, subd. (a)(2).

In re Marcos G. (2/4/10)
182 Cal. App. 4th 369
Second Appellate District, Division Two

Issue:

Should the appellate court utilize a "harmless error" standard in determining whether to uphold a TPR, when there has been a failure to follow certain notice provisions (which were prior to and unrelated to the 26 hearing), as well a failure to also provide a JV-505 form to a father in a timely fashion, so that the father may have been elevated above an alleged father status?

Facts

This is a detailed and fact-specific case. The Agency failed to properly comply with various notice provisions for certain hearings, unrelated to the 26 hearing. Also, the Agency failed to timely provide a blank JV-505 form to father, as required by WIC 316.2(b). Father contended that notice errors resulted in his failure to appear, as well as his failure to obtain FR services, since he was only an alleged father. Although he was a "non-offending" parent, his parental rights were inevitably terminated. He contends that this never would have occurred IF he had been given proper notice of certain hearings, and IF he had been given a timely opportunity to submit a JV-505 form.

Holding

Yes. Although there may have been an error in certain notice provisions, and an error in failing to timely provide a JV-505 form to the father, any errors should be reviewed on a "harmless error" standard. This case has a detailed and excellent discussion of various notice provisions. The court finds that certain of these provisions were not complied with by the Agency and/or court. Despite these failures, the court found that these errors were "harmless," in that the father essentially slept on any of his rights, and thus may have waived them, or was also responsible for failing to take any actions to protect his rights in a timely manner. Moreover, these errors were not "prejudicial" since the court concluded that even if the father had acted promptly, he never would have obtained the rights he was seeking, under the facts and circumstances in this case. "Actual notice would not have changed the outcome of the jurisdiction and disposition hearing." The child still would have been declared a dependent and would have taken custody both mother and father, and he would not have been placed in any of the paternal relatives' homes.
No harm, no foul.

In Re M.B. (3/22/2010)
182 Cal. App. 4th 1496
Fourth Appellate District, Div. Two

Issue:

Does ICWA require the Indian expert to interview parents in every case?

Facts:

The trial court found that ICWA applied at time of detention. Appropriate notice and findings made. Tribe intervened. Prior to M.B.'s birth, parents had lost custody of four other minors due to allegations that father has molested the oldest stepchild and that mother has failed to protect. At jurisdiction hearing, found that M.B. was a dependent due to the abuse and neglect of his siblings.

M. B. was removed and services were denied on the based on termination of parental rights for siblings and father's violent felony conviction. The tribe agreed with the recommendation to deny services.

At 366.26 hearing, Indian expert testified at hearing. During parents' cross examination, expert testified that she normally does not speak to parents. Expert testified that termination of parental rights would not be detrimental to the child. The parents appealed.

Holding:

No. The purpose of the Indian expert's testimony is to offer a cultural perspective on the parent's conduct with his or her child to prevent the unwarranted interference with the parent-child relationship due to cultural bias. The Indian expert's testimony is directed to the question of whether continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child and not because the family did not conform to any decision maker's stereotype of what a proper family should be. Here, Father's behavior including sexual abuse of a half-sibling could not be interpreted differently in a cultural context, so knowledge of cultural practices would not be helpful.

Court also found that there was substantial evidence to support ICWA detriment finding. Court found that although parents had not objected to expert, a claim that there is insufficient evidence to support the judgment is not waived by a failure to object. Court found sufficient evidence to support finding.

In re Rebecca S (2/8/10)
181 Cal. App. 4th 1310
Second Appellate District, Division One

Issue

Does the court need to designate the frequency, duration and location of parental visits when it terminates jurisdiction with a legal guardianship in place?

Facts

The court terminated jurisdiction after granting a legal guardianship to the maternal aunt. When terminating jurisdiction, the court stated "and as to visitation, that while I will order that the parents have monitored visits, your responsibility as a guardian is to arrange the frequency, location, duration, et cetera, taking into consideration the children's well-being." The written order provided "Monitored visits for parents. Duration, frequency and location to be determined by the legal guardian." The father did not object at the trial court level but later this appeal followed.

Holding

The appellate court held that while the time, place and manner of parental visitation may be left to the legal guardian, the frequency and duration of the visitation must be delineated by the trial court to assure that visitations will actually occur.

In re S. A. (3/15/10)
182 Cal. App. 4th 1128
Fourth District, Division One

Issue:

Does a parent have standing to assert that minor's counsel provided ineffective assistance to the child? Secondly, was it an abuse of discretion for the court to exclude the prehearing statements of the child's therapist?

Facts:

The petition alleged Father sexually molested S.A. At the jurisdiction hearing, S.A. testified to the abuse. Father sought to introduce the prehearing statements of the therapist S.A. had been seeing for about three years. The jurisdiction report and a police report included the therapist's statements to the social worker and a police detective that S.A. never revealed Father had molested her and that the therapist did not believe the minor's story. Father also sought to elicit the therapist's live testimony on the same issue. At that point in the hearing, minor's counsel invoked the psychotherapist-patient privilege, indicating the therapist had disclosed the information without consideration of S.A.'s right to confidentiality and before minor's counsel had an opportunity to speak to the therapist. The trial court upheld the privilege and excluded the therapist's prehearing statements. On appeal Father argued, among other things, S.A. had forfeited the privilege when her therapist made the statements, that the claim during trial was untimely, that S.A. should have personally claimed the privilege, that the court should have had all the available information before rendering a decision, and that minor's counsel was ineffective for not interviewing the therapist herself, thereby failing to properly investigate S.A.'s credibility.

Holding:

Affirmed. Father had no standing to challenge the competency of minor's counsel because the right to be represented by competent counsel is personal to S.A. Further, it would be nonsensical to confer standing on a party whose interests may be adverse to those of the minor when the minor has independent counsel on appeal. The Court of Appeal also held excluding the therapist's prehearing statements was not an abuse of discretion. The privilege was not forfeited because the patient holds the privilege, not the therapist. The claim was properly made at time of trial when Father actually sought to introduce the therapist's statements. Section 317(c) provides that either the child or counsel for the child may invoke the psychotherapist-patient privilege, although a child of sufficient age and maturity may waive the privilege. S.A. did not waive the privilege. In fact, her attorney specifically advised the court to the contrary. In some cases the court may permit limited information from a therapist even after the privilege is claimed – such as a general progress report without the details of disclosures made by the child or advice given or any diagnosis. However, in this case the court's decision to redact the therapist's statements from the reports and to opt for full confidentiality was not an abuse of discretion. The trial court

presumably determined the information to be provided by the therapist was unhelpful to its decision.

In re Z.N. (1/22/10)
181 Cal. App. 4th 282, 104 Cal. Rptr. 3d 247
First Appellate District, Division Two

Issues:

1) Did the trial court abuse its discretion in denying counsel's motion to be relieved (P. v. McKenzie) and parent's motion to relieve counsel (P. v. Marsden) after the court began the W and I § 366.26 hearing; and,
2) Did the trial court err when it failed to require ICWA notice and was there any prejudice to the parent as a result?

Facts:

This appeal involves the termination of parental rights involving twins born in April, 2002. Mother had a total of five children with different fathers. The twins half siblings were born in 1992 (Dexter), 1994 (Benjamin) and 1995 (L). The twins, Dexter and L were detained in 2006 and petitions filed due to mother's incarceration, homelessness and failure to provide proper support and care for the children.[1] Mother was also facing criminal charges for welfare fraud and her refusal to provide information on Benjamin's whereabouts.[2]

Mother was appointed counsel at the initial hearing but she either refused of failed to appear at any hearing until almost two years later. Mother reported that one of her grandmothers had Cherokee heritage and that another was "part Apache." She went on to say that neither she nor her mother were registered or affiliated with any tribe. There were ICWA notices and findings in the siblings' cases but the agency did not notice and the court did not make any findings regarding ICWA regarding the twins.

Mother failed to make any progress in reunification. She was in and out of custody and was ultimately convicted in the fraud case and sent to State prison. Reunification was terminated in June 2008.[3]

Mother was paroled in August 2008 and immediately entered a Female Offender Treatment Employment Program. She filed a WIC 388 in Jan. '09 and was heard just prior to the commencement of the 366.26 hearing. The petition was denied based upon a lack of showing of best interests. The matter then proceeded to hearing on the 366.26. After the Agency rested, mother asked for and was granted a continuance.

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[1] Each child was subject to a separate petition and the trial court maintained a separate file for each child.
[2] Benjamin was 12 at the time of detention but he had not been seen since he was six-months old. Mother gave various stories regarding his whereabouts, none of which could be confirmed.
[3] By that time Dexter was 17 and in planned permanent living arrangement and L.'s case was dismissed as she was living with her father.

On the date of the continuance, mother's counsel made a "McKenzie" motion to be relieved and mother made a "Marsden" motion to relieve her counsel. Both cited a complete breakdown in communication, counsel citing abusive and threatening phone calls and mother citing counsel's failure to communicate and failure to follow mother's requests. In her argument on the Marsden hearing, mother conceded that she had very little chance of succeeding on the 366.26. Due to the fact that the 366.26 hearing had commenced, the trial court denied the motions without prejudice, noting that while the attorney could have done a better job of communication, she had fought vigorously for the mother at every opportunity; that her decisions on trial tactics were within her discretion; and, that mother should not have made the inappropriate calls to the attorney.

Holding:

Affirmed on appeal:

1) The trial court did not abuse its discretion in denying either the motion to be relieved as counsel or mother's motion to relieve counsel. The trial court has the discretion to deny the motions where they are made on the date of the hearing or, as in this case, where the hearing is already commenced; additionally, the court made an adequate inquiry into all of the reasons the attorney and party had for their motions and found them inadequate under the circumstances; and, there was no actual harm done by the denial. Counsel continued to represent mother and put up a vigorous defense and, in any event, the outcome would not have been any different had new counsel been appointed.
2) There was insufficient information to conclude that ICWA notice was required. Mother was vague about the affiliation and the relatives were great grandmothers. The court of appeal further found that even if notice was required, the error was harmless. The agency asked the court to take judicial notice of the information and findings in the siblings file. The Court of Appeal declined to take notice for the purpose of an ICWA finding as it was improper to do so; however, the C of A did find judicial notice was proper to determine whether any error was prejudicial. Here there was more than sufficient evidence that the inquiries made with respect to the siblings did not result in any information that ICWA applied and there was little if any likelihood that had notice been done in this case, the result would have been different.
3) In this case, the C of A noted that in the siblings' cases, no tribe had intervened and the court found no ICWA. The court failed to see the logic used by other districts (i.e., the Second) to use judicial notice instead of the policy of limited remands as a coercive tool to force the trial courts and the agencies to comply with the ICWA notice requirements where the result is pre-ordained. Such a policy flies in the face of the policy of resolving dependency cases expeditiously and in the best interest of the children.

CASE LAW INDEX

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Appellate Issues

me	Case Cite	Issue	Holding
na S.)	180 Cal. App. 4th 1489 103 Cal. Rptr. 3d 889 Fourth Appellate Dist Division One	Can trial court rely on Court of Appeal decision before remittitur issues?	The appellate court held that the trial court cannot used the non-f (remittitur hasn't issued) appellate decision to influence the outc the matter before it. The trial court is authorized to continue to c issues concerning the child's placement and well-being during th pendency of the appeal. However, the decision must be based or evidence and the law and not on the anticipated appellate decisio
A.	141 Cal. App. 4th 47 Cal. Rptr. 3d 115 Second Appellate Dist Division Five	Discussion of time line for granting of rehearings.	The court held that the date of denial of a rehearing is the date of judge's signature on the rehearing from. The clerk must create a order showing the denial forthwith, but such minute order does n to be within the same twenty day time line. The failure to create minute order does not result in the right to a rehearing.
ndy R.	150 Cal. App. 4th 607 58 Cal. Rptr.3d 456 Fourth Appellate Dist. Division Three	Does a pending writ automatically stay the trial court proceedings?	The appellate court held that unlike appeals, writs do not result i automatic stay of the trial court proceedings. (The appellate cou that the trial court could proceed to the WIC 366.26 hearing even the writ on the termination of reunification services had yet to be resolved.)
len W.	150 Cal. App. 4th 71 57 Cal. Rptr. 3d 914 Fourth Appellate Dist Division Three	Was the appeal properly authorized by parent given that parent's attorney signed the notice of appeal?	The appellate court changed their previous practice of requiring t parent to sign the notice of appeal. The appellate court held that 8.400(c) now provides that "the appellant *or* the appellant's attor must sign the notice [of appeal]."
nifer T.	159 Cal. App. 4th 254 71 Cal. Rptr. 3d 293 Second Appellate Dist Division Three	Must the court orally advise a parent of their writ rights?	The appellate court held that the court must orally advise a paren their writ rights even if the clerk sends out the written writ rights Failure to do so caused the appellate court to construe the appeal petition for writ of mandate.

iah Z.	36 Cal. 4th 664 115 P. 3d 1133 CA Supreme Court	Under what circumstances may appellate counsel investigate whether dismissal of an appeal is in the child's best interest.	The court held that the appellate counsel does have the power an appellate court has the power to consider and rule on a motion fo dismissal by the child's appellate counsel. The court also held th appellate counsel may actually file a motion to dismiss only afte consultation with, and authorization from, the child or the child's guardian ad litem.
3.)	173 Cal. App. 4th 562 Second Appellate Dist Division Five	Can an appeal be filed before the party is aggrieved?	The appellate court held that a party cannot file an appeal before aggrieved. In this case the simple setting of a 366.21(f) hearing possibly untimely manner is not appealable at this point because hearing has not yet been held and therefore the parent was not in
dison W.	141 Cal. App. 4th 1447 47 Cal. Rptr. 3d 143 Fifth Appellate Dist	Should the appeal court review the denial of the 388 petition even though it was not specifically mentioned in the notice of appeal?	The appellate court held that they would henceforth liberally con parent's notice of appeal from an order terminating parental righ encompass the denial of the parent's WIC 388 petition provided court issued its denial during the 60 day period prior to filing the parent's notice of appeal. The appellate court held such for prag reasons such as the unnecessary consumption of limited judicial resources.
oenix H. 0)	47 Cal. 4th 835 220 P.3d 524 CA Supreme Court	Does appellant have a right in dependency proceedings to file supplemental brief after attorney files Sade C. letter.	The supreme court held that the appellant does not have a right t supplemental brief after the reviewing attorney files a Sade C. le The court reiterated that Sade C. had previously held that Anders protections inapplicable in dependency proceeding and that it wo lead to error as appointed counsel faithfully conduct themselves advocates for indigent parents. In addition, dependency proceedi require the timely resolution of a child's status and adequate safe are in place that negates any purpose in allowing a parent to file supplemental brief as a matter of right.
ardo V.	147 Cal. App. 4th 419 54 Cal. Rptr. 3d 223 Second Appellate Dist Division One	Can a dependency court judge vacate a referee's order while a rehearing is pending?	The court held that pursuant to WIC 250 that a dependency judg prohibited from vacating or modifying a referee's order until afte rehearing. A referee's order remains in full force and effect unti order is made after a rehearing of the original order or pursuant t procedures authorizing the court to modify an existing order.

A.)	182 Cal. App. 4th 1128 Fourth Appellate Dist Division One	Does a parent have standing to assert that minor's counsel provided ineffective assistance to the child?	The appellate court held that the father had no standing to challe competency of minor's counsel because the right to be represent competent counsel is personal to S.A. Further, it would be nonse to confer standing on a party whose interests may be adverse to t the minor when the minor has independent counsel on appeal.
pitha W.	143 Cal. App. 4th 811 49 Cal. Rptr. 3d 565 Fourth Appellate Dist Division Two	Can parents appeal some issues from dispo and writ the others when 26 hearing is set?	The appellate court held that all orders issued at a hearing in whi WIC 366.26 hearing is ordered are subject to WIC 366.26(l) and reviewed by extraordinary writ.

Confidentiality/WIC 827

me	Case Cite	Issue	Holding
ah S.	12 Cal. App. 4th 1532 24 Cal. Rptr. 3d 16 First Appellate Dist Division Three	Does WIC 827 govern children for whom a petition has never been filed in juvenile court? Is there a different standard of confidentiality for living v. deceased children?	The court held that WIC 827 allows for the disclosure of records child who by definition comes "within the jurisdiction of the juv court pursuant to WIC 300 without regard to whether a section 3 dependency petition has been filed." In addition, the court found that unlike records pertaining to a liv dependent, which must be maintained as confidential unless som sufficient reason for disclosure is shown to exist, records pertain deceased dependent must be disclosed unless the statutory reason confidentiality are shown to exist.
a S.	133 Cal. App. 4th 1074 35 Cal. Rptr. 3d 277 First Appellate Dist Division Four	Does the right to inspect documents include the right to copy the same documents? Did the court abuse its discretion by denying mother's WIC 827 motion.	The right to inspect documents as outlined in WIC 827 does not the right to copy the same documents. The court held that the trial court did err in denying mother's WI motion because it could have given the mother the information s sought without violating the child's privacy issues. Rule of Cou (B) requires that the court balance the interests of the child and c parties to the Juvenile Court proceedings, interests of the petition interests of the public. The Court must permit disclosure or disc however access to Juvenile Court records, only in so far as is nec and only if there is a reasonable likelihood that the records in qu will disclose information or evidence of substantial relevance to pending litigation.
. 9)	172 Cal. App. 4th 1049 91 Cal. Rptr. 3d 546 Fourth Appellate Dist Division Three	Good discussion of statutory scheme and balancing of interests court must do in disclosing conf. juvenile records.	The appellate court held that the rights of the parents of the victi tape of their child's interview regarding the abuse outweighed th of the perpetrator and his family's privacy concerns.

me	Case Cite	Issue	Holding
C.	169 Cal. App. 4th 636 88 Cal. Rptr. 3d 1 Fourth Appellate Dist Division Three	When does the 361.5 reunification time line begin if a child is placed at dispo with another parent?	The appellate court held that when a child is placed with any par disposition that the time limits for reunification services set forth 361.5 does not begin. The 6/12/18 month date does not begin un child is removed from both parents and placed in "foster care".
rianna P.	166 Cal. App. 4th 44 81 Cal. Rptr. 3d 918 Fourth Appellate Dist Division One	Do the bypass provisions of WIC 361.5 apply to non-custodial parents who requested and are denied custody under WIC 361.2?	The appellate court held that when the court removes a child fro parental custody, it must first determine whether there is a non-c parent that desires to assume custody of the child. If the court do order the non-custodial parent to assume custody under WIC 361 because placement with that parent would be detrimental to the s protection, or physical or emotional well-being of the child, the c then proceeds to WIC 361.5 to govern the grant or denial of FR s
vin P.)	178 Cal. App. 4th 958 100 Cal. Rptr. 3d 654 Fourth Appellate Dist Division One	May the court provide FR services to one parent when the child is placed with the other parent and, if ordered, must those services be reasonable?	The appellate court held that a trial court may offer family reunif services to one parent when the child has been placed with the ot parents and family maintenance services ordered for that parent. appellate court also held that if those reunification services have offered, they must be reasonable.
rolyn R.	41 Cal. App. 4th 159 48 Cal Rptr. 2d 669 Fifth Appellate Dist	Does the child's return to the parents after disposition toll the 361.5 time line for services that began at disposition?	The appellate court held that once a court sustains a supplementa petition to remove a dependent child for a second time from a pa physical custody, it may set the matter for a permanency plannin 366.26 if that parent received 12 or more months of reasonable c welfare services. In determining how many months of services t has received the court found that both reunification and maintena services are part of the continuum of child welfare services. [In case, the child was suitably placed at the time of disposition and returned to the parent; therefore receiving 8 mos of FR and 10 m FM - 18 months in total].

briel L. 9)	172 Cal. App. 4th 644 91 Cal. Rptr. 3d 193 Fourth Appellate Dist Division One	If, after a period during which both parents were offered FR, the child is placed with one parent, what is the court's discretion to continue FR to the other parent?	The appellate court held that the trial court, may, but is not requi continue FR for the now non-custodial parent. The appellate cou explained that the court's discretion should be examined under W rather than WIC 366 or 366.21 and that the discretion to order se the same whether the child is placed with a previously noncustod parent or is returned to one parent after a period of offering reuni services to both parents. Like 361.2, the court can provide servic the previously custodial parent, to the parent who is assuming cu to both parents, or it may instead bypass the provision of service terminate jurisdiction
l T.	70 Cal. App. 4th 263 82 Cal. Rptr. 2d 538 Third Appellate Dist	Do family maintenance services count when determining the 18 months time line under WIC 361.5?	The appellate court held that because the children had been place their mother at the disposition hearing, it was truly family mainte services which had been offered. Therefore, the time lines under 361.5 had not started to run and mother should have been offered reunification services at the first disposition hearing removing th children from her care unless one of the exceptions to offering reunification services existed.
M.	108 Cal. App. 4th 845 134 Cal. Rptr. 2d 187 Fourth Appellate Dist Division Two	When does 18 month clock begin?	The appellate court held that the 18 month clock begins for both if the child is detained from their custody at the onset of the depe action regardless of whether the court grants one parent custody disposition under a family maintenance plan (which was done pu to WIC 362 in this case)
sa S.	100 Cal. App. 4th 1181 122 Cal. Rptr. 2d 866 Fourth Appellate Dist Division Three	Do reunification services need to be provided to a parent on a new petition after the court returns the child to that parent and terminates jurisdiction on a previous petition?	The appellate court held that where a child had been returned to and jurisdiction terminated that the trial could was obliged to pro reunification services to that parent at disposition on a subsequen petition unless one of the exceptions under WIC 361.5(b) applie court stated that where a supplemental or subsequent petition is f an existing dependency proceeding, the parent has not yet been successful enough to justify the termination of juvenile court juri over his or her child. Where jurisdiction has been terminated, ho the parent-child relationship is restored to its former status, free governmental interference absent extraordinary circumstances, a new dependency proceeding must include all the statutory provis designed to protect that relationship.

.	154 Cal. App. 4th 1262 65 Cal. Rptr. 3d 444 Second Appellate Dist Division Eight	Is a non-custodial parent who is not seeking custody entitled to FR services?	The appellate court held that a previously non-custodial parent w not seeking custody of the child at the disposition of the case is n entitled to reunification services. The court stated that WIC 361 specifically with the removal of a child from a custodial parent w there also exists a non-custodial parent. When a court orders ren a child per WIC 361, the court shall first determine whether there parent of the child, with whom the child was not residing at the t the events or conditions arose that brought the child within WIC who desires to assume custody of the child. If such a parent requ custody, the court shall place the child with the parent unless find placement with that parents would be detrimental to the child (W 361.2(a). WIC 361.5 requires the provision of services to parent purpose of facilitating reunification of the family. The provision services to a non-custodial parent who does not seek custody of t children does not in any way serve this purpose.

Defacto Parents

me	Case Cite	Issue	Holding
ttany K.	127 Cal. App. 4th 1497 26 Cal. Rptr. 3d 487 First Appellate Dist Division Three	Termination of defacto parent status	The court affirmed the Patricia L court in stating that once a cou an adult 'defacto status', in order to terminate that status, the mo party must file a noticed motion and 'has the burden of establish change of circumstances which no longer support the status, such when a psychological bond no longer exists between the adult ar child', or when the defacto parent no longer has reliable or uniqu information regarding the child that would be useful to the juven court. The facts supported those findings in this case.
ricia L.	9 Cal. App. 4th 61 11 Cal. Rptr. 2d 631 Fourth Appellate Dist Division One	Defines defacto parent status.	The court listed some of the considerations relevant to the decisi whether a person qualifies as a defacto parent. Those considerat include whether 1) the child is 'psychologically bonded' to the a the adult has assumed the role of a parent on a day-to-day basis f substantial period of time; 3) the adult possesses information abo child unique from other participants in the process; 4) the adult h regularly attended juvenile court hearings and 5) a future proceed may result in an order permanently foreclosing any future contac the adult. Once the court finds someone to be a defacto parent, t defacto parent may 1) be present at the hearing; 2) be represente retained counsel or, at the discretion of the court, by appointed c 3) present evidence.
.	134 Cal. App. 4th 1357 37 Cal. Rptr. 3d 6 Fourth Appellate Dist Division Two	Does a de facto parent have standing to complain of the decision to place the child in a new adoptive home?	De facto parents "do not have a right to reunification services, cu or visitation," so a defacto parent's legal rights are not impacted order to replace the child, and de facto parents, therefore, have n standing to appeal the placement decision. Even if they have suc standing, a de facto parent's equivocation about adopting the chi itself, is substantial evidence supporting the Court's order to cha placement.

.	164 Cal. App. 4th 219 79 Cal. Rptr. 184 Third Appellate Dist	What is the standard of proof to trigger a hearing on a defacto parent motion?	The appellate court held that there is no standard of proof to trig hearing on a defacto motion. In the instant case, the grandmothe to provide any authority showing that she was entitled to an evid hearing. The appellate court noted that the grandmother was not caretaker of the children on a day-to-day basis and that the grand have no constitutionally protected interest in the care and custod their grandchildren.

Delinquency Issues

me	Case Cite	Issue	Holding
rmen M.	141 Cal. App. 4th 478 46 Cal. Rptr. 3d 117 Second Appellate Dist Division Seven	Can a dependency court require a non-delinquent child to submit to random drug tests?	The appellate court held that the trial court can order drug testing program has reasonable cause to believe the child may be under influence of drugs. The court suggest that orders be made regard type of testing and the circumstances as well as the scope of who results can be released. Case supports WIC 362 which gives the broad discretion to make orders for the care, custody ... of the ch for their best interests.
Superior)	173 Cal. App. 4th 1117 93 Cal. Rptr. 3d 418 Fourth Appellate Dist Division Three	Does a 241.1 assess. have to be prepared by both the child welfare agency and probation?	The appellate court held that the requirement under WIC 241.1 f child welfare agency and probation to do a "joint assessment" fo child could be satisfied with one agency consulting the other eve the phone.
nry S.	140 Cal. App. 4th 248 44 Cal. Rptr. 3d 418 Fifth Appellate Dist	Does minor have right to full evid. hrg. for purposes of determination under 241.1?	The court found that a child does not have a due process right to evidentiary hearing for purposes of a determination under WIC 2 However, nothing precludes the court from granting a full hearin admitting further evidence if the court believes such a proceedin necessary to enable it to make a properly informed decision.
fany A.	150 Cal.App. 4th 1344 59 Cal. Rptr. 3d 363 Second Appellate Dist Division Seven	Discussion of when shackling a juvenile delinquent in court is appropriate.	The appellate court held that any decision to shackle a minor wh appears in the Juvenile Delinquency Court for a court proceedin be based on the non-conforming conduct and behavior of that in minor. Moreover, the decision to shackle a minor must be made case-by-case basis... The amount of need necessary to support th will depend on the type of proceeding. However, the Juvenile Delinquency Court may not justify the use of shackles solely on inadequacy of the courtroom facilities or the lack of available se personnel to monitor them.

Emancipation/ Terminating Jurisdiction

me	Case Cite	Issue	Holding
nnie P.	134 Cal. App. 4th 1249 37 Cal. Rptr. 3d 77 Fourth Appellate Dist Division One	Requirements to formally emancipate child under Family Code section 7120.	The trial court must make two findings under Family Code sectio to emancipate a child; 1) that the minor willingly lives separate a from the minor's parents or guardian with the consent or acquies the minor's parents or guardian and 2) minor is managing his or financial affairs. Also, although considered an informal hearing, process requires all witnesses to be sworn in.
A. v. Court	148 Cal. App. 4th 285 55 Cal. Rptr. 3d 647 Second Appellate Dist Division Seven	Is the court required to terminate jurisdiction when it returns children to the custodial parent at a review hearing?	The appellate court held that the trial court was not required to te jurisdiction when it returned the children to the care of the paren WIC 366.22 hearing. The court held that it was within the court discretion to return the children to the parents, order family main services to the family and set a hearing under WIC 364. In addit appellate court stated that the 18 month limit on family reunifica services constrains the juvenile court's authority to order family maintenance services beyond that time for a child who had been to the custody of his or her parent. There is no statutory limit on provision of family maintenance services if the court believes the objectives of the service plan are being met.
l T.	70 Cal. App. 4th 263 82 Cal. Rptr. 2d 538 Third Appellate Dist	How long can family maintenance services and supervision be provided when a child is in the parent's home?	The appellate court stated that unlike the situation in which the c removed from the home and court-ordered services are statutoril limited to 18 months, nothing in the statutes or rules limits the ti period for court supervision and services when the child remains home. If supervision is no longer required, the court simply term the dependency. Otherwise, the state may continue to provide supportive services and supervision to parents until the dependen children reach their majority.
mika C.	131 Cal. App. 4th 1153 32 Cal. Rptr. 3d 597 Fifth Appellate Dist	Requirements to terminate jurisdiction after child turns 18.	The court held that regardless of the funding issues that the court terminate jurisdiction over a child who is over 18 just because fe funding stops when child turns 19. The court should not termina jurisdiction over a dependent until all the requirements of WIC 3 been met and it is in the best interest of the dependent to close th

me	Case Cite	Issue	Holding
ril C.	131 Cal. App. 4th 599 31 Cal. Rptr. 3d 804 Second Appellate Dist Division Two	Was the trial court required to strike the child's statements in the reports after all the parties stipulated that the child was not competent to testify. Does Crawford apply to dependency cases?	The court held that WIC 355 expressly authorizes the admission hearsay statements of a child victim contained in a social study, does not meet the requirements of the child dependency exceptio even if the minor is incompetent to testify unless such a statemer product of fraud, deceit, or undue influence. Due process requir finding by the court that the statement bears special indicia of re In this case, the child's statements, together with the corroborati evidence of sexual abuse, constituted substantial evidence to sup jurisdictional findings. The court held that unlike the Crawford decision, the right to confrontation does not apply to parties in ci proceedings, including juvenile dependency proceedings.
e C.	174 Cal. App. 4th 900 95 Cal. Rptr. 3d 62 Fourth Appellate Dist Division One	Discussion of who holds psychotherapist -patient privilege for the child in dependency case.	The appellate court held that once minor's counsel is appointed t represent a minor in a dependency case, they hold the psychothe patient privilege. The holder of the privilege is determined at the the disclosure of confidential communications are sought to be introduced into evidence and the attorney can assert the privilege about pre-filing therapy sessions.
vid B.	140 Cal. App. 4th 772 44 Cal. Rptr. 3d 799 Fourth Appellate Dist Division Three	Can an offer of proof be required for a contested review hearing?	The appellate court held that a parent of a dependent child has a process right to a contested review hearing, unfettered by the prerequisite of a juvenile court's demand for an offer of proof. A case law allowing the requirement for an offer of proof is at the 366.26 hearing at which the burden of showing non-adoptability with the parent once DCFS has met its initial burden. The court that a party must be able to make its best case, untrammeled by evidentiary obstacles arbitrarily imposed by the court without leg sanction.

nna Y.	8 Cal. App. 4th 433 10 Cal. Rptr. 2d 422 Sixth Appellate Dist	Interpretation of WIC 355.1(f) Does a parent have the right to "plead the 5th" in dependency court?	The court held that a parent does not have a right to "plead the 5 dependency court because pursuant to WIC 355.1(f), the testimo parent shall not be admissible as evidence in any other proceedi court held that the privilege against self-incrimination is inappli child welfare proceedings because all relevant evidence should b disclosed to protect the paramount interest of the safety and welf the child. In addition that a parent should never have to elect be trying to regain custody of his children and defending himself ag criminal charges. However, the court added the caveat that use immunity would not bar use of statements if the criminal defend such statements in issue through squarely inconsistent testimony criminal trial because the purpose of use immunity is to secure t testimony, not to license perjury.
nela v. LA Court)	177 Cal. App. 4th 1139 99 Cal. Rptr. 3d 736 Second Appellate Dist Division Three	Did physician-patient privilege or constitutional right to privacy support trial court's quashing of subpoenas for medical records?	The appellate court held that the physician-patient privilege only for the doctor who treated the patient before his marriage but not doctor where the mother was present for the appointment and the talked about the diagnosis in front of the mother. The court also indicated that the father's right to privacy was not absolute and t father's privacy interest was outweighed by the state's compelli interest in protecting the child's best interests.
.)	182 Cal. App. 4th 1128 Fourth Appellate Dist Division One	Was it an abuse of discretion for the court to exclude the prehearing statements of the child's therapist?	The Court of Appeal held excluding the therapist's prehearing statements was not an abuse of discretion. The privilege was no forfeited because the patient holds the privilege, not the therapis claim was properly made at time of trial when Father actually so introduce the therapist's statements. Section 317(c) provides tha the child or counsel for the child may invoke the psychotherapis privilege, although a child of sufficient age and maturity may wa privilege. S.A. did not waive the privilege. In fact, her attorney specifically advised the court to the contrary.
.	38 Cal. App. 4th 396 41 Cal. Rptr. 3d 453 Third Appellate Dist	When is the Child Sexual Abuse Accommodation Syndrome (CSAAS) admissible?	The court held that "it has long been held that in a judicial proce presenting the question whether a child has been sexually molest CSAAS is admissible evidence for the limited purpose of disabu fact finder of common misconceptions it might have about how c victims react to sexual abuse." (Note - all the cases cited in this c are criminal and not dependency cases.)

nessa M.	138 Cal. App. 4th 1121 41 Cal. Rrtr. 3d 909 First Appellate Dist Division Five	Was court's refusal to hear father's further testimony a denial of father's due process?	The court held that the court's refusal to allow father to finish hi testimony after his failure to appear at a court date was a denial o process and was not harmless beyond a reasonable doubt. The c noted that there was no statutory authority to impose such an "ev sanction" against the father.

me	Case Cite	Issue	Holding
xandria	156 Cal. App. 4th 1088 68 Cal. Rptr. 3d 10 Fourth Appellate Dist Division One	Does juvenile court have jurisdiction over child support issues? Did court err in not accepting stipulated family law order?	The appellate court held that the juvenile court has no jurisdictio determine child support issues. In addition, the appellate court held that the trial court erred in n accepting a stipulated family law order. In the absence of risk, t family court, rather than the juvenile court, is the proper forum f adjudicating child custody disputes?
zabeth M.	158 Cal. App. 4th 1551 70 Cal. Rptr. 3d 746 Fourth Appellate Dist Division Three	Was the father denied due process when a new visitation order was made part of the family law order without notice and a hearing?	The appellate court held that the father was denied due process w bench officer signed a family law order which cut the father's vi by interlineation. The father had not been given notice of a poss change to his visitation or an opportunity to be heard on the issu was no indication on the record of where or why the change was and because the change was made in a different writing on the or origin was questionable. The moral: Make sure that any orders y are consistent with what was said on the record.
rriage of & Yana	37 Cal. 4th 947 CA Supreme Court	Can the non-custodial parent challenge the right of the custodial parent to move out of state with the children?	The court held that Family Code 7501 contemplates that even a p with sole legal and sole physical custody may be restrained from changing a child's residence, if court determines that the change be detrimental to the child's rights and welfare. However, the co deny the non-custodial parent a full evidentiary hearing if the pl show only an abstract detriment which is insufficient. The facto consider in changing custody to the non-custodial parent in light proposed move would include 1) the child's interest in stability a continuity in existing custody arrangement; 2) distance of the pr move; 3) child's age; 4) child's relationship with both parents; 5 relationship between parents which included their ability to communicate and cooperate; 6) willingness to put child's interes individual interests; 7: child's wishes (if mature enough); 8) reas the move; and 9) the extent parents share custody.

rriage of & Martha 6)	140 Cal. App. 4th 96 44 Cal Rptr. 3d 388 Second Appellate Dist Division Seven	What standard must family law court use in modifying a prior juvenile court exit order.	The appellate court found that pursuant to WIC 302, the family l court must find a significant change of circumstances in order to a juvenile court exit order issued pursuant to WIC 362.4. The ap court also affirmed that WIC 302(d) provides that a 362.4 exit or "final order" pursuant to Montenegro.

Funding Issues

me	Case Cite	Issue	Holding
rrine W. 9)	49 Cal. 2d 112 315 P. 2d 317 CA Supreme Court	Did the trial court err when it refused to order the agency to pay for the child's automobile liability insurance?	The CA Supreme Court found that WIC 11460 did not require th Agency to pay for automobile liability insurance. The court indi that federal and state appropriations for foster care are finite and shared by all the foster care providers in the state. It is up to the to exercise judgment in the use of the limited resources. Therefo while the Agency can use its funds to pay for automobile liabilit insurance, it is not compelled to do so.
rlene T.	163 Cal. App. 4th 929 78 Cal. Rptr. 3d 119 Second Appellate Dist Division Two	Did trial court exceed its authority when it ordered DCFS to pay retroactive funds before the caretaker exhausted admin. remedies?	The appellate court held that the trial court erred in finding that V 362(a) gives the juvenile court the authority to order the Departm make [AFDC-FC] payments without an administrative determina the children's eligibility for those payments." The court held tha caretaker was required to exhaust administrative remedies before could consider the issue of AFDC-FC funding.
hua S.	41 Cal. 4th 261 59 Cal. Rptr. 3d 460 CA Supreme Court	Can a caretaker, living with the children in a foreign country get financial assistance from U.S.?	The California Supreme Court held that to be eligible for foster c payments, a child must be in foster care. Since foster care is def foster family home for children which is licensed by the State in is situated or has been approved by the agency of such state, a ca residing out of the Country is not eligible for any financial assist from any source in the U.S. (County, State or Federal), at any sta the Dependency proceedings (jurisdiction/disposition, during reunification or after) or under any type of permanent plan (LTFC/PPLA, Guardianship, or Adoption) even if court ordered.
nuel G. 9)	174 Cal. App. 4th 502 94 Cal. Rptr. 3d 237 Fourth Appellate Dist Division One	May the court order the Agency to pay for the travel of a dependent's education representative to visit the child?	The appellate court held that the trial court could order the Agen pay for the travel of a dependent child's educational representati visit the child in an out-of-county placement. Ordering the Agen pay for the CASA's travel expenses would otherwise be inappro (without an MOU), but in this case, the order was made for the C her separate capacity as the educational decision maker and educ a fundamental interest that must be made available to all on an e basis.

Guardian ad Litem

me	Case Cite	Issue	Holding
C.	166 Cal. App. 4th 146 82 Cal. Rptr. 3d 542 Fifth Appellate Dist	Did court error in not appointing a GAL for a father for whom a conservator had been appointed in another proceeding?	The appellate court held that the trial court did err in failing to ap GAL for a father under CCP 372 once another court had appoint conservator for that parent under the Lanterman-Petris-Short Act appellate court held that when a dependency court has knowledg party's minor status or incompetence under CCP 372, the depend court has an obligation to appoint a GAL sua sponte. The error, however, was harmless, because the father's interests were not substantially prejudiced.
J.	141 Cal. App. 4th 326 45 Cal. Rptr. 3d 854 Fourth Appellate Dist Division One	Requirements for appointment of GAL for parents	The court held once again that a parent must be given notice of t possible appointment of a GAL and an opportunity to be heard. court goes on to say that the hearing may be closed to other parti the court or counsel must explain to the parent the purpose of ap a guardian ad litem, the parent's loss of authority over the litigat guardian ad litem's role, and why counsel believes the appointm necessary. The court clarifies that the presence of mental illness necessarily determinative of the need for a GAL.
G.	129 Cal. App. 4th 27 27 Cal. Rptr. 3d 872 Second Appellate Dist Division Four	Requirements for appointment of GAL for parents.	The court found that because the court failed to make any inquir parent prior to appointing a GAL, that there was insufficient evi support the appointment. The court points out that the test for appointment of a Guardian ad Litem in dependency court is whe person has the capacity to understand the nature or consequences proceedings and whether the person is able to assist counsel in p the case. If a person consents to a GAL, then no need for inquiry but if the person does not consent, the court must advise the pers the request, inquire as to the parent's position and then determin person is competent (understands the nature of the proceedings a assist their attorney).
D.	144 Cal. App. 4th 646 50 Cal. Rptr. 3d 578 Fifth Appellate Dist	Must the court appoint a GAL for a father who is a minor before the juri hrg?	The court held that the trial court must appoint a GAL for a mino who is a presumed father, even if he does not appear. The court CCP 372 and 373 and found that when a minor is a party, a GAL be appointed.

rique G.	140 Cal. App. 4th 676 44 Cal. Rptr. 3d 724 Fourth Appellate Dist Division One	Requirements for appointment of GAL for parents.	The court found that the trial court must assure that a parent is pr notice of attorney's request for the appointment of a GAL and ar opportunity to respond to the request. The court must assure tha parent is provided an explanation of what a GAL is and the funct the GAL services, in addition to the requirements set forth in In r
meralda S.	165 Cal. App. 4th 84 80 Cal. Rptr. 3d 585 Fourth Appellate Dist Division Two	Discussion of harmless error analysis in cases involving appointment of GAL.	In the harmless error analysis in cases involving the appointment GAL, the appellate court held that it harmless error if the outcom proceedings would not have been affected even if the GAL had n appointed (not only if the GAL would have been appointed desp due process violation). The appellate court also addressed wheth standard of review for the harmless error analysis was harmless b a reasonable doubt or by clear and convincing evidence. The cou harmless beyond a reasonable doubt because they weren't sure.
nes F.	42 Cal. 4th 901 CA Supreme Court	Is appointment of a GAL without proper inquiry of the party, structural or harmless error?	The California Supreme Court held that the appointment of a GA without the consent of the party or without the appropriate inquir his competence with an explanation of the purpose of the appoin should be subject to a harmless error review and is not a structur requiring reversal as a matter of law.
F.	161 Cal. App. 4th 673 74 Cal. Rptr. 3d 383 Third Appellate Dist	Pursuant to CCP 372(a), must the trial court appoint a GAL for a minor parent? If the trial court fails to do so, is the failure subject to the "harmless error" doctrine?	The appellate court held that while the provisions of the CCP "do automatically extend to the dependency context", in the absence dispositive provision in the WIC, we may look to these requirem guidance. The court found that an attorney for a parent in depen proceeding must have meaningful input from his/her client and s CCP 372 recognizes that minors are considered legally incapable providing adequate direction to counsel, a guardian ad litem is no in such cases to stand in the role of the client. In addition, since there were possible arguments that the attorney have made had a "client" been present and the mother was not pr and didn't have a GAL, the error was not harmless.

Incarcerated Parents

me	Case Cite	Issue	Holding
R.	131 Cal. App. 4th 337 32 Cal. Rptr. 3d 146 Second Appellate Dist Division Two	Can juri. hearing on a 300(g) proceed w/o parent who is inc. and not transported to court hearing?	There is no statutory right for an incarcerated parent to be presen adjudication of a petition under 300(g) and findings at such a hea would not be reversed for constitutional due process violation ab showing that there is a reasonable probability the result would ha different if the parent had personally attended the hearing.
usa V.	32 Cal. 4th 588 85 P. 3d 2 CA Supreme Court	Interpretation of Penal Code 2625. Does the trial court need the prisoner and the prisoner's attorney to adjudicate the petition?	Cal. Penal Code section 2625 requires a court to order a prisoner parent's temporary removal and production before the court only the proceeding seeks to terminate parental rights under WIC 366 adjudicate the child of a prisoner a dependent child. Although P indicates that no dependency petition may be adjudicated withou physical presence of 'the prisoner *or* the prisoner's attorney", the held that *or* should be construed in the conjunctive and means *ar* Therefore, the prisoner <u>and</u> his attorney had to be present before court could adjudicate the petition.

me	Case Cite	Issue	Holding
A.	167 Cal. App. 4th 1292 84 Cal. Rptr. 3d 841 Fifth Appellate Dist	Good discussion of definition of active efforts, adoptability and assessments in ICWA cases, relative and ICWA preferences and when they apply and finally the WIC 366.26(c)(1)(B)(vi) exception.	The appellate court held that active efforts and reasonable efforts essentially the same. There is no requirement for a generally ado finding, or backup families, or an assessment that provides for m families. These kids are adoptable because there is a family appr adopt them. The appellate court looked to WIC 361.31, in conju with 361.3 and determined that after disposition, once placement made, no ICWA preference applies unless the child must be mov Finally the court held that the Tribe's preference for legal guardi is only one factor to look at and is not necessarily compelling cau trump the stability and permanence of adoption.
B.	164 Cal. App. 4th 832 79 Cal. Rptr. 3d 580 Fourth Appellate Dist Division One	Is failure to have parent sign JV-135 form error? Can that error become harmless when augmented by JV-135 from another proceeding?	The appellate court held that the trial court's failure to inquire as mother's Indian heritage (court failed to get a signed JV-135 forn before terminating parental rights constituted harmless error beca mother denied knowledge of any Indian heritage in another judic proceeding (mother signed JV-135 form in another county as to a child). The court allowed the Agency to augment the record bec any court could take judicial notice of this form.
C.	155 Cal. App. 4th 282 65 Cal. Rptr. 3d 767 Third Appellate Dist	Does a non-federally recognized tribe need to be noticed of the dependency action?	The court held that while Section 306.6 of the Indian Child Welf allows a non-federally recognized tribe to appear in a dependenc proceeding and present information to the court, it does *not* requ notice of the action to such a tribe.
exis H.	132 Cal. App. 4th 11 33 Cal. Rptr. 3d 242 Second Appellate Dist Division Eight	Do the notice requirements of ICWA apply if the court does not place the child out of the parents' custody.	Pursuant to Rule of Court 1439, the notice requirements under th ICWA apply "to all proceedings... in which the child is at risk of entering foster care or is in foster care..." The court held that bec the Department in this case sought neither foster care nor adoptio Act did not apply. (Note: this may be different pursuant to In re A. if the Department *recommends* foster care placement even if t doesn't follow the Department's recommendation.)

ce M.	161 Cal. App. 4th 1189 74 Cal. Rptr. 3d 863 Sixth Appellate Dist	1) After the enactment of WIC 224.3, did the ICWA notice requirements change? 2) Were the ICWA notices sufficient? 3) Can the parents forfeit their right to object to ICWA notices on appeal?	1) The court held that legislature did not intend to modify CA c and raise the threshold upon which notice to the tribes is required it enacted WIC 224.3. The suggestion that the child is a member eligible for membership in a tribe is still sufficient to trigger the requirements. 2) Notices were insufficient because they were not sent to the tr chairperson or his designee and one was sent to the wrong addre 3) Although this was the second appeal from the termination of rights on the ICWA issues, their is no forfeiture by the parent on issue because the court found no statutory support or persuasive basis for shifting the burden of ICWA compliance to the child's even if ICWA was raised in a prior appeal.
r F.	150 Cal. App. 4th 1152 58 Cal. Rptr. 3d 874 Fourth Appellate Dist Division Three	Does a parent forfeit her right to appeal the sufficiency of the ICWA notices when she fails to object at the trial level at the remanded hearing for ICWA notices?	This case involves a case that was remanded for the trial court to sure that appropriate ICWA notices were sent. The parent who h initially raised the issue on appeal failed to object at the trial leve second round of notices. That parent then appealed the same issu appellate court held the parent forfeited her right to appeal those by her failure to raise them at the trial level. The appellate court that the parent had ample opportunity to review and correct the n documents involved in the second round of notices and failed to any discrepancies to the attention of the trial court and therefore forfeited her right to do so at the appellate level.
bara R.	137 Cal. App. 4th 941 40 Cal. Rptr. 3d 687 Fourth Appellate Dist Division One	Does preserving potential Indian financial benefits outweigh the benefit of adoption and did minor's counsel have a duty to investigate the specifics of the potential tribal monetary benefits?	The court held that the benefit of permanency and stability outwe potential financial benefits that would have come to the child. T also held that the child's counsel did not have a duty to investiga potential financial benefits before advocating for adoption. *Note*: There is a strong dissenting opinion that stated that the chi counsel did have a duty to investigate and consider all the factors regarding the termination of parental rights and advocating for a including the potential financial benefits that the child might hav entitled to through the tribe if the child was not adopted.

R.)	176 Cal. App. 4th 773 97 Cal. Rptr. 3d 890 First Appellate Dist. Division One	Do ICWA notice provisions apply when the presumed father's adoptive father is the one with Indian ancestry?	Yes. The appellate court held that the question of whether a child Indian child is for the tribe to determine and not the state court o social worker. The definition of "Indian child" under ICWA doe its terms automatically exclude minors who are grandchildren by adoption of an ancestor with Indian blood.
ndon T.	164 Cal. App. 4th 1400 80 Cal. Rptr. 3d 287 Third Appellate Dist	How many experts are needed to testify in ICWA case before court can TPR?	One. The appellate court held that although ICWA itself is writte plural "witnesses", the BIA Guidelines for state courts specify th testimony of one or more witnesses is required. Further applying federal rules of construction, the plural use of witnesses includes singular "witness".
ooke C.	127 Cal. App. 4th 377 25 Cal. Rptr. 3d 590 Second Appellate Dist Division Two	Were the notice requirements of ICWA met and if not, was that jurisdictional error?	The court held that because the Dept. had failed to notice all of t possible Navajo and Apache tribes and because they failed to ful investigate and develop the record with respect to the identity of ancestors, ICWA notice was defective. However, the court held defects were not jurisdictional error and that rather once notice w properly given, the prior defective notices become harmless erro
eyanne F.	164 Cal. App. 4th 571 79 Cal. Rptr. 3d 189 Fourth Appellate Dist. Division Two	Is missing information on the non-Indian parent harmless?	The appellate court held that the fact that the ICWA notices lack information about the non-Indian parent was harmless error.
mian C.)	178 Cal. App. 4th 192 100 Cal. Rptr. 3d 110 Fourth Appellate Dist Division One	Was their sufficient information to suggest that the child may be an Indian child?	The appellate court held that even though the MGF had been unsuccessful in establishing the family's Indian heritage, the que membership in the tribe resides with the tribe and that notices sh have been sent. The trial court indicated that it believed that WI was more stringent than the federal law and that the information provided gave the court "reason to know" that an Indian child is be involved, thus triggering the requirement to give notice.
Superior Humboldt 9)	171 Cal. App. 4th 197 89 Cal. Rptr. 3d 566 First Appellate Dist. Division Five	Does a parent have to be enrolled in an Indian tribe for ICWA to apply?	The appellate court stated that a "lack of enrollment is not dispos tribal membership because each Indian tribe has sole authority to determine its membership criteria and to decide who meets those criteria."
G. 9)	170 Cal. App. 4th 1530 88 Cal. Rptr. 3d 871 Third Appellate Dist	Did the court have to notice the possible Indian tribes id'ed by the non-bio father?	The appellate court held that until biological parentage is establi alleged father's claim of Indian heritage does not trigger the requ of ICWA notice because absent a biological connection, the child claim Indian heritage through the alleged father.

I.	141 Cal. App. 4th 1330 46 Cal. Rptr. 3d 787 Fourth Appellate Dist Division Two	If parent submits on Agency reports stating no ICWA, must the court inquire per Rule of Court 1439(d)?	The appellate court held that when the mother submitted on man Agency reports indicating that there was no American Indian He that the trial court did not need to overtly inquire about it pursua Rule of Court 1439(d). Basically, even though the court never specifically asked, the appellate court found that the Agency had and that satisfied 1439.
ncisco W.	139 Cal. App. 4th 695 43 Cal. Rptr. 3d 171 Fourth Appellate Dist Division One	Is the appellate court practice of limited reversals in defective ICWA appeals keeping with public policy?	The court held that the appellate court practice of limited reversa defective ICWA appeals does keep with public policy because p policy in the dependency scheme favors the prompt resolution of Therefore, it is acceptable for the court to remand these cases for trial court to make sure that appropriate ICWA notice is given ar to reinstate the termination of parental rights if it turns out the ch not fall under the Indian Child Welfare Act. In addition, the court held that under California Rules of Court 1439(f)(5), the juvenile court needs only a <u>suggestion</u> of Indian a to trigger the notice requirements to the tribes and/or the Bureau Indian Affairs.
L.	177 Cal. App. 4th 1009 99 Cal. Rptr. 3d 356 Fourth Appellate Dist Division One	Did the court err in failing to provide appropriate notice to the Indian custodian?	The appellate court held that "like parents, Indian custodians are to ICWA's protections, including notice of the pending proceedi the right to intervene". The court states that because of the exten family concept in the Indian community, parents often transfer p custody of the Indian child to such extended family member on a informal basis, often for extended periods of time and at great di from the parents. The designation of an Indian custodian by a pa does not require a writing but can be done informally.
orianna K.	125 Cal. App. 4th 1443 24 Cal. Rptr. 3d 582 Second Appellate Dist Division Four	Can the court accept the word of the Dept. that the tribes received notice? Does all counsel need to be present when the court reviews ICWA notices?	The court held that the juvenile court may not rely on mere representations that proper notice was given; there must be a cou record of the notice documents. In addition, the lack of authenti on the notice documents were compounded by the fact that neith parent nor her counsel was in attendance on the date the court re the notice documents to test the authenticity of the evidence. *Practice Tip*: Make sure that you see and receive all notices, retu receipts and letters from the tribes. Also, make sure that if you h been reversed on ICWA notices, that previous counsel is reappoi and present when you review the new notices and other notice

			documents.
n of S.	143 Cal. App. 4th 988 48 Cal. Rptr. 3d 605 Third Appellate Dist	Discusses "active efforts", "break-up of Indian family" and "existing Indian family doctrine"	The court held that any termination of parental rights of an India is subject to ICWA and the use of an expert is only one factor in decision to terminate parental right. The court rejects the "existi Indian family doctrine". The court discusses "active efforts" and that the standard for finding active efforts is by clear and convin evidence and not beyond a reasonable doubt. Finally, the court the "breakup of Indian family" to mean "circumstances in which Indian parent is unable or unwilling to raise the child in a healthy manner emotionally or physically".
B.	161 Cal. App. 4th 115 74 Cal. Rptr. 3d 27 Second Appellate Dist Division Seven	If a parent doesn't even allege possible American Indian heritage at the appellate level, should the case be reversed because the trial court didn't do the proper inquiry?	The appellate court held that even though the trial court failed to proper inquiry of the parents regarding possible American Indian heritage that the case should not be reversed. It was harmless er appellant did not claim, even at the appellate level, that she had American Indian heritage. The court again stated that "ICWA is get out of jail free card dealt to parents of non-Indian children" r in an unreasonable delay in permanency.
lly B. 9)	172 Cal. App. 4th 1261 92 Cal. Rptr. 3d 80 Third Appellate Dist	Did court properly comply with ICWA on 388 hearing?	The appellate court held that ICWA is not implicated in the orde appealed from and unlike orders placing a child in foster care or terminating parental rights, failure to comply with the ICWA not provisions had not impact on the court's orders.
.	133 Cal. App. 4th 1246 35 Cal. Rptr. 3d 427 First Appellate Dist Division Two	Did the trial court comply with the ICWA notice requirements?	No, the trial court did not comply with the ICWA notice require because it did not strict comply with the notice requirements. Th appellate court refused to take additional evidence as to the notic because that proof must be given to the trial court. In this case, t record was silent as to the specifics of the courts findings as to n responses etc.

.)	178 Cal. App. 4th 751 100 Cal. Rptr. 679 Fifth Appellate Dist	Does ICWA require expert testimony when removing custody from one parent and placing with another?	The appellate court held that the requirement under ICWA for ex testimony before removal from a parent is waived when the plac with another parent. The court stated that the change of custody one parent to another is deemed to be "custodial" under ICWA a therefore that no expert was required.
emiah G. 9)	172 Cal. App. 4th 1514 92 Cal. Rptr. 3d 203 Third Appellate Dist	Did ICWA notice requirements arise when father claimed Indian heritage and later retracted that claim?	The appellate court held that both the federal regulations and the require more than a bare suggestion that a child might be an Indi to trigger notice to the tribes. The claim must be accompanied b information that would reasonably suggest that the child had Ind heritage.
.	138 Cal. App. 4th 450 41 Cal. Rptr. 3d 494 Fifth Appellate Dist	Did failure to inquire from party if they had Indian heritage require reversal?	The court reversed and remanded because there was no evidence record that anyone had inquired of the mother whether there was American Indian heritage.
athan S.	129 Cal. App. 4th 334 28 Cal. Rptr. 3d 495 Fourth Appellate Dist Division Two	Does the parent not claiming possible American Indian heritage have standing to assert ICWA notice violations?	The court held that even the parent not claiming American Indian heritage, has standing to assert ICWA notice violations on appea addition, the court held that even though the father stated that he a part of the Blackfeet tribe, that his possible Indian heritage did the notice requirements of ICWA and that failure to provide appr ICWA notices reversed all the orders going back to the jurisdicti hearing (from TPR appeal).
e C.	155 Cal. App. 4th 844 66 Cal. Rptr. 3d 355 Fifth Appellate Dist	Does the petitioning agency have the obligation to enroll the children as members of a tribe?	The appellate court held that the tribe is the determiner of its membership, and the tribe did not claim the children as members they weren't enrolled. The appellate court held that the Departm no duty to enroll them. (Note: Tribe was given an opportunity to intervene on the appeal chose not to file a brief.)
eph P.	140 Cal. App. 4th 1524 45 Cal Rptr. 3d 591	Does a parent's late claim identifying a particular tribe give new reason to believe ICWA applies after notice already given	The court found that a parent's late claim identifying a particular tribe does not give the trial court new reason to believe that the c might fall under ICWA if notice has already been given to the B the determination about ICWA made. In addition, the court can other factors regarding why the parent might have changed their including the fact that the parent first voiced the claim at the per

	Fifth Appellate Dist	to BIA?	planning hearing.
.	154 Cal. App. 4th 986 65 Cal. Rptr. 3d 320 First Appellate Dist Division Five	Does the Indian Child Welfare Act require notice to all the bands of an identified tribe?	The appellate court held that the juvenile court did err when it fa assure that all 16 Sioux tribes were appropriately noticed. The a court noted that it was not enough to just notice the BIA because tribes had been identified. The court also mentioned that the not must be addressed to the tribal chairperson, unless the tribe has designated another agent for service and that the Federal Registe the appropriate place to find all the information about the tribes a addresses.
tin L.	165 Cal. App. 4th 1406 81 Cal. Rptr. 3d 884 Second Appellate Dist Division Three	Discussion of compliance with ICWA	The appellate court held that the trial courts need to comply with
tin S.	150 Cal. App. 4th 1426 59 Cal. Rptr. 3d 376 Sixth Appellate Dist	On limited reversal from the appellate court for ICWA notice, must the parent be noticed and represented by counsel?	The appellate court held that when a case is remanded for the lim purpose of providing appropriate ICWA notice, the trial court mu notice the parents for the hearing and allow the parents to be repr by counsel. In addition, the court must not hold a hearing less th days from the time appropriate notices were given.
B.)	173 Cal. App. 4th 1275 93 Cal. Rptr. 3d 751 Fourth Appellate Dist Division Two	Good discussion of "active efforts".	The appellate court provided a useful guide in distinguishing bet passive and active efforts. "Passive efforts are where a plan is dr and the client must develop his or her own resources towards bri to fruition. Active efforts is where the state caseworker takes the through the steps of the plan rather than requiring that the plan b performed on its own." The appellate court indicated that what constitutes active efforts would need to be determined on a case basis.
M. 9)	172 Cal. App. 4th 115 90 Cal. Rptr. 3d 692 Second Appellate Dist	How much is required for "affirmative steps" to gather info for ICWA notice?	The appellate court held that ICWA does not require further inqu based on mere supposition. In a case where the grandparents ref cooperate and give the Agency further information on possible American Indian heritage , the court held that the Agency did en and that "the agency is not required to conduct an extensive inde investigation, or cast about, attempting to learn the names of pos

	Division Six		Tribal units to which to send notices."
P.)	175 Cal. App. 4th 1 95 Cal. Rptr. 3d 524 Third Appellate Dist	Does the Court have a duty to comply with the notice provisions of ICWA for a non-federally recognized tribe?	The appellate court held that neither the Agency nor the juvenile was under a duty to comply with the notice provisions of ICWA there was no evidence that the mother's tribe was federally recog "We decline to extend ICWA to cover an allegation of membersh tribe not recognized by the federal government."
B.)	182 Cal. App. 4th 1496 Third Appellate Dist	Does ICWA require the Indian expert to interview the parents in every case?	The appellate court held that ICWA does not require the Indian e interview the parents in every case because the purpose of the In expert's testimony is to offer a cultural perspective on the parent conduct with his/her child to prevent the unwarranted interferenc the parent-child relationship due to cultural bias. The Indian exp testimony is directed to the question of whether continued custoc child by the parent or Indian custodian is likely to result in seriou emotional or physical damage to the child and not because the fa not conform to any decision maker's stereotype of what a proper should be. Here, Father's behavior including sexual abuse of a h sibling could not be interpreted differently in a cultural context, s knowledge of cultural practices would not be helpful.
lissa R.)	177 Cal. App. 4th 24 98 Cal. Rptr. 3d 794 First Appellate Dist Division Three	Were ICWA notice defects moot given that the "child" is now 20?	The appellate court held that while the Agency did fail to send IC notices even though it knew that the "child" might be of Indian h the error was moot. An Indian child is "any unmarried person w under age eighteen…" Since the "child" at the time of the appea years old, she cannot be considered an Indian child.
racle M.	160 Cal. App. 4th 834 73 Cal. Rptr. 3d 24 Second Appellate Dist Division Seven	Must a case be reversed if the ICWA notices do not contain the name of all the children?	The appellate court held that ICWA notices must contain the nam the children. In addition, the ICWA notices must also be sent to parents. The case was sent back to the trial court in regards to th not listed on the ICWA notices on a limited reversal.
M.	154 Cal. App. 4th 897 65 Cal. Rptr. 3d 273 First Appellate Dist Division Five	Can an order of transfer from the dependency court to the tribal court be appealed?	The appellate court held that a transfer order cannot be appealed court noted that because no party requested a stay of the transfer prior to the completion of the transfer to the tribal court, the state lost all power to act in the matter upon completion of the transfe addition, the appellate court cannot provide relief from that orde because it has no power to order the court of a separate sovereign tribal court) to return the case to the state court.

E.	160 Cal. App. 4th 766 73 Cal. Rptr. 3d 123 Fourth Appellate Dist Division Three	If a parent doesn't even allege possible American Indian heritage at the appellate level, should the case be reversed because the trial court didn't do the proper inquiry?	The appellate court held that even though the trial court failed to proper inquiry of the parents regarding possible American Indian heritage that the case should not be reversed. The appellant did claim, even at the appellate level, that he had possible American heritage. The court again stated that "ICWA is not a get out of j card dealt to parents of non-Indian children" resulting in an unreasonable delay in permanency. The court held that the pare at lease allege sufficient facts to have triggered ICWA notice to relief.
ole K.	146 Cal. App. 4th 779 53 Cal. Rptr. 3d 251 Third Appellate Dist	Does reversal for appr. ICWA notice require a full reversal of the orders or simply remand for appr. ICWA notices and what comprises appr. ICWA notice.	The appellate court held that ICWA notices were insufficient bas the facts that the notice to one tribe was not sent to the latest add the Federal Register nor was the return receipt signed by the pers listed as the agent for service by the tribe. The appellate court a vacated the orders for the setting of the 26 as they held that a lim reversal for ICWA notices was not sufficient.
M.)	174 Cal. App. 4th 329 94 Cal. Rptr. 3d 220 Third Appellate Dist	Was their sufficient evidence to deviate from the relative preference of ICWA?	The appellate court held that in this fact specific case the court h cause to deviate from the relative preference of ICWA and appoi non-related legal guardian for the child. Those facts included tha child had been in that home for two years, the caretaker was ded maintaining sibling contact and the lack of real contact by the re
M.	161 Cal. App. 4th 253 74 Cal. Rptr. 3d 138 Second Appellate Dist Division Eight	What is the requisite period the court must wait before making any finding regarding the applicability of ICWA?	The appellate court held that pursuant to WIC 224.2(d) prevents juvenile court from setting a hearing to terminate parental rights earlier than 10 days after receipt of notice by the parent, the tribe Bureau of Indian Affairs. WIC 224.3(e)(3) allows a tribe or the 60 days after receipt of notice to confirm that a child is an Indian CRC 5.664 makes clear that the juvenile court is constrained onl 10-day time limitation set forth in WIC 224.2(d) after notice bef terminating parental rights.

yna N.	163 Cal. App. 4th 262 77 Cal. Rptr. 3d 628 Second Appellate Dist Division Four	1) Should the court have terminated FR services without assuring notice requirement of WIC 224.2 were complied with? 2) Is limited reversal still appropriate given enactment of WIC 224.2.	1) The appellate court held that the trial court should not have proceeded with the hearing to terminate reunification services wi assuring that proper notice had been given to the Indian tribes pu to WIC 224.2. This included timely and appropriate notices with return receipts being received or letters from the tribe. (This cas not address whether the court did/didn't have reason to know the would fall under ICWA). 2) The appellate court held that even after the enactment of WIC a limited reversal and remand are appropriate and nothing in WI prohibits that established remedy,l
pecca R.	143 Cal. App. 4th 1426 49 Cal. Rptr. 3d 951 Fourth Appellate Dist Division Two	Can a parent not tell a court or Agency about possible Am. Indian heritage and then bring it up on appeal?	The court held that the burden on an appealing parent to make an affirmative representation of American Indian heritage is de min and in the absence of such a representation there can be no preju no miscarriage of justice requiring a reversal. The court held tha is not a 'get out of jail free' card to parents of non-Indian childre allowing them to avoid a termination order by withholding secre knowledge, keeping an extra ace up their sleeve. Parents cannot the matter for the first time on appeal without at least showing th hands.
bert A.	147 Cal. App. 4th 982 55 Cal. Rptr. 3d 74 Fourth Appellate Dist Division One	Can the court use the notices sent and findings made on a half- sibling's case to show that ICWA does not apply on the child currently before the court?	The court held that the court can not use the investigation done, t notices sent and the findings made on a half-sibling on a differen show that the child in the instant case does not fall under the Ind Child Welfare Act. The court denied the agency's motion to aug the record with the documents from the half-sibling's case becau records were not before the juvenile court at the time of the proc and were not part of the juvenile court case file.

.	130 Cal. App. 4th 1148 30 Cal. Rptr. 726 Fourth Appellate Dist Division Two	Did mother waive right to raise notice issues for hearing preceding 366.26 on appeal if MGM, not mo, finally gave info re: possible Indian heritage?	The court held that even if notice is belated, the mother here cou asserted possible Am Indian heritage at earlier hearing and did n allow her to raise it on appeal would allow a party to play fast an with administration of justice by deliberately standing by withou making an objection. While the CSW and the trial court have a c inquire into the child's Indian ancestry, (they have no duty to ma inquiries of persons not parties to proceedings) and a parent has access to this information. A parent has a right to counsel, who l only the ability but also the duty to protect the parent's rights un ICWA.
. 9)	174 Cal. App. 4th 808 94 Cal. Rptr. 3d 645 Second Appellate Dist Division Four	Are parents' counsel responsible to advise the trial court of any problems with notices issued under ICWA?	The appellate court affirmed the trial court and held that counsel parents share responsibility with the Agency and minor's counse advise the trial court of any infirmities in these notices in order t for prompt correction and avoid unnecessary delay in the progres dependency case.
.	138 Cal. App. 4th 396 41 Cal. Rptr. 3d 453 Third Appellate District	Can the court proceed to a disposition hearing if the tribes had not received notice 10 days prior to the hearing?	The court held that Section 912(a) of ICWA states "no dependen proceeding shall be held until at least ten days after receipt of no the... tribe ..." Practice tip - You can proceed to disposition even if you don't ha proper notice to the tribes yet if you can still find that you "have reason to believe" that the child would fall under the Indian Chil Welfare Act. It would be a good practice to make that finding ag before you proceed. If you do have reason to believe that the chi would fall under ICWA, wait to conduct the hearing until 10 day all the tribes have received notice.
ne G.	166 Cal. App. 4th 1532 83 Cal. Rptr. 3d 513 Fourth Appellate Dist Division One	Did failure to give proper notice to the Comanche tribes necessitate reversal of the termination of parental rights?	The appellate court held that because the record was devoid of ar evidence the child was Indian, reversing the termination of paren rights for the sole purpose of sending notice to the tribe would ha served only to delay permanency for the child rather than further important goals and ensure the procedural safeguards intended b ICWA.

rrance B.	144 Cal. App. 4th 965 50 Cal. Rptr 3d 815 Fourth Appellate Dist Division One	Does the trial court have juri to hear 388 petition where there has been a limited remand for ICWA purposes/notices only?	The court held that when an appellate court issues a limited reve address ICWA issues only, the juvenile court does not have juris to address or hear any other issue even if it is raised in a 388 peti The appellate court does warn that this might not be the same if t is remanded and parental rights reinstated for any other issue oth ICWA.
.)	175 Cal. App. 4th 1031 96 Cal. Rptr. 3d 706 Third Appellate Dist	Is the court obligated to adopt the permanent plan identified by the tribe?	The appellate court held that the juvenile court was not obligated adopt the permanent plan designated by the tribe without conduc independent assessment of detriment. In this case, the tribe iden guardianship with maternal cousins who had criminal histories a not approved by the Agency. Therefore, the juvenile court did n when it terminated parental rights and placed the child with som other than the cousins.
ronica G.	157 Cal. App. 4th 179 68 Cal. Rptr. 3d 465 First Appellate Dist Division Three	Does the stipulated reversal for ICWA findings require vacating all findings and orders or renotice only?	The court held that the only improper notice which requires a rev findings is a 366.26 TPR reversal. That reversal reinstates paren rights, without the ability to file a 388, but requiring reinstateme termination if the case is not ICWA. All other cases, such as this care reversed for notice only, and all prior findings and orders re full force and effect.
acent M.	150 Cal. App. 4th 1247 59 Cal. Rptr. 3d 321 Sixth Appellate Dist	Does the existing Indian family doctrine exist in Santa Cruz County?	The court held that ICWA notices were insufficient and remande case for appropriate notice. The court held that the Existing Indi Family Doctrine does not exist in Santa Cruz County and that the Child Welfare Act rules. The appellate court urged the Californi Supreme Court to reconcile the split in jurisdictions on this issue
V.	132 Cal. App. 4th 794 33 Cal. Rptr. 3d 236 Fourth Appellate Dist Division One	May ICWA be raised on appeal a second time if not timely raised in the trial court.	The court held that the principles of waiver apply and the parents to object at the hearing held to determine ICWA notice is fatal. indicated that while ICWA is to be construed broadly, it should n impediment to permanence for children. Failure of the parents to in the trial court at the hearing, so that any deficiencies might be cured, forfeited the right to raise it on appeal again.

Jurisdiction/Disposition Issues

Case Name	Case Cite	Issue	Holding
In re Adam D. (3/30/10)	Second Appellate Dist Division Three	Good discussion of WIC 360(b).	The appellate court held that an order for informal supervision is tantamount to a disposition which is an appealable order. If informal supervision is ordered pursuant to WIC §360(b), the court 'has no authority to take any further role in overseeing the services or the family unless the matter is brought back before the court' pursuant to WIC §360(c)." "If the court agrees to or orders a program of informal supervision, it does not dismiss the dependency petition or otherwise set it aside. The true finding of jurisdiction remains. It is only the dispositional alternative of declaring the child a dependent that is not made."
In re A.E. (2008)	168 Cal. App. 4th 1 85 Cal. Rptr. 3d 189 Second Appellate Dist Division Eight	Discussion of reasonableness of disposition orders to "non-offending" parent.	The appellate court held that the trial court's order for the "non-offending" father to complete parenting and individual counseling was reasonable given the father did not appear to understand the inappropriateness of mother's physical discipline and by the time of trial was in complete denial although he had reported the original allegations. The appellate court did encourage the trial courts to make a good record regarding the reasons for all dispositional orders especially when ordering services for "non-offending" parents.
In re Alexis E. (2009)	171 Cal. App. 4th 438 90 Cal. Rptr. 3d 44 Second Appellate Dist Division Three	Did parent's use of "medicinal" marijuana place the child at risk?	The court held that father's use of prescription marijuana did place the child at risk in this case. The court summarized "We have no quarrel with father's assertion that his use of medical marijuana, without more, cannot support a jurisdictional finding ..." However the court stated the numerous reasons that "more" existed such as father's behaviors when he was using marijuana as well as the children's exposure to second hand smoke as the reasons that risk existed.
In re Alexis H. (2005)	132 Cal. App. 4th 11 33 Cal. Rptr. 3d 242 Second Appellate Dist Division Eight	Does the court have to sustain allegations against both parents to take jurisdiction of a child?	The court held that a jurisdictional finding good against one parent is good against both. The child is a dependent if the actions of either parent bring her within one of the statutory definitions of a dependent. The purpose of dependency proceedings is to protect the child rather than prosecute the parent.

In re Andy G. (4/20/10)	Second Appellate Dist Division Eight	Is the male sibling at risk of sexual abuse if the abuser molested the female siblings?	This appellate court agreed with the court in P.A. and reiterated that "aberrant sexual behavior by a parent places the victim's siblings who remain in the home at risk of aberrant sexual behavior". The appellate court noted that while Andy may have been too young to be cognizant of father's behavior, the father exposed himself to Janet while Andy was in the same room and in fact used Andy to get Janet to approach him so that he could expose himself to her. "This evinces, at best, a total lack of concern for whether Andy might observe his aberrant sexual behavior."
In re Angel L. (2008)	159 Cal. App. 4th 1127 72 Cal. Rptr. 3d 88 Second Appellate Dist Division Eight	Was the trial court mandated to contact another state when there was no previous child custody order?	This was a very fact specific case. The appellate court held that the trial court was not mandated to contact another state about assuming jurisdiction because no previous child custody order had ever been made. The appellate court held that FC 3410 indicates that the juvenile court "may" communicate with a court of another state. In this case, there was no evidence that there was another home state, but it was possible.
In re Baby Boy M. (2006)	141 Cal. App. 4th 588 46 Cal. Rptr. 3d 196 Second Appellate Dist Division Seven	When a child's whereabouts are unknown at the jurisdictional hrg, can court sustain the petition and proceed to disposition?	The appellate court held that when a child's whereabouts are unknown at jurisdiction, the court may not sustain the petition and move to disposition because of the importance of assessing the child's present condition and welfare. The appellate court found that the trial court should have issued a protective custody warrant and then continued the matter for a jurisdictional hearing when the child was found. (This decision *may* leave open the question about whether the court can sustain the petition and just put over disposition because there were subject matter jurisdiction issues in this case.)
In re B.D. (2007)	156 Cal. App. 4th 975 67 Cal. Rptr. 3d 810 Third Appellate Dist	How much corroborating evidence is required to sustain a dependency petition if WIC 355(c)(1) objections are made?	The appellate court held that only a slight amount of corroborating evidence was sufficient to sustain a dependency petition in light of the 355.(c)(1) objections made by counsel. The court stated that when ruling in dependency proceedings, the welfare of the minor is the paramount concern of the court. Since the purposed of the proceedings is not to punish the parent but protect the child, the trial court should not restrict or prevent testimony of formalistic grounds, but should, on the contrary, avail itself of all evidence which might bear on the child's best interest.

In re Brenda M. (2008)	160 Cal. App. 4th 772 72 Cal. Rptr. 3d 686 Fourth Appellate Dist Division Three	Does the privilege against self-incrimination apply in dependency proceedings?	The appellate court held that the privilege against self-incrimination does apply in dependency proceedings. The appellate court stated that the protections addressed in WIC 355.1(f) were not sufficient protections and that the parent should not have been forced to answer the questions posed. In addition, that not allowing that parent to present any evidence as an evidence sanction for failing to testify was not appropriate.
In re Carlos T. (6/3/09)	174 Cal. App. 4th 795 94 Cal. Rptr. 3d 635 Second Appellate Dist Division Four	In order to find an allegation true under WIC 300(d), does the court have to find a current risk?	The appellate court held that under WIC 300(d) unlike with WIC 300(b) or (j) does not require a *current* substantial risk of detriment. Therefore, even though the father was currently incarcerated and had no current contact with the child that the court could sustain a (d) allegation because the Agency did not need to prove a *current* risk. In addition, the father might get out of jail and therefore pose a future risk to the child.
In re Claudia S. (2005)	131 Cal. App. 4th 236 31 Cal. Rptr. 3d 697 Fourth Appellate Dist Division One	Does the disentitlement doctrine apply in dependency proceedings? Did the court have jurisdiction over the child or the parents if the parents were never properly noticed of the dependency proceedings?	The disentitlement doctrine means that a party to an action cannot seek the assistance or protection of the court while the party stands in an attitude of contempt to legal orders or processes of the court. This doctrine does apply to dependency proceedings but, in this case, because there were no pending dependency proceedings when the mother took the children to MX, it did not apply. The court did have jurisdiction over the child because the child's home state was California pursuant to FC 3421 et seq even through the mother had just taken the child to MX. The court did not have personal jurisdiction over the parents because notice to them of the dependency proceedings was not properly given pursuant to WIC 290 et seq. The court only had the authority to make the detention findings, issue warrants for the parents and the child(ren) and then hold the case in abeyance until either the child(ren) were taken into protective custody or the parents apprehended.

In re Christopher C. (2/22/10)	182 Cal. App. 4th 73 Second Appellate Dist Division Four	Does the on-going allegations of abuse by each other from both parents, place the children at risk of serious emotional harm?	The appellate court held that when children are at substantial risk of emotional harm as a result of being utilized as weapons in an on-going familial fight, the dependency court properly exercises its jurisdiction and declares them dependent children. Unlike Brison C., the parents in this case have turned a blind eye to the substantial risk of emotional damage to the children that their conduct has spawned and therefore the risk of emotional damage is on-going.
In re David M. (2005)	134 Cal. App. 4th 822 36 Cal. Rptr. 3d 411 Fourth Appellate Dist Division Three	Is evidence of past misconduct without something more current, enough to find WIC 300 (j)?	Under WIC 300 (b) there are three necessary elements 1) neglectful conduct, 2) causation and 3) serious harm or illness to child or substantial risk of serious harm or illness. The court found that evidence of past misconduct without something more current is not enough to even declare under WIC 300(j). This case is fact driven but... *Practice Tip*: Take judicial notice of old reports and evidence in sustaining a (j) subdivision.
D.M. v. Superior Court (4/13/09)	173 Cal. App. 4th 1117 93 Cal. Rptr. 3d 418 Fourth Appellate Dist Division Three	Does a WIC 300(g) finding require a finding of "bad faith"?	The appellate court held that a finding that a child was left without any provision of support under WIC 300(g) does not require a finding that a parent acted in "bad faith". Although the parent kicked this child out to protect the siblings, the child was still left without any provision of support. The appellate court held that bad faith is not an element of WIC 300(g) because the focus of the system is on the child and not the parents.
In re E.B. (4/9/10)	 Second Appellate Dist Division One	Did the fact that mother was the victim of domestic violence mean that nothing she did or is likely to do endangers the children?	In this case, the appellate court noted that the facts that mother admitted to the Agency that the father abused her emotionally and physically, the latter within hearing of the children, that when father berated mother after the daughter was born, the mother would sometimes leave but she always returned when he apologized and that after he struck her four times and the children heard her screaming, she stayed with him another 7 months, was substantial evidence to sustain the 300(b) allegation and that "mother's remaining in the abusive relationship, and her record of returning to Father despite being abused by him, supports the juvenile court's finding that her conduct in the domestic violence altercations endangered the children." (Good cites to dv cases and articles).

In re E.H. (2003)	108 Cal. App. 4th 659 133 Cal. Rptr. 2d 740 Second Appellate Dist Division Seven	Does a finding under WIC 300(e) require the court to identify the perpetrator of the abuse?	The court held that since the child was never out of the custody of either the mother or father, they reasonably should have known who inflicted the child's injuries. The fact that the parents denied that they knew who was abusing the child did not preclude the court finding that the parents reasonably should have known someone was abusing the child since the child was never out of their custody.
In re Hadley B. (2007)	148 Cal. App. 4th 1041 56 Cal. Rptr. 3d 234 Fourth Appellate Dist Division Three	Did the juvenile court err by refusing to allow the Agency to amend the original petition to include out of county evidence?	The court held that the juvenile court did err by refusing to allow the Agency to amend the original petition to include allegations that occurred out of county and to include out of county evidence. The court stated that concern for the child's welfare requires the court to consider all the information relevant to the present conditions and future welfare of the person in the petition and that if the court had wanted to change venue, it should have adjudicated the petition and then transferred the case pursuant to WIC 375.
In re H.E. (2008)	169 Cal. App. 4th 710 86 Cal. Rptr. 3d 820 First Appellate Dist Division Two	Is a risk of emotional harm enough to justify removal under WIC 361(c) without a risk of physical harm?	The appellate court held that it was well established under case law and CRC 5.695(d)(1) that a court can remove a child based upon a risk of emotional *or* physical harm.
In re James R. (7/15/09)	176 Cal. App. 4th 129 97 Cal. Rptr. 3d 310 Fourth Appellate Dist Division One	Did substantial evidence support juvenile court's finding of jurisdiction?	The appellate court held that in spite of the mother's mental illness and substance abuse history and father's inability to protect the children, that substantial evidence did not support the juvenile court's findings of jurisdiction. The court stated that there was no evidence of actual harm to the children from the parents conduct and no showing the parents conduct created a substantial risk of serious harm to the children. Any casual link between the mother's mental condition and future harm to the children was speculative and the Agency failed to show with specificity how mother's drinking harmed or would harm the children.

In re Javier G. (2005)	130 Cal. App. 4th 1195 30 Cal Rptr 3d 837 Fourth Appellate Dist Division One	Are the findings at the jurisdictional portion of a 387 petition appealable? Good language for out of control kids.	The court held that in proceedings on a supplemental petition, a bifurcated hearing is required. In the first phase of a section 387 proceeding, the court must make findings whether 1) the factual allegations of the supplemental petition are or are not true and) the allegation that the previous disposition has not been effective in protecting the child is, or is not, true. Then the court must hold a separate dispositional hearing where the court has a number of options including dismissing the petition, permitting the child to remain at home or removing the child from the parent's custody. A dispositional order on a supplemental petition is appealable as a judgment and issues arising from the jurisdictional portion of the hearing may be challenged on appeal of the dispositional order. The court held that the mother was unable to provide the older brothers with "sufficient structure and supervision to moderate their behaviors" and that the trial court reasonably concluded that the boys "required therapeutic treatment in an appropriately structured environment". The court found that the fact that the older brother's removal from the mother's care served to protect the younger child from further physical abuse was of no import because the analysis would have been the same if the older brothers were assaulting non-family members.
In re J.K. (6/17/09)	174 Cal. App. 4th 1426 95 Cal. Rptr. 3d 235 Second District Dist Division Seven	When are allegations of abuse so remote in time as to negate a finding of current risk of harm?	The appellate court held that old acts of abuse may be sufficient to sustain a petition and remove custody from a parent. In this case, the court found that the prior acts of abuse were sufficiently serious and further that the father had not taken any steps to address his behaviors which led to the abuse.
In re J.N. (1/6/10)	181 Cal. App. 4th 1010 104 Cal. Rptr. 3d 478 Sixth Appellate Dist	Was evidence of a single episode of parental conduct sufficient to bring the children with the court's jurisdiction?	This appellate court concluded that WIC 300(b) does not authorize dependency jurisdiction based upon a single incident resulting in physical harm absent current risk.

In re John M. (2006)	141 Cal. App. 4th 1564 47 Cal. Rptr. 3d 281 Fourth Appellate Dist Division One	Does court need ICPC approval to place with non-offending parent out of state? Should the court have continued the dispositional hearing to receive the ICPC report? Discussion of clear and convincing evidence of placement being "detrimental" pursuant to WIC 361.	The court clarified that ICPC approval is NOT required before a court places a child with a non-offending out of state parent and that to the extent that Rule of Court 1428 suggests that it does, it is "ineffective" as is any like local regulation. The court suggested that the trial court use the ICPC evaluation as a means of gathering information before placing a child with a parent. However, the court is not bound by a requirement that ICPC approve the placement. The court also held that awaiting the ICPC evaluation was an exceptional circumstance to allow the court to continue the disposition hearing to more than 60 days beyond the detention hearing. The court discusses the Agency's failure to meet the burden that placement with his father would be detrimental to John pursuant to WIC 361. The court defines clear and convincing evidence to be evidence that is so clear as to leave no substantial doubt. It indicates that John's unwillingness to go should have been taken into account but was not determinative and that his relationship with his relatives here, his relationship with his half sibling who would continue to be in this state and his mother's FR services was not enough to find it detrimental for him to be placed with his father. When addressing the sibling relationship, the court stated that the facts would have to support a finding that there was a high probability that moving to the other state would have a devastating emotional impact on the child.

In re Karen R. (2001)	95 Cal. App. 4th 84 115 Cal. Rptr. 2d 18 Second Appellate Dist Division Three	Discussion of whether the male siblings are at risk of sexual abuse based on sexual abuse of their sister.	The appellate court held that WIC 300(d) does not require a touching but does require conduct a "normal person would unhesitatingly be irritated by" and "motivated by an unnatural or abnormal sexual interest" in the victim. The court found that based on the brother witnessing the physical abuse and hearing about the sexual abuse of his sister, a normal child would have been disturbed and annoyed at having seen these events and therefore the brother was properly described by WIC 300(d). In addition, the court held that the two forcible rapes of the 11 year old girl was so sexually aberrant that both male and female siblings of the victim are at substantial risk of sexual abuse within WIC 300(d). This court disagreed with the court in Rubisela E. and found that although the danger of sexual abuse of a female sibling in such a situation may be greater than the danger of sexual abuse of a male sibling, the danger of sexual abuse to the male sibling is nonetheless still substantial.
In re L.A. (12/18/09)	180 Cal. App. 4th 413 103 Cal. Rptr. 3d 179 Sixth Appellate Dist	Can the Court order a LG under WIC 360(a) without a parent explicitly waiving their right to reunification?	The court held that as long as the court finds notice proper under WIC 291, even if a parent does not appear and formally waive reunification services, the court can order a legal guardianship under WIC 360(a). The court must also read and consider the evidence on the proper disposition of the case and find that the guardianship is in the best interests of the child.
In re Mark A. (2007)	156 Cal. App. 4th 1124 68 Cal. Rptr. 3d 106 Fourth Appellate Dist Division Three	Does the 5th amendment privilege against self incrimination apply in dependency proceedings?	Yes, the 5th amendment privilege against self incrimination does apply in dependency and is not replaced by WIC 355.1(f). Since the privilege is broader than the code section, it remains intact in dependency and it is error for a dependency court to force a person to testify after the privilege is asserted. In addition, the appellate court held that the trial court could not impose evidence sanctions for the failure of the person to testify.
In re Mariah T. (2008)	159 Cal. App. 4th 428 71 Cal Rptr. 3d 542 Second Appellate Dist Division Eight	Is WIC 300(a) unconstitutionally vague?	The court held that WIC 300(a) is not unconstitutionally vague. The court found that the finding of "serious physical harm" is no less specific than "great bodily injury" in the criminal code. The court said that serious physical harm is sufficient even though there may be a certain "I know it when I see it" component.

In re Neil D. (2007)	155 Cal. App. 4th 219 65 Cal. Rptr. 3d 771 Second Appellate Dist Division Fourth	Did the trial court have the ability to order a parent into a residential drug treatment program at disposition?	The appellate court held that the juvenile court could order a parent into a residential drug treatment program. The appellate court noted that under WIC 362, the court may make any and all reasonable orders to alleviate the conditions that brought the child within the juvenile court's jurisdiction. The court stated "Our courts have recognized that severe measures are necessary to prevent drug usage from undermining the prospect of the successful reunification of families."
In re P.A. (2006)	144 Cal. App. 4th 1339 51 Cal. Rptr. 3d 448 Second Appellate Dist Division Three	Are the male siblings at risk of sexual abuse if the abuser molested the female sibling?	The appellate court held that the male siblings were at risk of sexual abuse when the court found that the perpetrator sexually abused their nine year old sister. The appellate court stated that "aberrant sexual behavior by a parent places the victim's siblings who remain in the home at risk of aberrant sexual behavior" and that "any younger sibling who is approaching the age at which the child was abused, may be found to be at risk of sexual abuse".
In re R.M. (7/13/09)	175 Cal. App. 4th 986 96 Cal. Rptr. 3d 655 Second Appellate Dist Division One	Was there evidence of current risk of harm by clear and convincing evidence to allow court to take jurisdiction?	The appellate court held that there was not clear and convincing evidence to declare the children dependents as the mother had taken remedial steps to make sure that one child no longer molested the other child. Although evidence of past events may have some probative value, there must be evidence of circumstances existing at the hearing that make it likely that the children will suffer the same type of harm. (FYI - Jurisdiction was taken after a submission vs. a no-contest plea)
In re Rubisela E. (2000)	85 Cal. App. 4th 177 101 Cal. Rptr. 2d 760 Second Appellate Dist Division Two	Are the male siblings at risk of sexual abuse if the abuser molested the female sibling?	The appellate court held that in light of the trial court finding that the father had molested his 13 year old daughter that it was reasonable for the court to determine that in the victim's absence, the father's sexual offenses were likely to focus on his only other daughter, and that he should not be allowed to return to the family home or regain custody of the children. However substantial evidence did not support the court's finding that the father's sexual abuse of his daughter presented a substantial risk to his minor sons. The appellate court confirmed that a male sibling could be harmed by the denial of the perpetrator, the spouse's acquiescence in the denial or the parents efforts to embrace them in a web of denial, among other things, but that no risk had been shown in this case.

In re Savannah M. (2005)	131 Cal. App. 4th 1387 32 Cal. Rptr. 526 4th Appellate District Division One	Can prior acts of neglect, w/o some reason beyond mere speculation to believe they will reoccur, establish a substantial risk of harm.	Under WIC 300, the court can only take jurisdiction when the circumstances <u>at the time of the hearing</u> subject the child to the defined risk of harm. For a WIC 300 (b) finding there must be: 1) Neglectful conduct by the parent in one of the specified forms; 2) causation and 3) serious physical harm or illness to the child, or a substantial risk of such harm or illness. The evidence must show a substantial risk that past harm will recur.
In re Silvia R. (2007)	158 Cal. App. 4th 1551 70 Cal. Rptr. 3d 746 Second Appellate Dist Division Four	Can the court order non-parties to complete programs and participate in the disposition case plan?	The appellate court held that WIC 362(c) does not authorize the juvenile court to order other relatives other than whom the child is not placed to participate in counseling or education programs. Rather, section 361(c) authorizes the court to impose *on the parent*, as a condition of the disposition plan for reunification with the child, that the parent demonstrate to the court's satisfaction that the parent can protect the child. Further, when the child has been the victim of sexual abuse by other relatives, the court has the authority to order that the parent must reside separately from the perpetrators, or must demonstrate that the perpetrators *voluntarily* participated in counseling and satisfactorily addressed the issues involved, such that the child may safely reside with them.
In re Stacey P. (2008)	162 Cal. App. 4th 1408 77 Cal. Rptr. 3d 52 Second Appellate Dist Division Eight	Can a court dismiss a petition on the initial hearing?	The appellate court held that a trial court could not summarily dismiss a petition at an initial hearing except in an exceptional case where a court at an initial hearing may be in a position to make the findings required under WIC section 390. Otherwise the remedy for the agency's failure to make a prima facie case for detention is release of the child/ren to the parents.
In re S.W. (2007)	148 Cal. App. 4th 1501 56 Cal. Rptr. 3d 665 Fifth Appellate Dist	Did trial court have subject matter jurisdiction over these children?	This case is very fact specific. However, the appellate court found that the trial court did have subject matter jurisdiction over these children. Although the children had lived with their mother in Nebraska during three of the six months prior to the detention, the court found that the mother did not live in Nebraska and were visiting in California but rather that based on the facts that they lived in Madera County and therefore the court did have subject matter jurisdiction over the children.

In re V.F. (2007)	157 Cal. App. 4th 962 69 Cal. Rptr. 3d 159 Fourth Appellate Dist Division One	At the time of disposition, what is the proper code section to proceed under when considering a previously non-custodial parent?	The appellate court held that regardless of whether a previously non-custodial parent is "offending" or "non-offending", the appropriate procedure to proceed under at disposition is WIC 361.2 and not WIC 361(c).
In re Y.G. (6/23/09)	175 Cal. App. 4th 109 95 Cal. Rptr. 3d 532 Second Appellate Dist Division Four	Does WIC 300(b) permit the court to consider parent's misconduct with unrelated child in determining risk of parent to own child?	The appellate court looked to the legislative intent under WIC 355.1 which provides that evidence of a parent's misconduct with another child is admissible at a hearing under WIC 300. "This provision is consistent with the principle that a parent's past conduct may be probative of current conditions if there is reason to believe that the conduct with continue." Factors that the court can consider, in making a determination of substantial risk: when the conduct occurred, whether the unrelated child is of the same age as the child in the petition, and the reason for the misconduct.

Legal Guardianship

Case Name	Case Cite	Issue	Holding
In re Angel S. (2007)	156 Cal. App. 4th 1202 67 Cal. Rptr. 3d 792 Third Appellate Dist	What is the proper procedure to terminate a legal guardianship in juvenile court that was created in probate court?	WIC 728(a) lays out the proper procedure for terminating or modifying a probate guardianship by the juvenile court. This includes the filing of a motion vs. a WIC 388 petition. This motion may be granted by showing only that it is in the best interests of the child. Probate Code 1511 must be followed in regards to notice and this includes noticing all persons named in the original petition for legal guardianship. In addition, the juvenile court must notify the Probate Court of the juvenile court's actions.
In re Carlos E. (2005)	129 Cal. App. 4th 1408 29 Cal. Rptr. 3d 317 First Appellate Dist Division Two	Is a guardian appointed pursuant to WIC 360 or 366.26 entitled to FR if the child is removed from the guardian?	The court held that the guardian has no right to FR and therefore cannot challenge the adequacy of those services. The court stated that there is no requirement for FR when you are terminating a guardianship. The court found that the Dept should have filed a 388 and not a 300 or 387 and the court should have determined whether it was in the child's best interest to maintain or terminate the guardianship. The court held that the right to FR discussed in WIC 361.5(a) refers to a guardian established through the probate court and not the dependency court.
In re D.R. (2007)	155 Cal. App. 4th 480 66 Cal. Rptr. 3d 151 Second Appellate Dist Division One	Can the court re-take jurisdiction of a child who is in a legal guardianship and for whom jurisdiction has been terminated after the child turns 18?	The appellate court held that the trial court could retake jurisdiction over a child in a legal guardianship after the child turns 18 on condition that the WIC 388 petition is filed before the child turns 18. The court reasoned that at the time of the filing of the 388, the guardianship was still in place and the court was not automatically precluded from jurisdiction once the child reached 18. The appellate court held that the trial court had the discretion under WIC 303 to reinstate jurisdiction where there is a showing of a reasonable foreseeable future harm to the welfare of the child.
In re Guardianship of L.V. (2005)	136 Cal. App. 4th 481 38 Cal. Rptr. 3rd 894 Third Appellate Dist	What is the test to determine whether to terminate a probate guardianship?	The court held that the test for determining whether to terminate a probate guardianship is the best interest of the child. It is not enough for the parents just to be "fit" again, it must also be in the best interest of the child to terminate the guardianship.

In re Jessica C. (2007)	151 Cal. App. 4th 474 59 Cal. Rptr. 3d 855 Fifth Appellate Dist	Under what Code Sections should a petition be initiated to terminate a legal Guardianship? Prior to terminating a legal guardianship, is the court required to consider providing services to the child and/or the legal guardian to maintain the guardianship?	The appellate court held that a WIC 387 petition is the appropriate procedural mechanism to terminate a legal guardianship if doing so will result in foster care even though the statutory scheme allows for using a WIC 388 petition. The court held that the juvenile court must evaluate whether providing services to a legal guardian would prevent the termination of the guardianship. Although WIC Section 366.3(b) provides for the termination of guardianship, the section requires the court to evaluate whether the child could safely remain in the guardian's home, without terminating the guardianship, if services were provided to the child or the legal guardian. CRC 5.740(c)(3)(A) also provides for the court to order the Agency to provide services to the guardian and child for the purpose of maintaining the guardianship consistent with WIC section 301 versus terminating the guardianship.
In re K.D. (2004)	124 Cal. App. 4th 1013 21 Cal. Rptr. 3d 711 Fourth Appellate Dist Division One	Did the court abuse its discretion in terminating juri after establishing LG to ensure parental visits?	The court held that the trial court's order to terminate jurisdiction after ordering a legal guardianship at a WIC 366.26 hearing based on the (c)(1)(A) exception was "fatally inconsistent" with the court's finding that it was in the child's best interest to maintain the parental bond through court ordered visitation (the legal guardian's were moving out of state.) The court found that the juvenile court should have maintained jurisdiction to monitor compliance with the visitation order.
In re Kenneth S. (2008)	169 Cal.App.4th 1353 87 Cal.Rptr. 3d 715 Fourth Appellate Dist Division One	Which court is appropriate to hear modification of visitation after LG?	The appellate court held that the juvenile court retains jurisdiction to hear visitation modification requests after granting of legal guardianship. The family law court is not the appropriate court to hear such requests.
In re M.R. (2005)	132 Cal. App. 4th 269 33 Cal. Rptr 3d 629 Fourth Appellate Dist Division Two	Interpretation of 366.26 (c)(4) Parental visitation after a legal guardianship	The court held that the trial court must specify the frequency and duration of the visitation by a parent when the children are in a Legal Guardianship. The court can leave to the guardian, the "time, place and manner" of visitation but must make a specific visitation order unless the court finds that visitation is not in the best interests of the children.

In re Rebecca S. (2/8/10)	181 Cal. App. 4th 1310 104 Cal. Rptr. 3d 706 Second Appellate Dist Division One	Which specifics must court delineate re: parental visitation when terminating jurisdiction with a LG?	The appellate court held that while the time, place and manner of parental visitation may be left to the legal guardian, the frequency and duration of the visitation must be delineated by the trial court to assure that visitations will actually occur.
In re S.J. (2008)	167 Cal. App. 4th 953 84 Cal. Rptr. 3d 557 Fourth Appellate Dist Division Two	Did the court improperly delegate the power of deciding visitation to the legal guardian?	The appellate court held that because the original guardianship and visitation order were made in 2000, prior to the passage of WIC 366.26(c)(4)(c), that the trial court had not improperly delegated the power of deciding visitation for a parent to the legal guardian. However, in any legal guardianship granted after the passage of WIC 366.26(c)(4)(c), in 2005, the trial court must decide whether visitation with the parent should happen and not leave that decision to the guardian.
In re Z.C. (10/2/09)	178 Cal. App. 4th 1271 101 Cal. Rptr. 3d 49 First Appellate Dist Division Two	Does the court have the authority to order an Agency to provide FR services to the LG to try and maintain the guardianship?	The appellate court held that under the plain meaning of WIC§366.26(b) when considered within the context of the juvenile dependency law, provides the juvenile court with the power to order the social services agency to provide reunification services to a legal guardian to preserve the legal guardianship. In addition, the length of time for those services is to be determined by what is in the best interests of the child.

Miscellaneous

Case Name	Case Cite	Issue	Holding
In re A.M. (2008)	164 Cal. App. 4th 914 79 Cal. Rptr. 3d 620 Fourth Appellate Dist Division Three	Discussion of the standard for denying a parent's request for self-representation.	The appellate court held that the juvenile court has discretion to deny the request for self-representation when it is reasonably probable that granting the request would impair the child's right to a prompt resolution of custody status *or* unduly disrupt the proceedings even if the parents is legally competent to represent themselves.
In re Amber R. (2006)	139 Cal. App. 4th 897 43 Cal. Rptr. 3d 297 Fourth Appellate Dist Division Three	Who has standing to be found an "important person to the child" and seek contact with a dependent child pursuant to WIC 366.3(e)?	The court held that the decision of who is important to the child is made by the court on recommendation by the agency pursuant to WIC 366.3(e)(2) and (f)(3). The Agency, not the world at large, is responsible for determining who is important to the child and reporting that information to the court. The court was concerned that biological parents whose rights had been terminated might subsequently come to court to litigate whether they are important to the child under the statute. The focus is on the best interests of the child and the child has standing to demand a review where the issue of identifying important individuals is determined and may appeal any decision with which she is dissatisfied.
In re Andrew A. (3/30/10)	Fourth Appellate Dist Division One	Did ct have authority to entertain mother's motion for reconsideration of its jurisdictional finding and dismiss petition prior to dispo?	The appellate court concluded on two separate grounds that the juvenile court lacked the authority to reconsider its jurisdictional finding: (1) Mother's plea of no contest barred her from bringing a motion for reconsideration; and (2) the juvenile court was barred from reconsidering its jurisdictional finding at the hearing on the section 342 petition because the parties were not provided with prior notice that the issue would be addressed at the hearing
In re A.R. (01/26/09)	170 Cal. App. 4th 733 88 Cal. Rptr. 3d 448 Fourth Appellate Dist Division One	Did court err in refusing to grant stay of proceedings pursuant to Servicemember Civil Relief Act?	The appellate court held that the trial court did err in refusing to grant the 90 day stay mandated by the Servicemember Civil Relief Act. The court held that the stay was mandatory and overrode the 6 month requirements under WIC 352(b).

Beltran v. Santa Clara County (1/24/2008)	514 F.3d 906 US Court of Appeals for the Ninth Circuit	Are social workers entitled to absolute immunity for verified statements in petition filed with dependency court?	The US Court of Appeals for the Ninth Circuit reversed the district court and held that social workers are not entitled to absolute immunity with respect to dependency petitions and custody petitions, as well as the statement of facts submitted with them if those statements can shown to be fabricated evidence or false statements.
In re C.C. (2008)	166 Cal. App. 4th 1019 83 Cal. Rptr. 3d 225 Fourth Appellate Dist. Division Three	Upon appellate reversal, when can a party file a CCP 170.6 affidavit?	The appellate court held that in dependency matters, if the reversal and remand is for the lower court to perform a "ministerial act", then a 170.6 is improper. However, if the remand is for the lower court to "conduct a new trial on the matter", then a 170.6 affidavit is allowed by the party who filed the appeal which resulted in the reversal.
In re Charlisse C. (2008)	45 Cal. 4th 145 CA Supreme Court	Under what circumstances, if any, may a non-profit, public interest law firm, be disqualified from the successive representation of a parent and child?	The appellate court held, in a 2-1 decision, that the trial courts should not disqualify on conflict-of-interest grounds, particularly lawyers from legal services agencies, where the lawyer has no actual or imputed conflict of interest. Absent a showing of an actual conflict, or that the current attorney has obtained material confidential information, a non-profit, public interest law firm should not be disqualified in a serial representation case. The Supreme Court held that while generally agreeing with the appellate court, that they had applied the law relating to "concurrent representation" vs. "successive representation" and that the burden of showing no actual conflict should be borne by the agency opposing the motion to recuse counsel, not the party seeking recusal.
City and County of San Francisco v. Cobra Solutions (2006)	138 Cal. 4th 839 15 P. 3d 445 California Supreme Ct	Defines the scope and need for ethical walls in separate law units under one umbrella firm	The California Supreme Court reaffirmed the findings in the Castro case when it articulated that there would be no conflict if attorneys from each unit simultaneously represent clients from a single family whose interests are divergent. In Castro, the autonomy of each law unit was ensured because the chief attorney in each unit initiated hiring, firing and salary changes for that units attorneys...
In re Claudia E. (2008)	163 Cal. App. 4th 627 77 Cal. Rptr. 3d 722 Fourth Appellate Dist Division One	Is declaratory relief available in dependency proceedings?	The court held that the juvenile court has the authority to grant declaratory relief in certain cases (such as the instant case in which the Dept. Has a policy of untimely filing supplemental petitions in contravention of statutory requirements). Moreover, declaratory relief better serves the juvenile dependency system than habeas corpus relief on a case by case basis.

Deborah M. v. Superior Court of San Diego (2005)	128 Cal. App. 4th 1181 27 Cal. Rptr. 3d 747 Fourth Appellate Dist Division One	Does FC 3041.5(a) permit drug testing by using hair follicle samples?	The court held that the only testing procedures established by the Dept. of Health and Human Services was urine testing. Family Law section 3041.5 states that the 'court shall order the least intrusive method of testing" and 'the testing shall be performed in conformance with procedures and standards established by the US Department of Health and Human Services for testing of federal employees.' Therefore, hair follicle testing is not permitted under FC 3041.5(a).
George P. v. Superior Court of San Luis Obispo (2005)	127 Cal. App. 4th 216 24 Cal. Rptr. 3d 919 Second Appellate Dist Division Six	Service members Civil Relief Act	The Service members Civil Relief Act allows a 90 day stay, plus additional stays as warranted and is discretionary. Military obligations must not adversely affect the service members ability to participate in the dependency proceeding both personally and through counsel. For the stay to be granted there must be a specific showing of inability to participate and a letter signed by the commanding officer for the service member. In this case, the court upheld a denial of a stay over nine months citing that father's non-compliance even before he was deployed shows that his military service did not adversely affect his participation in the case.
In re Jackson W. (4/29/10)	Fourth Appellate Dist Division One	Can parent who waives right to court appointed counsel trained in juvenile dependency law to retain counsel who does not meet those qualifications claim private counsel provided ineffective representation?	The appellate court held that, after proper advisement, a parent may knowingly, intelligently and voluntarily waive the statutory right to be represented by appointed counsel meeting the definition of "competent counsel" under California Rules of Court, rule 5.660(d). Once that right is waived, the parent is precluded from complaining about counsel's lack of juvenile dependency qualifications.

In re Janee W. (2006)	140 Cal. App. 4th 1444 45 Cal. Rptr. 3d 445 Second Appellate Dist Division Eight	When a child has been placed with previously non-custodial parent, what is next hearing?	The appellate court held that regardless of when a child is placed with a previously physically non-custodial parent, (whether at dispo or any later hearing), the court does so under WIC 361.2. If the court retains jurisdiction after placement, the appropriate code section to set the next hearing is WIC 366 where the court shall determine which parent, if either, shall have custody of the child. In addition, since neither 366 nor 366.21(e) requires reasonable services be offered to a previously custodial parent, DCFS does not have to provide nor does that court have to find that reasonable services have been provided to the previously custodial parent even if reunification services were ordered.
In re J.N. (2007)	156 Cal. App. 4th 523 67 Cal. Rptr. 3d 384 Fourth Appellate Dist Division One	Is the court required to conduct a full evidentiary hearing before appointing a medical Guardian? Can the Court authorize removal of a breathing tube prior to adjudging (declaring) the child to be a dependent? Does the Court have the authority to issue a "DNR order prior to adjudging the child to be a dependent?	The Court has the discretion to appoint a guardian at an informal hearing in which the parent is given an opportunity to respond and where there is an explanation of the purpose for appointing the guardian, as well as the authority that will be transferred. Prior to the disposition, the Court has the authority to order removal of the temporary feeding tube because WIC 369(b) allows the court, once a petition has been filed, to intervene when the child is in need of the performance of medical treatment (surgical or other remedial care). Prior to disposition, the Court does NOT have the authority to issue a DNR order because it is an order for non-performance of medical treatment; although permitted under WIC 362(a) (all reasonable orders for care, supervision, etc.) once the child has been adjudged (declared) a dependent. WIC 369(b) limits orders at this stage to affirmative medical treatment. The Court of Appeal also notes that the procedure had not been properly followed for live testimony of physicians, and cites the factors to be weighed from In re Christopher I (2003) 106 Cal. App. 4th 533, 551.

Jonathan L. v. Superior Court (2008)	165 Cal. App. 4th 1074 81 Cal Rptr. 3d 571 Second Appellate Dist Division Three	Do parents of dependent children have a constitutional right to home school their children?	Upon rehearing, the appellate court reversed/tailored their original ruling that enrollment and attendance in a public full-time day school is required by California law for minor children unless (1) the child is enrolled in private full-time day school and actually attends that private school, (2) the child is tutored by a person holding a valid state teaching credential for the grade being taught, or (3) one of the other few statutory exemptions to compulsory public school attendance applies to the child. The court concluded that an order requiring dependent children to attend school outside the home in order to protect that child's safety is not an unconstitutional violation of the parents' right to direct the education of their children.
In re Kristen B. (2008)	163 Cal. App. 4th 1535 78 Cal. Rptr. 3d 495 Fourth Appellate Dist Division One	Is it ineffective assistance of counsel for minor's counsel to advocate for the child's best interest vs their stated wishes?	The appellate court held that it is not ineffective assistance of minor's counsel to advocate on behalf of the child's interests vs. their stated interests. The court noted that despite the seemingly inherent conflict in all dependency cases where minor's counsel takes a position contrary to the minor's stated wishes, the Legislature has expressly provided that the best interests of the minor, not his or her wishes, determine the outcome of the case.
Manuel C. v. Superior Court of Los Angeles (1/26/10)	181 Cal. App. 4th 382 104 Cal. Rptr. 3d 787 Second Appellate Dist Division Four	Can a party to an action file a 170.6 where case had previously been in front of same bench officer?	In this case, the court had previously terminated jurisdiction on the family. A new petition with different allegations was subsequently filed. One of the parties filed a CCP §170.6. The appellate court held that the §170.6 filed by the party was timely.
In re M.L. (03/23/09)	172 Cal. App. 4th 1110 90 Cal. Rptr. 3d 920 Second Appellate Dist Division Six	Did the Court err in finding exigent circumstances allowing the agency to take newborn into custody? Does the court have to defer to mother's selection of adoptive parents?	The appellate court held that a social worker, pursuant to WIC 306 may remove a child from a parent's custody if there is reason to believe that the child is in imminent danger and therefore that the Agency did not need a warrant. In this case the mother had made a revocable plan when the Agency detained the child and therefore the child was still in imminent danger. The appellate court held that, after the court finds the allegations in the petition to be true, the trial court is not required to defer to mother's selection of adoptive parents for her child. Although the mother had a recognized constitutional right to select adoptive parents for her child, the juvenile court is charged with determining whether that plan or another is in the best interests of the child.

In re Nolan W. (03/30/09)	45 Cal. 4th 1217 203 P. 3d 454 California Supreme Ct	Can Juv. Ct. use contempt sanctions as punishment when a parent fails to satisfy conditions of reunification plan?	The California Supreme Court held that the trial court may not use its contempt power to incarcerate a parent solely for the failure to satisfy aspects of a voluntary reunification case plan. The court held that because reunification services are voluntary in nature, they cannot be forced on an unwilling or indifferent parent. The termination of parental rights is the ultimate "punishment" for failure to comply with the reunification plan, not jail. This decision was limited and left the juvenile court with its contempt power to otherwise control the proceedings.
In re Paul W. (2007)	151 Cal. App. 4th 37 60 Cal. Rptr. 3d 329 Sixth Appellate Dist	Does the parent who did not seek the Writ of Habeas Corpus have standing to appeal the orders made during that hearing?	The court of appeal held that the parent who had not sought the original Writ of Habeas Corpus had no standing to appeal the orders made at that hearing. Although that parent had standing in the entire dependency proceeding, she was not a party to the habeas corpus proceeding. That parent had never made an attempt to intervene in the habeas proceeding and the ruling did not otherwise affect her parental interests.
In re R.D. (2008)	163 Cal. App. 4th 679 77 Cal. Rptr. 3d 793 Fourth Appellate Dist Division Two	Discussion of requirements for transferring of cases between counties.	The court held that when a case is transferred out, the receiving court *shall* take jurisdiction of the case. Pursuant to Calif Rules of Court 5.612(f), if the receiving court believes that a change of circumstances or additional facts indicate that the child does not reside in the receiving county, a transfer-out hearing must be held separately. In addition, at a transfer-out hearing, the transferring court is required to make findings not only about the child's residence (case discusses 5 bases to establish residency), but also whether the transfer is in the best interest of the child.
In re R.W. (03/26/09)	172 Cal. App. 4th 1268 91 Cal. Rptr. 3d 785 Fourth Appellate Dist Division Three	Discussion of limiting educational rights of parent.	The appellate court held that the trial court did not abuse its discretion when it limited the mother's educational rights because the mother was not acting in the child's best interests. The child urgently needed emotional, behavioral and educational services and the court needed to act before the "window of opportunity" closed.
V.S. v. Allenby (2008)	169 Cal. App. 4th 665 87 Cal. Rptr. 3d 143 Second Appellate Dist Division Seven	DSS requirements for action within 180 days of Voluntary Placement.	The appellate court found that the trial court should have issued a writ of mandamus directing the Director of DSS to order his agents to comply with the mandatory requirements of federal and state law with regards to Voluntary Placements. The agents must take one of 5 actions within 180 days of the start of the voluntary placement.

In re Z.N. (12/29/09)	181 Cal. App. 4th 282 104 Cal. Rptr. 3d 247 First Appellate Dist. Division Two	Good discussion of Marsden motions	The appellate court considered (1) the timeliness of the motion, (2) the adequacy of the court's inquiry into the defendant's complaint, and (3) whether the conflict was so great that it resulted in a total lack of communication preventing an adequate defense.

Notice Issues

Case Name	Case Cite	Issue	Holding
In re Alyssa F. (2003)	112 Cal. App. 4th 846 6 Cal. Rptr. 3d 1 Fourth Appellate Dist Division One	Discussion of the notice requirements for a party living in another country under the Hague Convention.	The appellate court held failure to properly serve a party who resides outside the country under the Hague Convention renders all subsequent proceedings void as to that person. This is true even if the party indisputably had notice of the action. Specifically Article 10 of the Hague Service Convention indicates that notice must be valid under California law and in a manner not objected to by the other country. This case notes that Mexico and the United States are both signatories to the Hague Convention and that Mexico does not prohibit service by registered mail. The other means is to notice through the Central Authority.
In re Gerald J. (1992)	1 Cal. App. 4th 1180 2 Cal. Rptr. 2d 569 Fourth Appellate Dist Division One	Can the court proceed when the parents have been appropriately noticed but fail to appear? Does the WIC 366.26 report with attached adoption assessment need to be served 10 days prior to the hearing?	The court held that the trial court had not erred in failing to grant parents counsel's request for a continuance pursuant to WIC 352 because the parents had been adequately and timely noticed and counsel was present. The court found that a parent's failure to appear will not normally constitute the good cause necessary to justify a continuance because substantial importance is attached to the child's need for a prompt resolution of the matter. In addition, the court held that the fact that counsel had not received the adoption assessment prior to the court date was also not good cause for a continuance because none of the statutes requires the report to be served on the parents or their counsel.
In re Jennifer O. (5/6/10)	 Second Appellate Dist Division Four	Does the Hague Convention apply to service of notice of review hearings in Dependency?	The appellate court held that the Hague Convention does not apply to service of notice of review hearings in Dependency. The appellate court held that once the juvenile court acquires "personal jurisdiction" over the non-resident parent in this manner at the jurisdictional hearing, that subsequent notices only need to comply with California law.
In re J.H. (2007)	158 Cal. App. 4th 174 70 Cal. Rptr. 3d 1 Second Appellate Dist Division One	Is failure to notice a reason for reversal if the result would not have been any different?	This is a very fact specific case. The appellate court held that even though father had never been appropriately noticed, that he knew about the proceedings and never appeared until the 366.26 hearing. The appellate court held that the errors were "harmless beyond a reasonable doubt" because it was clear that the father could not have taken custody of the child or even participated in reunification services.

In re Jorge G. (2008)	164 Cal. App. 4th 125 78 Cal. Rptr. 3d 552 Second Appellate Dist Division One	Discussion of requirements for notice to parents who reside in Mexico.	The appellate court held that when parents reside in Mexico, the juvenile court is required to afford a reasonable time for proper service under the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters. (The notice must comport with notice requirements in both California and in Mexico.) [Note: In re Alyssa F. seems to imply that notice can be by international certified mail - return receipt requested; the other means is to notice through the Central Authority. The notice and pleadings/petition must be in Spanish.]
In re Justice P. (2004)	123 Cal. App. 4th 181 19 Cal. Rptr. 3d 801 Fourth Appellate Dist Division One	Does every notice violation warrant a hearing on its face under WIC 388?	The court rejected the notion that every WIC section 388 petition based on notice violations merits an evidentiary hearing as a matter or law regardless of a prima facie showing of best interests.
In re Kobe A. (2007)	146 Cal. App. 4th 1113 53 Ca. Rptr. 3d 437 Second Appellate Dist Division Four	Addresses issues of notice, ROC 1413(g) parentage, standing, appointment of counsel for inc. parents; etc	The appellate court held that the father was entitled to notice of the jurisdictional hearing by certified mail with a copy of the petition pursuant to WIC 291. The court also held that pursuant to Rule of Court 1413(h), father was entitled to be sent a JV 505 form by the clerk that would have given him the opportunity to address paternity and standing.
In re Marcos G. (2/4/10)	182 Cal. App. 4th 369 Second Appellate Dist Division Three	Good discussion of PC §2625 and notices to an incarcerated parent	This is a very fact specific case. The appellate court found that in spite of failures under PC §2625, and failure to follow certain notice provisions, the error was not prejudicial and the father had not shown that it was in his child's best interests at a WIC §388 hearing (pending a WIC §366.26 hearing) to go back to disposition in this matter.
In re P.A. (2007)	155 Cal. App. 4th 1197 66 Cal. Rptr. 3d 783 Second Appellate Dist Division Three	If the due diligence was incomplete at disposition, do the findings made at the 366.26 hearing need to be reversed?	The court held that even though the due diligence was incomplete when the court proceeded to disposition, the findings made at the 366.26 hearing did not need to be reversed because notice for the 366.26 hearing was appropriate and the father never challenged jurisdiction in the trial court. Because the father had appeared at several hearings post disposition and never asked to receive reunification services nor did he file a 388 petition challenging jurisdiction based on bad notice, the issues were waived.

In re Wilford J. (2005)	131 Cal. App. 4th 742 32 Cal. Rptr. 3d 317 Second Appellate Dist Division Seven	Notice requirements and advisements for jurisdictional hearing.	The court held that failure to "identify the nature of the proceeding" as required by WIC 291(d)(2) for the jurisdictional hearing constituted inadequate notice. The court indicates that a parent must be apprised that a jurisdictional hearing is set to adjudicate the allegations of a dependency petition and that the parent must be apprised of the consequences of their failure to appear at that hearing. The appellate court seems to misunderstand that a PRC is actually a jurisdictional hearing. Either way, the court needs to assure that the parties know that whatever they call the hearing, that it is a jurisdictional hearing and notice them of what could happen at that hearing.

Parentage Issues

Case Name	Case Cite	Issue	Holding
Adoption of Arthur M. (2007)	149 Cal. App. 4th 704 57 Cal. Rptr. 3d 259 Fourth Appellate Dist Division One	Discussion of what it means under FC 7611 to come forward promptly and assume parental responsibility.	The appellate court held that once an unwed father knows or reasonably should know of the pregnancy, he must promptly attempt to assume his parental responsibilities as fully as the mother will allow and the circumstances permit. The appellate court goes into great detail about what the father did and didn't do to demonstrate his commitment to his parental responsibilities.
In re Baby Boy V. (2006)	140 Cal. App. 4th 1108 45 Cal. Rptr. 3d 198 Second Appellate Dist Division One	When does an alleged father become a presumed father?	The court held that a mother may not unilaterally preclude her child's bio father from becoming a presumed father on nothing more than a showing of the child's best interests. The court held that when an unwed father learns of a pregnancy and promptly comes forward (or as soon as he learns of the babies existence) and demonstrates a full commitment to his parental responsibilities, his federal constitutional right to due process prohibits the termination of his parental relationship absent a showing of his unfitness as a parent.
Charisma R. v. Cristina S. (2006)	140 Cal. App. 4th 301 44 Cal. Rptr. 3d 332 First Appellate Dist Division Five	Presumed mother	The court held that to determine whether one partner is the presumed mother of the child, the court must look at whether she actively participated in the child being conceived with the understanding that she would raise the child as her own, 2) whether she voluntarily accepted the rights and obligations of parenthood after the child's birth and 3) whether there are competing claims to being the child's second parent.
In re Cody B. (2007)	153 Cal. App. 4th 1004 63 Cal. Rptr. 3d 652 Fourth Appellate Dist Division One	Can a biological mother be declared a presumed mother after the termination of parental rights?	The court held that the biological mother could not be declared the presumed mother after termination of parental rights even if she held herself out to be the mother and openly accepted the child into her home. The court stated that even though FC 7611 allows for someone to be declared a presumed parent at any stage of the proceedings it does not apply after the termination of parental rights; 366.26(i)(1) controls.
County of Orange v. Superior Court of Orange County (2007)	155 Cal. App. 4th 1253 66 Cal. Rptr. 3d 689 Fourth Appellate Dist Division Three	Should the court have set aside the voluntary declaration of paternity based on a motion filed more than two years after the child's birth?	The court held that the trial court should not have set aside the voluntary declaration of paternity based on a motion filed more than two years after the child's birth. The court held that the because paternity had been established by a voluntary declaration, the motion was untimely under Family Code Section 7575(b) and 7646(a)(2). The trial court should not have ordered genetic testing absent extrinsic fraud being shown.

County of San Diego v. David Arzaga (2007)	152 Cal. App. 4th 1336 62 Cal. Rptr. 3d 329 Fourth Appellate Dist Division One	Discussion of doctrine of parentage by estoppel.	The court held that the doctrine of parentage by estoppel did not apply to the facts in this case because the "father" did not know all of the facts (namely that he was not the biological father) when he held himself out to be the father of the child. In general the doctrine of parentage by estoppel is "the duty of support which a husband owes to his wife's illegitimate child when the husband , from the date of birth of the child, accepts the child into his family, publicly acknowledges the child as his own and treats the child as if he were legitimate." This presupposes that the husband knows that the child is not biologically his child.
Craig L. v. Sandy S. (2004)	125 Cal. App. 4th 36 22 Cal. Rptr. 3d 606 Fourth Appellate Dist Division One	Competing paternity presumptions under FC 7611, 7612 and 7540.	The court reiterated that FC 7612(b) requires that "if two or more presumptions arise under 7611 which conflict with each other, the presumption which on the facts is founded on weightier considerations of policy and logic controls." In this case, there existed competing presumptions and the court remanded it to conduct a factual hearing on the nature of the competing relationships to the child and the impact on the child. The concept is that the child's best interests are paramount in making the paternity findings.
In re Elijah V. (2005)	127 Cal. App. 4th 576 25 Cal. Rptr. 3d 774 Fourth Appellate Dist Division One	Who was entitled to presumed father status - bio father or man married to mother at time of conception? Did court err in failing to order FR for bio father?	The court held that the trial court properly declared Jesse to be a presumed father under FC7540 (married to mother and child born during marriage- also time of conception very close to husband and wife co-habitating) even though he wasn't bio father. The court held that the trial court erred in order a paternity test because only the husband, child and presumed father may seek blood tests. The court held that the trial court wasn't required to balance bio father's interests against presumed father's interests because bio father didn't qualify for presumption under FC7611 because he never publicly ack paternity to anyone other than PGM and although child lived with him for 11 days, he was like babysitter v. parent. Finally, the court held that the trial court may not order srvs for the bio father when a conclusively presumed father exists.

Elisa B. v. The Superior Court of El Dorado County (2005)	37 Cal. 4th 108 117 P. 3d 660 CA Supreme Court	Can the two parents of a child be of the same sex?	The California Supreme Court held that a lesbian partner to the biological parent could be the other parent to a child with the ensuing obligation to support that child. The court used FC Section 7611 (d) to analyze whether the lesbian partner had openly accepted the children into her home and held them out to be her own and therefore intended the child to be her own. The court specifically found that a child was deserving of two parents (and not more) for both financial and emotional support.
In re E.O. (3/3/10)	182 Cal. App. 4th 722 First Appellate Dist Division Five	Does a paternity judgment made for purposes of child support equate to presumed father status?	The appellate court held that a paternity judgement, as the name implies, is a judicial determination that a parent child relationship exists. It is designed primarily to settle questions of biology and provides the foundation for an order that the father provide financial support. Presumed father status, by contrast, is concerned with a different issue: whether a man has promptly come forward and demonstrated his full commitment to his parental responsibilities – emotional, financial and otherwise. They do not equate.
In re Eric E. (2005)	137 Cal. App. 4th 252 39 Cal. Rptr. 3d 894 Second Appellate Dist Division Eight	What is the procedure for requesting presumed father status?	The court held that the proper procedure for requesting presumed father status was through the filing of a WIC 388 petition. If you wait to long to earn presumed father status, you must file a 388 petition which requires you to show a change of circumstances and that it is in the child's best interest to change the paternity status.
Gabriel P. v. Suedi D. (2006)	141 Cal. App. 4th 850 46 Cal. Rptr. 3d 437 Second Appellate Dist Division Four	Weighing presumed fathers	The appellate court concluded that the trial court was correct in ruling that the bio father was entitled to establish his paternity because the mother had precluded him from becoming a presumed father. In addition, the trial court was correct in ordering genetic testing and admitting the results of these tests to resolve whether the husband's voluntary declaration should be set aside. However, the trial court erred in failing to weigh the presumptions supporting the husband's status as presumed father. The trial court must weigh the competing interests of paternity for weightier considerations of policy and logic.

H.S. v. Superior Court of Riverside County (4/22/10)	Fourth Appellate Dist Division Two	Should ct have ordered genetic testing as requested by prior presumed father after declaration of paternity had been rescinded?	The appellate court held that the trial court erred when it ordered genetic testing in a paternity action when real party in interest had no standing as a presumed father other than a voluntary declaration of paternity that was executed and subsequently rescinded by a married woman. When the trial court granted the motion to set aside the declaration, it should have found that the declaration was void and had no effect.
In re J.L. (2008)	159 Cal. App. 4th 1010 72 Cal. Rptr. 3d 27 First Appellate Dist Division One	Does the juvenile court have the jurisdiction to set aside a voluntary declaration of paternity under FC 7575?	The appellate court held that the answer is yes. Family Code 7575 allows for the rescission of a voluntary declaration of paternity by either parent or where the court finds there is proof that the man signing the declaration was not the biological father unless the court finds it would not be in the child's best interests. The motion to set aside must be filed within the first 2 years after the child's birth by a local child support agency, the mother, the man who signed the declaration, "or in an action to determine the existence or nonexistence of the father and child relationship... or in any action to establish an order for child custody, visitation, or child support based upon the voluntary declaration of paternity." The appellate court found that the juvenile court had jurisdiction to hear the motion to set aside the declaration since it is a court that is charged with inquiring about a child's biological parents and establishing custody of a child.
In re J.O. (9/9/09)	178 Cal. App. 4th 139 100 Cal. Rptr. 3d 276 Second Appellate Dist Division Four	Does "failure to provide" rebut presumption under FC §7611(d)?	The appellate court found that although a FC§7611(d) presumption of paternity may be rebutted in an "appropriate action" by "clear and convincing evidence", if the result would be to leave the child without any presumed father, the court should not allow such a rebuttal. The court stated that while failure to provide might result in a failure to establish a presumption of paternity under FC §7611(d), once the presumption is established, failure to provide is not enough to rebut it.

Kevin Q. v. Lauren W. (6/19/09)	175 Cal. App. 4th 1119 Fourth Appellate Dist Division Three	Does a man's voluntary declaration of paternity rebut a rebuttable presumption of paternity under a subdivision of FC 7611?	The appellate court held that FC 7612(a) listing the section 7611 presumptions rebuttable, expressly excludes presumed father status arising from a declaration of paternity as one of the rebuttable presumptions. Even a pre-1997 voluntary declaration of paternity "overrides the rebuttable presumptions created by section 7611's subdivisions. Therefore, the appellate court held that the trial court was incorrect when it weighed and balanced the two presumptions because that is only to be done when both presumptions arise from the subdivisions of FC 7611.
In re Lisa I. (2005)	133 Cal. App. 4th 605 34 Cal. Rptr. 3d 927 Second Appellate Dist Division Eight	Paternity- Nature vs. Nurture FC 7611(d)	The court held that a protected liberty interest in establishing paternity does not arise from a biological connection alone but from the existing relationship, if any, between a biological father and a child. The court found that the presumption of paternity did not arise with the biological father because another man had established a relationship with the child. Applying the statutory presumption furthers the state's interest in preserving the familial relationship between the child and the presumed father and these relationships are not always founded in biological reality.
K.M. v. E.G. (2005)	37 Cal. 4th 130 117 P. 3d 673 CA Supreme Ct.	Is an ovum donor whose intention it was to produce a child to be raised in the joint home of the donor and donee, a parent?	The California Supreme Court found that ovum donor's status was not analogous to that of a sperm donor under FC 7613(b) which provides that a man is not a father if he provides semen to a physician to inseminate a woman who is not his wife, because the ovum donor supplied her ova to impregnate her lesbian partner in order to produce children who would be raised in their joint home. The Supreme Court used the "intent test" to show that the couple intended to raise the child together. The Supreme Court again found that the child was entitled to two parents for financial and emotional support.
Kristine H. v. Lisa R. (2005)	37 Cal. 4th 156 117 P. 3d 690 CA Supreme Court	Challenge to validity of stipulated Existence of Parental Rights	The California Supreme Court held that given that the Superior court had subject matter jurisdiction to determine the parentage of the unborn child, and that appellant invoked that jurisdiction, stipulated to the issuance of a judgment, and enjoyed the benefits of that judgment for nearly two years, it would be unfair to both the other parent and the child to permit appellant to challenge the validity of that judgment. It would also contravene the public policy favoring that a child has two parents rather than one.

In re Mary G. (2007)	151 Cal. App. 4th 184 59 Cal. Rptr. 3d 703 Fourth Appellate Dist Division One	Did father's signed voluntary declaration of paternity from Michigan make him a presumed father in California?	The appellate court held that when the father signed the voluntary declaration of paternity in Michigan, it had the same force and effect as a paternity judgment. Family Code section 5604 requires California courts to give full faith and credit to paternity judgments made by any other state and those judgments shall have the same effect as a paternity determination made in this state.
Adoption of O.M. (2008)	169 Cal. App. 4th 672 87 Cal. Rptr. 3d 135 First Appellate Dist Division Four	Discussion of whether father made full commitment to parental responsibilities resulting in Kelsey S.status	The appellate court held that the biological father did not reach Kelsey S. status because he had not made a full commitment to his parental responsibilities. Although the mother did frustrate him to some extent, the father's ability to demonstrate his commitment was impeded to a far greater extent by the predictable consequences of his own criminal activity.
In re T.R. (2005)	132 Cal. App. 4th 1202 34 Cal. Rptr. 3d 215 Fourth Appellate Dist Division One	Interpretation of FC section 7611 (d) for stepfather who was convicted of sexually molesting the child who was the subject of the petition.	The court held that although a stepfather had raised a child as his own since she was age 3, he was not entitled to presumed father status under FC 7611(d). The court held that because he was convicted of molesting the child that was the subject of the dependency petition and that those actions were so contrary to a parental role that any presumption under 7611(d) either did not apply or was rebutted.
In re Vincent M. (2008)	161 Cal. App. 4th 943 74 Cal. Rptr. 3d 755 Second Appellate Dist Division Five	Does the court have to find it is in the child's best interest to place with or offer reunification services to a biological father who appears after the reunification period has ended?	The court held that a biological father seeking reunification with a child, who does not come forward in the dependency proceeding until after the reunification period has ended, must establish under WIC 388 that there are changed circumstances or new evidence demonstrating the child's best interest would be promoted by reunification services. The court also held that the rule is the same whether his paternity was concealed from him or not.

In re William K. (2008)	161 Cal. App. 4th 1 73 Cal. Rptr. 3d 737 Third Appellate Dist	Discussion of setting aside a voluntary declaration of paternity.	VDP is a conclusive presumption of paternity. The appellate court held that a motion to set aside a voluntary declaration of paternity under FC 7573 may be made by the mother, the previously established father or the child. However, even if genetic testing (which may be requested by mother, previously established father or child support agency) shows that the previously established father is not the bio father, the court may deny a motion to vacate the judgment if that is in the best interest of the child. FC 7575 discusses the ways to set aside the VDP and the factors that should be considered in determining the best interest of the child

Placement Issues

Case Name	Case Cite	Issue	Holding
In re Antonio G. (2008)	159 Cal. App. 4th 254 71 Cal. Rptr. 3d 293 Fourth Appellate Dist Division One	Even if a child has previously been removed from a relative, if the child has to be moved again, does the court have to evaluate that possible relative?	The appellate court held that even though the child had previously been removed from a relative, the trial court was obligated to look at that relative again when the child had to be moved again. The appellate court held that the agency and the court should have reevaluated that relative again pursuant to WIC 361.3 and 361.4. The court indicated that "The Legislature has determined that all the factors in 361.3(a) are important in determining whether placement with a relative is appropriate.
In re Esperanza C. (2008)	165 Cal. App. 4th 1042 81 Cal. Rptr. 3d 556 Fourth Appellate Dist Division One	May court review Agency's denial of a criminal records exemption for placement purposes?	The appellate court held that, for placement purposes, the trial court can review the Agency's denial of a "criminal records exemption" under an "abuse of discretion" standard, and if such an abuse of discretion is found, the court can ONLY order the agency to evaluate or re-evaluate a request for a criminal records exemption under the "correct legal standard, and to promptly report its decision to the court and the parties."
In re G.W. (5/19/09)	173 Cal. App. 4th 1428 94 Cal. Rptr. 3d 53 Fifth Appellate Dist	May the court use WIC 360(a) after sustaining a supplemental petition?	The appellate court held that case law as well as Rule 5.565(f) required the juvenile court to proceed directly to a WIC 366.26 hearing after the court sustained the 387 petition because the mother had already received 18 months of family reunification services. The court stated that WIC 360(a) was not the proper section to use at the disposition of a supplemental petition.
In re H.G. (2006)	146 Cal. App. 4th 1 52 Cal. Rptr. 3d 364 Fourth District Division One	When a 387 petition has been sustained against a relative, what must the court consider at dispo order to remove?	The appellate court held that when a 387 petition is sustained against a caretaker, the court must first hold a dispositional hearing regarding whether to remove from that caretaker. The appellate court held that the trial court must consider *all* of the factors set forth under WIC 361.3, when determining whether this caretaker is an appropriate caretaker or whether the child should be removed.

Hossanna Homes v. County of Alameda Social Services (2005)	129 Cal. App. 4th 1408 29 Cal. Rptr 3d 317 First Appellate Dist Division Two	Can an FFA move a child from a home they no longer wish to license if that home gets licensed by another FFA?	The court held that it is the juvenile court, not the FFA, which has the ultimate responsibility of ensuring that the placement decisions are in the children's best interests. While the certified family home is exempt from the licensing requirements otherwise applicable to a foster home, as their compliance with requirements necessary for the placement of children is monitored and assured by the FFA, the placing agency remains responsible for the care, custody and control of the children.
In re James W. (2008)	158 Cal. App 4th 1562 71 Cal. Rptr. 3d 1 Second Appellate Dist Division Three	What is the standard for appellate court review of child custody determinations?	This is a very fact specific case. However, the appellate court held that custody determinations made by a juvenile court are reviewed under the deferential abuse of discretion standard. It will not be disturbed unless the trial court exceeds the limits of legal discretion by making an arbitrary, capricious, or patently absurd determination. Here, the court held that the danger to the child in the home of the relative outweighed the benefit of placement with a relative.
In re Joseph T. (2008)	163 Cal. App. 4th 787 77 Cal. Rptr. 3d 806 Second Appellate Dist Division One	Does the relative placement preference apply after the dispositional hearing even if the child does not have to be moved?	The appellate court held the relative preference discussed in WIC 361.3(a) applies after the dispositional hearing through the reunification period and that 361.3(d) does not limit the preference to new placements once the dispo hearing in complete. This case contains a strong dissent.
In re K.C. (4/26/10)	Fifth Appellate Dist	Does father have appellate standing to contest the denial of WIC §388 by PGPs asking for placement just prior to WIC §366.26 hearing?	The appellate court held that a parent does not have appellate standing to challenge an order denying a relative placement request once a permanency planning hearing is pending unless the parent can show his or her interest in the child's companionship, custody, management and care *is*, rather than *may be* "injuriously affected" by the court's decision. A decision that has the "potential" to or "may affect" the parent's interest, even though it may be "unlikely" does not render the parent aggrieved.
In re Lauren Z. (2007)	158 Cal. App. 4th 1102 70 Cal. Rptr. 3d 583 Second Appellate Dist Division One	When the results from an ICPC are not timely in a case, does the relative preference or the child's best interest prevail?	The appellate court held that while ICPC is an unwieldy mechanism at best, it is still the law, and must be complied with. If the ICPC conflicts with the best interests of the child, the analysis remains a best interest one. The relative preference is not a license to request placement past the time it is in the interests of the child to do so. While ICPC is one factor in the equation, the relative preference is also to be determined under the usual criteria.

In re Sabrina H. (2007)	149 Cal. App. 4th 1403 57 Cal. Rptr. 3d 863 Fourth Appellate Dist Division One	Discussion of the differences in the requirements between a detention into a home and a placement Is placement of Dependent Children in Mexico contrary to the interests of Dependency Law?	The appellate court held that detention in the home of the relative in Mexico was proper because the court had a clear CLETs, a clear CACI and a favorable home evaluation by DIF. However, placement in that same home at disposition was not appropriate because the Agency had not obtained a complete criminal records check and the relatives written statement that he had no criminal convictions was not enough. The appellate court also stated that the legislature has not banned foreign placement and that in fact, case law recognizes foreign placements of dependent children. Also since Mexico is a border community, visitation would not be hindered for the parents in reunification.
Sencere P. (2005)	126 Cal. App. 4th 144 24 Cal. Rptr. 3d 256 Second Appellate Dist Division One	Does the move to a new home trigger a reassessment of the new home and the adults in the new home pursuant to WIC 361.4? Does the juvenile court have the authority to waive a disqualifying conviction under WIC 361.4?	The court held that even if a child has been with the same caretaker for an extended period of time, the caretakers move to a new residence requires a reassessment of that home under WIC 361.4 (including a state and federal criminal records check on all adults living in that home followed by a fingerprint clearance check). WIC 361.4(d)(1) indicates that if the 'fingerprint clearance check indicated that the person has been convicted of a crime that would preclude licensure under Section 1522 of the Health and Safety Code [any crime other than a minor traffic offense], the child shall not be placed in the home, unless a criminal records exemption has been granted by the county...' The Director of Social Services has exclusive authority to grant an exemption for a disqualifying conviction. The juvenile court has no authority to waive a disqualifying conviction.
In re Shirley K. (2006)	140 Cal. App. 4th 65 43 Cal. Rptr. 3d 897 Fourth Appellate Dist Division One	Should ct consider best interests of child when determining whether the agency abused its discretion when it moved child post-termination?	The appellate court found that the court erred when it did not consider the "best interest of the child" when determining whether the Agency acted arbitrarily and capriciously in moving a child from a home post-termination of parental rights. The appellate court found that the trial court underplayed its role in determining whether the Agency properly considered the child's best interest in making critical important post-termination placement decisions.

In re Summer H. (2006)	139 Cal. App. 4th 1315 43 Cal. Rptr. 3d 682 Second Appellate Dist Division Seven	Does criminal record disqualification provision of 361.4 prevent court from exercising discretion to appoint a legal guardian under WIC 360 without criminal waiver from DCFS?	DCFS refusal to waive a criminal record under WIC 361.4 does not prevent court from exercising discretion to appoint a legal guardian under WIC 360.
In re S.W. (2005)	131 Cal. App. 4th 838 32 Cal. Rptr. 3d 192 Fourth Appellate Dist Division One	May the trial court review the Dept's decision to not grant a waiver of a criminal conviction under WIC 361.4?	The court held that the trial court does not have the right to review the Agency's decision to not grant a waiver of a disqualifying conviction under WIC 361.4. The court held that the Agency's decision not to grant an exemption for a criminal conviction is an executive one subject to administrative review and that any judicial review of that denial must follow the exhaustion of the full administrative process (including an admin appeal), and that the court must give deference to the Agency's decision.

Restraining Orders

Case Name	Case Cite	Issue	Holding
Gonzalez v. Munoz (2007)	156 Cal. App. 4th 413 67 Cal. Rptr. Ed 317 Second Appellate Dist Division Seven	Did court lack authority to extend temporary custody order made when TRO was issued when permanent RO was issued?	The appellate court held that not only did the trial court have the authority to extend the temporary custody order made when it issued the original temporary custody order but it had the responsibility to do so under the Domestic Violence Prevention Act. (FC 6323). The appellate court commented that "Court procedures, however well-intentioned, should not be imposed at the expense of the parties basic right to have their matters fairly adjudicated: "That a procedure is efficient and moves cases through the system is admirable, but even more important is for the courts to provide fair and accessible justice."
In re B.S. (03/17/09)	172 Cal. App. 4th 183 90 Cal. Rptr. 3d 810 Fourth Appellate Dist Division Two	Can the juvenile court issue a restraining order when a criminal protective order is already in effect?	The appellate court held that the issuance of a criminal protective order did not divest the juvenile the juvenile court of jurisdiction to issue its own protective order. Penal Code Section 136.2(e)(2) and CRC 5.630(1) suggest that the Legislature anticipated more than one restraining order being issued from separate courts. However, the more restrictive terms of a criminal protective order *always* have precedence in enforcement over any other civil protective order.
In re Cassandra B. (2004)	125 Cal. App. 4th 199 22 Cal. Rptr. 3d 686 Second Appellate Dist Division Two	What behaviors would constitute "molesting" or "stalking" in issuing a restraining order?	The court found that neither the term"molesting" or "stalking" necessarily involves violent behavior or the threat of violence and therefore that the court was within its rights to issue the restraining order. The court found that the term 'molest' doesn't necessarily refer to sexual misconduct but rather is synonymous with the term 'annoy' and generally refers to conduct designed to disturb, irritate, offend, injure or at least tend to injure another person and that the facts of this case fell within those definitions.
Holly Loeffler v. William Medina (6/18/09)	174 Cal. App. 4th 1495 95 Cal. Rptr. 3d 343 Fourth Appellate Dist Division One	What is the correct legal standard for deciding when to terminate a domestic violence restraining order?	The appellate court held that CCP 533 sets forth the standards for a trial court to apply when considering whether to dissolve an injunction. The court may modify or dissolve a restraining order upon a showing that there has been a material change in the facts upon which the restraining order was granted, that the law upon which the restraining order was granted has changed, or that the ends of justice would be served by the modification or dissolution of the restraining order.

In re Matthew F. (2005)	132 Cal. App. 4th 883 33 Cal. Rptr. 3d 909 Fourth Appellate Dist Division Two	Is court entitled to issue a restraining order for a social worker who is no longer on the case under WIC 340.5(a)?	The court held that court may issue a restraining order for a social worker who is no longer on the case because the legislative history shows that it is the intent of WIC 340.5(a) to protect social workers' who provide services to dependent children and did not intend for those protections to end when a social worker is no longer on a case.
Monterroso v. Moran (2006)	135 Cal. App. 4th 732 37 Cal. Rptr. 3d 694 Second Appellate Dist Division Two	Does a court have to make detailed findings under FC 6305 in order to issue mutual restraining orders?	A trial court has no statutory power to issue a mutual order enjoining parties from specific acts of abuse described in FC section 6320 without the required findings of fact. FC 6320 requires that both parties must personally appear and each party must present written evidence of abuse of domestic violence and the court must make detailed findings of fact indicating that both parties acted primarily as aggressors and that neither party acted primarily in self-defense.
Nakamura v. Parker (2007)	156 Cal. App. 4th 327 67 Cal. Rptr. 3d 286 First Appellate Dist Division Two	Discussion of denial of TRO without hearing or reasons.	The appellate court held the trial court' failure to explain its reasons for the summary denial of the TRO, without hearing, was "highly imprudent". The court also found that the petitioner's affidavit to be facially adequate to show that she was abused and, as such, it "divested" the trial court of the discretion to deny the TRO summarily.
Tameka Ross v. Oscar Figueroa (2006)	139 Cal. App. 4th 856 43 Cal. Rptr. 3d 289 Second Appellate Dist Division Seven	Under FC 243, when is the responding party entitled to a continuance and can they present evidence without preparing a written response?	Under Family Code section 243, a party is entitled to a continuance if the original TRO was issued without notice. In addition, that section allows you to present evidence even if no written response was filed and even if it only consisted of the responding parties testimony. The court reminded the trial courts that even through restraining order hearings are informal in nature, that due process is required and the judicial officer has an even bigger responsibility "to play a more active role in developing the facts before making the decision whether or not to issue the requested permanent protective order." At the very least, the parties should have been sworn in and have been given the right to present evidence.

Review Hearings

Case Name	Case Cite	Issue	Holding
M.T. v. Superior Court of San Francisco (10/30/09)	178 Cal. App. 4th 1170 First Appellate Dist Division Three	Can court require offer of proof from parent re: not setting 366.26 hearing?	The appellate court held that since the parent has the burden to show that it is not in the child's best interest to set a 366.26 hearing, the court can require an offer of proof in order for a parent to contest the setting of that hearing.
S.T. v. Superior Court (8/28/09)	177 Cal. App. 4th 1009 99 Cal. Rptr. 3d 412 Second Appellate Dist Division One	Does ct. have discretion to continue FR at 21(e) where parent hasn't complied with 366.21(g)(1-3)?	The appellate court held that the trial court has discretion to continue reunification services to a parent at a WIC 366.21(e) hearing even if the parent has not met the requirements listed under WIC 366.21(g). WIC 366.21(e) states that if the court finds that the parent has not made substantial progress in the case plan, the court *may* set a 366.26 hearing. Therefore, the court does not have to terminate FR and set a 366.26 hearing but has the discretion to continue FR services.

Standing

Case Name	Case Cite	Issue	Holding
In re Aaron R. (2005)	130 Cal. App. 4th 697 29 Cal. Rptr. 3d 921 First Appellate Dist Division One	Did the grandmother have standing to appeal the denial of her WIC 388 petition?	The court held that the MGM did have standing to appeal the denial of her 388 petition even though she had never sought de facto parent status at the trial court level. The court found that because the 388, if granted and the child placed with her, would have given the grandmother a claim of preference under section 366.26 (k) for adoption that she had standing to appeal the denial of the 388.
In re Harmony B. (2005)	125 Cal. App. 4th 831 23 Cal. Rptr. 3d 207 Fourth Appellate Dist Division Two	Did the grandmother have standing to appeal the termination of parental rights?	The court held that the grandmother who was a proposed out of state placement did not have standing to appeal from the termination of parental rights. However, the court stated that the grandmother would have had standing to appeal the denial of her request for placement under WIC 361.3.
In re Hector A. (2005)	125 Cal. App. 4th 783 23 Cal. Rptr. 3d 104 First Appellate Dist Division Three	Do siblings of a child being considered for adoption have standing to participate in the hearing?	The court held that a proper 388 petition could allow non-adopted siblings to present evidence as to the sibling relationships for the 366.26 hearing. The court relied on WIC 388(b) which allows any person, including a dependent child, to petition for visitation, placement with, or near the child, or consideration when determining or implementing a permanent plan. The court therefore found that in order for a sibling to be heard, a 388 petition must be filed and granted.

Termination of Reunification Services/ Reasonable Efforts

Case Name	Case Cite	Issue	Holding
A.H. v. Superior Court (3/12/10)	182 Cal. App. 4th 1050 Fourth Appellate Dist Division Three	In deciding whether to terminate reunification services, how is the trial court to "harmonize" W and I Code § 361.5(a)(2) with 366.21(g)(1)?	The appellate court held that there is no reason to infer from the current statutory scheme the legislature intended to toll timelines, or automatically extend reunification services to 18 or 24 months for incarcerated parents. To the contrary, the statutory provisions calling for special considerations do not suggest the incarcerated parent should be given a free pass on compliance with his/her service plan or visits. That there are barriers unique to incarcerated parents is but one of many factors the court must take into consideration when deciding how to proceed in the best interest of the dependent child. *(Note: Suggest you read the whole decision. It is the best and most concise discussion of the reunification time frames and the effect of incarcerated parents amendments on the reunification scheme.)*
In re Alanna A. (2005)	135 Cal. App. 4th 555 37 Cal. Rptr. 3d 579 Fourth Appellate Dist Division One	Can the trial court terminate FR services to one parent while continuing FR srvs to other parent?	The court held that WIC 366.21 (h) does not bar termination of reunification services to one parent when services are extended for the other parent to the 18-month review date.
In re Amanda H. (2008)	166 Cal. App. 4th 1340 83 Cal. Rptr. 3d 229 Second Appellate Dist Division Eight	Discussion of what constitutes reasonable services.	This was a fact specific case. The appellate court held that the trial court could not find by clear and convincing evidence that reasonable services had been offered when the social worker did not inform either the mother or the court that the mother was not enrolled in the appropriate services. The appellate court found that it was the social workers job to maintain adequate contact with providers and accurately inform the court and the parent of the sufficiency of the enrolled programs.
In re Aryanna C. (2005)	132 Cal. App. 4th 1234 34 Cal. Rptr. 3d 288 First Appellate Dist Division Four	Does the juvenile court have the authority to terminate reunification services of a parent prior to the 6 month date?	The court held that the trial court has discretion to terminate reunification services **at any time** after disposition, depending on the circumstances presented. The court held that WIC 361.5(a)(2) provides that services "may not exceed" six months; it does not constitute a grant of services for a six month period. The court also held that a 388 petition was not needed to terminate reunification services.

In re David B. (2004)	123 Cal. App. 4th 768 20 Cal. Rptr. 3d 336 Fourth Appellate Dist Division Three	Do we look to return children to perfect parents?	The court reversed the termination of reunification services and remanded the case back to the trial court. The court opined "We do not get ideal parents in the dependency system. Ideal parents are a rare, if not imaginary, breed. In fact, we do not get ideal parents anywhere. Even Ozzie and Harriet weren't really Ozzie and Harriet. The goal is for our parents to overcome their problems. They won't turn into superstars, and they won't win the lottery and move into a beachfront condo two blocks from the ocean. We are looking for passing grades here, not straight A's."
In re Denny H. (2005)	131 Cal. App 4th 1501 33 Cal. Rptr. 3d 89 First Appellate Dist Division Four	Extension of reunification services past the 18 month date	The court held that 18 months from the date of detention is the cut-off for reunification services absent "extraordinary circumstances: involving some external factor which prevented the parent from participating in the case plan." The court also held that at the 366.22 hearing, the court can set a 366.26 hearing even if the court doesn't make a reasonable efforts finding at that hearing <u>if</u> that finding has been made at every previously needed hearing.
In re Derrick S. (2007)	156 Cal. App. 4th 436 67 Cal. Rptr. 3d 367 First Appellate Dist Division Two	Does the court have the authority to terminate FR to a parent or a child over three prior to the twelve month date?	The court held that the juvenile court does have the authority to terminate reunification services of a parent of a child over the age of 3 prior to the expiration of the twelve-month period from the time the child entered foster care. The court cited to WIC 361.5(a)(2) in concluding that reunification "may not exceed" six months and therefore can be less.
In re Elizabeth R. (1995)	35 Cal. App. 4th 1774 42 Cal. Rptr. 2nd 200 Third Appellate Dist	Does WIC 352, give the court the authority to extend FR past the 18 month date under special circumstances?	The appellate court held that the trial court could have used WIC 352 to continue the WIC 366.22 hearing. WIC 352 provides an emergency escape valve in those rare instances in which the juvenile court determines the best interests of the child would be served by a continuance of the 18 month hearing. The court concluded that neither the elaborate statutory scheme governing dependency nor case law strips the juvenile court of its discretion to accommodate the special needs of the family of the mentally ill in the unusual circumstances presented by this case. The unusual circumstances consisted of mother having substantially complied with the case plan, having regular visitation and having been hospitalized for a majority of the reunification period.

In re Jacob P. (2007)	157 Cal. App. 4th 819 68 Cal. Rptr. 3d 817 Second Appellate Dist Division Seven	What is standard for return when FR, which had been previously terminated, is reinstated?	The court held that when reunification services were previously terminated and are then reinstated pursuant to a 388 petition, the proper standard for possible return at the end of the new reunification services period is the best interest of the child standard under 388 vs. The substantial risk of detriment standard used at a 366.21 or 366.22 hearing.
In re Jesse W. (2007)	157 Cal. App. 4th 49 68 Cal. Rptr. 3d 435 Fourth Appellate Dist Division One	Can the court terminate FR for one parent when not setting a 366.26 hearing?	The majority of the appellate court held that the trial court can terminate reunification for one parent while still offering reunification for the other parent pursuant to WIC 366.21(e) even though CRC 5.710(F)(11) states that when no 366.26 hearing is set, FR must continue to be offered. The court does state that the trial court might want to extend FR, however, if it is in the child's best interests.
In re Jessica A. (2004)	124 Cal. App. 4th 636 21 Cal. Rptr. 3d 488 Fourth Appellate dist Division One	Does there need to be six full months between the WIC 366.21(e) and 366.21(f) hearing?	The court held that the express time frames for achieving permanence can not be thwarted by delays in holding the hearings. Even though there was a two month delay in holding the WIC 366.21(e) hearing, the 21f hearing should have been held 12 months after the child entered foster care and not six months from the date the 21e hearing was held.
In re Katie V. (2005)	130 Cal. App. 4th 586 30 Cal. Rptr. 3d 320 Fourth Appellate Dist. Division One	What standard of proof applies for the reasonable services finding at the 18-month review?	The court held that the standard of proof for reasonable services at the WIC 21e and 21f hearing is clear and convincing evidence, but the standard at the WIC 22 hearing is a preponderance of the evidence. The court found that at the 18-month review hearing, the parent already has received services beyond what the juvenile law ordinarily contemplates, and barring exceptional circumstances, the time for reunification has ended and the child's interests in stability is paramount. At that point, the heightened clear and convincing evidence standard of proof would run counter to the child's best interests.
In re M.V. (2008)	167 Cal. App. 4th 166 83 Cal. Rptr. 3d 864 Fourth Appellate Dist Division Three	May the court order additional FR at a 6 month hearing(for child under 3) even if factors of substantial probability of return do not exist?	The appellate court held that the trial court may order additional family reunification services for a child under three at the 6 month hearing even if the factors of substantial probability of return (enumerated in 366.21(g)) do not exist. The court held that the trial court can balance other relevant evidence such as extenuating circumstances excusing noncompliance with the factors enumerated under 366.21(g).

In re Olivia J (2004)	124 Cal. App. 4th 698 21 Cal. Rptr. 3d 506 Fourth Appellate Dist Division One	Can the court hold parents in contempt for failure to obey the court orders for family reunification services?	The court upheld the trial court's contempt orders and order of five days of jail time for father's failure to participate in the court ordered reunification services. The court held that a parent who agrees to the terms and conditions of family reunification services was properly held in contempt for failure to obey those orders. The court reasoned that if the father was in disagreement with the court ordered disposition orders, it was incumbent on him to appeal those orders and not just disobey them.
In re Rita L. (2005)	128 Cal. App.4th 495 27 Cal. Rptr. 3d 157 Fourth Appellate Dist Division Three	Was there substantial evidence for court to terminate FR services? Can the court consider the child's relationship with foster parents in determining risk of return?	The court held that there was insufficient evidence to show substantial risk of return based upon mother's use of Tylenol with codeine on the eve of possible return of the children since mother's drug history did not include prescription drugs and the one time use did not escalate into more significant drug use. The court stated that all relapses are not created equal and the court did not see how mother's ability to care for the child would have been impaired by her one time relapse. The court also found that the trial court improperly considered the quality of the child's relationship with the foster parents in deciding whether to return the child to her mother.
In re Sara M. (2005)	36 Cal. 4th 998 116 P. 3d 550 CA Supreme Court	Can dependency crt terminate FR at 21(e) for a child over 3 absent juri. findings of abandonment under sub 300(g)?	The court held that regardless of what subdivisions were originally sustained, the court may terminate FR and set a 366.26 hearing at the initial six-month review if the court finds by clear and convincing evidence, that the parent has not had contact with the child for six months. (Rule of Court 1460(f)(1)(B))
S.W. v. Superior Court (05/15/09)	174 Cal. App. 4th 277 94 Cal. Rptr. 3d 49 Fourth Appellate Dist Division Three	Does the parent have to fail to contact *and* visit the child in order to set a 366.26 hearing at the 366.21(e) hearing for child over 3?	The appellate court held that WIC 366.21(e) allows the court to set a WIC 366.26 hearing if the parent has failed to contact *and* visit the child. To the extent that Rule 5.710 deletes the visitation section, it is inconsistent and the statute controls. In addition, even if contact alone warranted additional services, one telephone conversation in six months is not substantial contact and that contact that is "casual or chance" or "nominal" does not preclude the application of WIC 366.21(e).

In re Tonya M. (2007)	42 Cal. 4th 836 172 P. 3d 402 CA Supreme Court	Should the court calculate the timing of the 366.21(f) hearing to be 12 months from the date the child entered foster care?	The California Supreme Court affirmed the appellate court decision that regardless of when a WIC 366.21(e) hearing is actually held, the timing of the 366.21(f) hearing is 12 months from the date the child entered foster care (which is the date the court sustained the petition or 60 days from the date the child was removed from the parents home whichever comes first). Hence when the court is determining at the 366.21(e) hearing whether there is a substantial probability that the child can be returned to the parent(s) by the 12 month date(if the child is under 3), that date has to be 12 months after the child entered foster care.
In re Victoria M. (1989)	207 Cal. App. 3d 1317 255 Cal. Rptr. 498 Fifth District	Was the trial court authorized to terminate parental rights for developmentally delayed person where services suited to appellant's needs had not been provided?	This was a case where parental rights had been terminated under WIC 232. The appellate court found that the mother, who was developmentally delayed had not been provided assistance with housing; her parenting counseling did not address her specific deficiencies, nor had she been referred to the Regional Center who might have been able to provide more appropriate services. The court held that a disabled parent is entitled to services which are responsive to the family's special needs in light of the parent's particular disabilities and that in this case, the mother's disabilities were not considered in determining what services would best suit her needs.
In re Yvonne W. (2008)	165 Cal. App. 4th 1394 81 Cal. Rptr. 3d 747 Fourth Appellate Dist Division One	Does a child's dislike of a parent's living arrangement constitute a substantial risk of detriment to return?	The appellate court held that "a child's dislike of a parent's living arrangement, without more, does not constitute a substantial risk of detriment..."

UCCJEA

Case Name	Case Cite	Issue	Holding
In re A.C. (2005)	130 Cal. App. 4th 854 30 Cal. Rptr. 3d 431 Fourth Appellate Dist Division One	Does the UCCJEA confer jurisdiction to CA when child in CA to receive medical care?	The Court held that the UCCJEA does not confer subject matter jurisdiction on CA pursuant to Family Code sections 3421 or 3424 when the child was only in CA to receive medical care. The court held that MX was the child's home state because she only came to CA to receive medical care and otherwise her legal residence was MX where her parents lived. The fact that MX did not have the facilities to treat the child did not confer jurisdiction on CA.
Grahm v. Superior Court (2005)	132 Cal. App. 4th 1193 34 Cal. Rptr. 3d 270 Second Appellate Dist Division Four	When do the Calif. Courts have continuing jurisdiction to determine issues of custody and visitation.	The court held that Family Code section 3422 provides that a California court has "exclusive, continuing jurisdiction" over the child custody determination until both of the following conditions are met: "a court of this state determines that neither the child, nor the child and one parent... have a significant connection with this state *and* that substantial evidence is no longer available in this state concerning the child's care, protection, training, and personal relationships." Thus, only when there is both a lack of significant connection and lack of substantial evidence in this state, may California terminate exclusive jurisdiction.
In re Jaheim B. (2008)	169 Cal. App. 4th 1343 87 Cal. Rptr. 3d 504 Fourth Appellate Dist Division One	When no home state, who has jurisdiction?	The appellate court held that CA was the appropriate forum at the time the court declared the child a dependent. The child had no home state under the UCCJEA because he did not live in CA or FL for at least six consecutive months immediately before the petition was filed. Even without home state jurisdiction, CA had emergency jurisdiction because the court's action was necessary to protect the child from immediate harm. Emergency jurisdiction could properly continue beyond the detention hearing because the risk of harm was ongoing. Further, according to the minute order the mother didn't have an ongoing case in FL and therefore there was no jurisdictional conflict with another state's court and thus UCCJEA didn't restrict the juvenile court's power to proceed.

Visitation

Case Name	Case Cite	Issue	Holding
Karen Butler v. Charles Harris (2004)	34 Cal. 4th 210 96 P. 3d 141 CA Supreme Ct.	When a child is in the care of the parents, whose burden is it and what is the standard to show that a visitation decision made by the parent should be overruled?	The court held that Family Code 3104 mandated that a person seeking visitation with a child when the parents oppose visitation has to show by clear and convincing evidence that the decision to withhold visitation would be detrimental to the child. The court further found that FC section 3104 was not unconstitutional. The court determined that CA has a rebuttable presumption that the parent's decision is in the best interest of the child and that it is the burden of the person seeking visitation to show that the parent's decision to withhold visitation would be detrimental to the child.
In re C.C. (04/13/09)	172 Cal. App. 4th 1481 92 Cal. Rptr. 3d 168 Second Appellate Dist Division Seven	Discussion of the correct legal standard for denying a parent visitation during the reunification period.	The appellate court held that if a parent is going to receive or is receiving family reunification services for a child, the court can only deny (or terminate/suspend) visitation between the child and a parent IF the court finds that such visits would pose a threat to the child's safety. The court seems to imply that the threat must be to the child's physical vs. emotional safety but that is unclear. However, the frequency of the visits depends on a broader assessment by the court of the child's "well-being".
In re David P. (2006)	145 Cal. App. 4th 692 51 Cal. Rptr. 3d 811 Second Appellate Dist Division Seven	If a trial court has determined that the contact between a child and the offending parent must be monitored, may the court permit the child to return to the family home and allow the non-offending second parent to monitor?	The appellate court held that the concept of monitored visitation is fundamentally incompatible with around-the-clock in-home contact that necessarily includes periods when the designated monitor will be unavailable to perform his or her protective function.

In re Hunter S. (2006)	142 Cal. App. 4th 988 48 Cal. Rptr. 3d 823 Second Appellate Dist Division Eight	Does the court have to force a child who is unwilling to visit his parents?	The court held that a parent has a right to visitation even after the termination of FR and that it is the court's obligation to ensure visits (even if the child refuses) **absent a finding of detriment under WIC 362.** The court found that a parent who has had their visitation rights frustrated is unlawfully denied the opportunity to establish that a WIC 366.26 (c)(1)(A) exception could apply.
In re J.N. (2006)	138 Cal. App. 4th 450 41 Cal. Rptr. 3d 494 Fifth Appellate Dist	Visitation orders after denial of FR under WIC §361.5.	The court held that if the trial court denies reunification services to a parent under WIC 361.5 that they "may" order visitation for that parent unless they find that those visits would be detrimental. They do not have to find the visits detrimental prior to ordering no visits because those visits are discretionary under the law.
In re S.C. (2006)	138 Cal. App. 4th 396 41 Cal. Rptr. 3d 453 Third Appellate Dist	Good visitation language	The court upheld the following language as meaningful and enforceable: " The (parent) shall have supervised visitation with the child as frequent as is consistent with the well-being of the child. (DCFS) shall determine the time, place, and manner of visitation, including the frequency of visits, length of visits, and by whom they are supervised." "(DCFS) may consider the child's desires in its administration of the visits, but the child shall not be given the option to consent to or refuse future visits"

Warrants

Burke v. County of Alameda (11/10/09)	586 F.3d 725 United States Court of Appeals for the Ninth Circuit	Did police officer interfere with the non-custodial parent's constitutional right of familial association by removing B.F. without a protective custody warrant?	As to the biological father, the court stated that non-custodial parents have a reduced liberty interest in the companionship, care, custody and management of their children. However, he was not without an interest at all. The court extended the holding in *Wallis* to parents with legal custody, regardless of whether they possess physical custody of their child. They did note that the test in Wallis, however, must be flexible depending on the factual circumstances of the individual case. For instance, if the parent without legal custody does not reside nearby and a child is in imminent danger of harm, it is probably reasonable for a police officer to place a child in protective custody without attempting to place the child with the geographically distant parent. However, in this case, the officers made no attempt to contact the non-custodial father and did not explore the possibility of putting B.F. in his care that evening rather than placing her in government custody. Therefore that the reasonableness of the scope of the officers intrusion upon the biological father's rights was for the jury to decide.
Calabretta v. Yolo County Department of Social Services (8/26/99)	189 F.3d 808 United States Court of Appeals for the Ninth Circuit	Did social worker and the police officer violate the families 4th Amend rights when it entered a home, interrogated a child, and strip searched the child, without a search warrant and without a special exigency?	While the court recognized that there are occasions when Fourth Amendment restrictions on entry into homes are relaxed, this was not such a case. The court reiterated that a special exigency excuses a warrantless entry where the government officers have probable cause to believe that the child has been abused and that the child would be injured or could not be taken into custody if it were first necessary to obtain a court order. Given the facts of this case, there was no special exigency. In this case, based on a visual inspection of the children and their statements there was little reason to believe that children had been abused and therefore "the government may not conduct a search of a home or strip search of a person's body in the absence of consent, a valid search warrant or exigent circumstances."

Greene v. Deschutes County (12/10/09)	588 F.3d 1011 United States Court of Appeals for the Ninth Circuit	Was in-school interview of a suspected child abuse victim permissible under the 4th Amend without warrant or the equivalent of a warrant, probable cause or parental consent? Did social worker violate the Greene's 14th Amend rights by excluding mother from mi's medical exam?	The ninth circuit extended 4th amendment protections and held that applying the traditional Fourth Amendment requirements, the decision by law enforcement and the social worker to "seize and interrogate" S.G. by interviewing her at school for two hours in the absence of a warrant, a court order, exigent circumstances, or parental consent was unconstitutional. The court held that given that law enforcement was present during the interview with the sole purpose of gathering information for a possible criminal case, this fell outside of the special needs doctrine. The court held that government officials cannot exclude parents entirely from the location of their child's physical examination absent parental consent, some legitimate basis for exclusion, or an emergency requiring immediate medical attention."

WIC 361.5 - No Reunification Services

Case Name	Case Cite	Issue	Holding
In re Albert T. (2006)	144 Cal. App. 207 50 Cal. Rptr. 3d 227 Second Appellate Dist Division Seven	Discussion of what is enough to show reasonable efforts to treat the problem that led to the original removal under 361.5(b)(10)?	This is a fact specific case. However, the court held the reasonable efforts to treat does not require success or a cure. The trial court had previously found the mother in complete compliance with the case plan and that was enough to show that she had made reasonable efforts to treat that earned her the right to try and reunify.
In re Amber K. (2006)	146 Cal. App. 4th 553 52 Cal. Rptr. 3d 701 Fourth Appellate Dist Division Two	Can a parent who is not the perpetrator be denied reunification services under 361.5(b)(6)?	A parent who is not the perpetrator of the sexual abuse can be denied family reunification services under WIC 361.5(b)(6), if the perpetrator was the other parent and this parent gave actual or implied consent (thus making that parent "offending").
In re Anthony J. (2005)	132 Cal. App. 4th 419 33 Cal. Rptr. 3d 677 Second Appellate Dist Division One	Does 361.5(b)(6) apply to a parent who is neither the parent nor guardian of the physically abused siblings of the child involved in the current proceeding.	The court found that 361.5 (b)(6) does apply to a parent who is neither the parent nor guardian of the physically abused siblings of the child involved in the current proceeding if it was that parent who abused the other siblings.
In re Cheryl P. (2006)	139 Cal. App. 4th 87 42 Cal. Rptr. 3d 504 Fourth Appellate Dist Division One	Discussion of WIC 361.5 (b)(10) and denial of FR on sibling after termination of FR on another child.	The court held that the term subsequently as used in WIC 361.5(b)(10) refers to the time since the removal from the sibling and not since the termination of reunification which might have only been a few minutes earlier. This case attempts to differentiate In re Harmony B and seems to imply that it is okay if no progress has been made as long as the parents have tried.

D.B. v. Superior Court of Humboldt County (02/18/09)	171 Cal. App. 4th 197 89 Cal. Rptr. 3d 566 First Appellate Dist. Division Five	Does a parent's resistance to treatment ordered as a condition of parole amount to resistance to "court-ordered Treatment" under SIC 361.5(b)(13)?	The appellate court construed WIC 361.5(b)(13)'s reference to "court-ordered treatment" to include treatment ordered as a condition of parole. The appellate court indicated that parole conditions, while not ordered directly by the court, are directly traceable to the court order imposing a prison sentence. The court also found that "there is no meaningful distinction between treatment ordered as a condition of probation and treatment ordered as a condition of parole for purposes of determining whether a parent's failure to comply signifies a substance abuse problem so intractable that the provision of reunification services would be a waste of time.
In re D.F. (02/20/09)	172 Cal. App. 4th 538 91 Cal. Rptr. 3d 170 Third Appellate Dist	Is WIC 361.5(b)(3) applicable if the child in the current proceeding is not the child that was previously physically abused?	The appellate court held that 361.5(b)(3) does apply even if the child in the instant proceeding was not the child physically abused in the previous proceeding. The statute states that it has to be the child *or* the sibling that was previously adjudicated a dependent for physical abuse. In addition, (b)(3) requires removal from and then return to the same parent, the second removal does not need to be from that same parent, just removal due to physical or sexual abuse.
In re Harmony B. (2005)	125 Cal. App. 4th 831 23 Cal. Rptr. 3d 207 Fourth Appellate Dist Division Two	Can the court deny FR to a parent pursuant to WIC 361.(b)(10) directly after it terminates FR to siblings?	The court held that there did not need to be a passage of time between the termination of reunification services to siblings and a denial of reunification services to a new child. The court reasoned that the statute "was not amended to create further delay so as to allow a parent, who up to that point has failed to address his or her problems, another opportunity to do so."
Jose O. v. Superior Court (2008)	169 Cal. App. 4th 703 87 Cal.Rptr. 3d 1 Fourth Appellate Dist Division One	Does WIC 361.5(b)(6) include situations where there is no physical harm to a child but there is emotional harm?	The appellate court held that in WIC 361.5(b)(6), the phrase "infliction of severe physical harm" was designed as a catchall to encompass all situations that qualify as acts or omissions that would cause serious emotional damage. Impliedly, serious emotional damage has both a psychological and physical component but physical injury is not required. Therefore, the father killingly the mother in front of the child, could qualify as a torturous act that would cause serious emotional damage.

K.C. v. Superior Court (3/18/10)	182 Cal. App. 4th 1388 Third Appellate Dist	Did court abuse discretion when it denied FR to mother pursuant to WIC 361.5(b)(10)(11)?	The appellate court held that the juvenile court did not abuse its discretion in denying services pursuant to 361.5(b)(10) and (11). In this case, the problems which led to removal of the half siblings were severe neglect resulting from mother's lack of concern about their welfare and characterized by her extreme dependence upon nicotine which she pursued to the exclusion of caring for the half siblings' needs. Mother was provided services to address her neglect and inadequate parenting, as well as her dependence upon nicotine. However, as the psychological evaluation concluded, mother resisted taking responsibility for herself or her children. One of the minors in the prior case was born dependent on nicotine and suffered withdrawal symptoms. With the new baby, mother was leaving the newborn alone several times a day in order to smoke.
In re Kenneth M. (2004)	123 Cal. App. 4th 16 19 Cal. Rptr. 3d 752 Third Appellate Dist	Does the denial of FR to a parent under WIC 361.5(b)(6) require the court to identify the offending parent?	The court held that for the trial court to deny reunification services to a parent under WIC 361.5(b)(6), requires the court to make a finding that the injuries were caused by a parent or guardian and that the court must make a factual finding that it would not benefit the child to receive services with the offending parent. Therefore, the court had to identify the perpetrator in order to deny reunification services under 361.5(b)(6). However, because the child was found to be a dependent of the court under subdivision (e), the court could have ordered no FR for the parent under 361.5(b)(5).
In re Kevin N. (2007)	148 Cal. App. 4th 1339 56 Cal. Rptr. 3d 464 Fourth Appellate Dist Division Three	Discussion of ordering no FR pursuant to WIC 361.5 (e) (1).	The court held that pursuant to WIC 361.5(e)(1) the court shall order family reunification services to the incarcerated parent unless the court finds that it would be detrimental to the child to order those services. The length of time that a parent will be incarcerated is only one of the factors to take into consideration when making that determination of detriment.
In re Mardardo F. (2008)	164 Cal. App. 4th 481 78 Cal. Rptr. 3d 884 Third Appellate Dist	Interpretation of 361.5(b)(14)	The appellate court held that in interpreting WIC 361.5(b)(14), 1) the word “parent” refers to the parent’s status in the current dependency case and that therefore, the offending parent did not have to be a parent when the child died and 2) the deceased child in this section does not need to be related to the parent.

In re Tyrone W. (2007)	151 Cal. App. 4th 839 60 Cal. Rptr. 3d 486 Fourth Appellate Dist Division One	Does WIC 361.5(b)(6) apply to a parent who "reasonably should have known" the child was being physically abused and failed to prevent the abuse? Must the court identify the offending parent?	The appellate court held that WIC 361.5(b)(6) does not allow the court to deny reunification services to a negligent parent who did not know that the child was being physically abused even though the parent should reasonably have known the child was being abused or injured. The parent must have been complicit in the deliberate abuse. The court held that the trial court is required to identify the offending parent who inflicted the severe physical harm on the child where the evidence does not show that both parents knew the child was severely injured or knew the child was being abused before denying reunification services.
In re William B. (2008)	163 Cal. App. 4th 1220 78 Cal. Rptr. 3d 91 Fourth Appellate Dist Division Three	Analysis of best interest standard when denying FR under 361.5(b).	The court held that when the trial court considered the best interest of the children in deciding whether to order reunification services, the court should have concentrated on the chances of success of reunification services and stability and permanency for the children versus the facts that the children loved their mother.

WIC 366.26 - Termination of Parental Rights

Case Name	Case Cite	Issue	Holding
In re Aaliyah R. (2005)	136 Cal. App. 4th 437 38 Cal. Rptr. 3d 876 Second Appellate Dist Division Eight	Analysis of bond needed to show WIC 366.26 (c)(1)(a) exception	The court held that a mere "affectionate closeness" during occasional visits was outweighed by the minors close bond with the primary caretaker and the need for permanence.
In re A.G. (2008)	161 Cal. App. 4th 664 74 Cal. Rptr. 3d 378 Fifth Appellate Dist	Once a finding of "no detriment" is found under 366.26(c)(3), may that issue be litigated at the continued 366.26 hearing?	The court held that once the trial court makes a finding under WIC 366.26(c)(3) that the termination of parental rights would not be detrimental to the child and continues the matter 180 days to locate an adoptive parent, the biological parent may not "re"-litigate that issue at the continued 366.26 hearing without new evidence.
In re Amy A. (2005)	132 Cal. App. 4th 63 33 Cal. Rptr. 3d 298 Fourth Appellate Dist. Division One	Family Code section 7822 - abandonment of child	In interpreting Family Code section 7822, the court held that failure to provide support or failure to communicate with the child for a period of one year or more "is presumptive evidence of the intent to abandon" and that therefore the rights of that parent could be terminated for abandonment.
In re A.S. 12/17/09	180 Cal. App. 4th 351 102 Cal. Rptr. 3d 642 Fourth Appellate Dist Division One	Can a parent who was non-offending in 300 petition have their parental rights terminated?	The appellate court held that the trial court can terminate parental rights of a parent without an express finding of detriment or a sustained petition against that parent. The appellate court noted that the father's persistent avoidance of responsibility, his failure to seek any relief in the juvenile court and lack of involvement in the child's life for an extended period constituted substantial evidence of detriment. Therefore, his parental rights could be terminated.
In re B.D. (2008)	159 Cal. App. 4th 1218 72 Cal. Rptr. 3d 153 Fourth Appellate Dist Division One	Did the trial court err in failing to continue the WIC 366.26 hearing to find an adoptive home for the 5 siblings.	This is a very fact specific case. The appellate court held that while it ended up being harmless error because an adoptive home was found for the five siblings, a better practice would have been for the trial court to continue the matter to find an adoptive home for the 5 siblings that should have been placed together. The fact that there was no adoptive home at the time of the severance of parental rights affected the child's adoptability determination and the exception under WIC 366.26(c)(1)(E) might have applied if no home was found for all 5.

In re Brian P. (2002)	99 Cal. App. 4th 616 121 Cal. Rptr. 2d 326 First Appellate Dist Division Three	Discussion of what to focus on when addressing adoptability.	The appellate court held that the issue of adoptability requires the court to focus on the child and whether the child's age, physical condition, and emotional state make it difficult to find a person willing to adopt. It is not necessary that the child already be placed in a preadoptive home, or that a proposed adoptive parent be waiting. However, there must be convincing evidence of the likelihood that adoption will take place within a reasonable time.
In re Carl R. (2005)	128 Cal. App. 4th 1051 27 Cal. Rptr.3d 612 Fourth Appellate Dist Division One	Does court need to inquire re: specific education plans in addressing adoptability? Is there a general best interest exception to TPR? Is a 388 petition the appropriate vehicle to challenge TPR?	The court held that when the trial court is determining the adoptability of a child, the court's inquiry need not include an in depth assessment of specific educational plans. The court need only determine that the prospective adoptive family would educate the child. 366.26(c)(1)(D) does not require the court to consider the relationship of a child with a non-relative or foster parent with whom the child might be removed. No general best interest exception exists. All exceptions to adoption are included in the 366.26 scheme. WIC 388 petition is not an appropriate vehicle to modify the judgment terminating parental rights. However, it may be appropriate in order to challenge a child's prospective adoptive placement.
In re Christopher L (2006)	143 Cal. App. 4th 1326 50 Cal. Rptr. 3d 57 Fourth Appellate Dist Division One	Examination of WIC 366.26(c)(1)(B) exception to adoption.	The court held that if a child 12 years old or older equivocally objects to termination of parental rights, the trial court can still terminate parental rights if, after examining the entire record, the court determines that the child's true state of mind favors TPR and adoption. The appellate court was clear to point out that it was not deciding whether an unequivocal objection by a minor 12 or over to TPR prevents TPR as a matter of law.
In re Daisy D. (2006)	144 Cal. App. 4th 287 50 Cal. Rptr. 3d 242 Third Appellate Dist	Does the trial court have the duty to consider the sibling exception where it is not raised and do these facts support finding a sibling exception?	The court held that the trial court does not have the duty to sua sponte consider the sibling exception (nor any exception) where it is not raised and that the parent has the burden to establish that an exception exists to the termination of parental rights. The court also quoted the author of the legislation (WIC 366.26(c)(1)(E) saying that "use of the new exception 'will likely be rare'" meaning "that the child's relationship with his or her siblings would rarely be sufficiently strong to outweigh the benefits of adoption."

In re Dakota H. (2005)	132 Cal. App. 4th 212 33 Cal. Rptr. 3d 337 Fourth Appellate Dist Division One	Does the court need to find "parental unfitness" at the 366.26 hearing? Interpretation of 366.26 (c)(1)(A).	The court held that even 15 months after the termination of reunification services, the court does not need to make a finding of "parental unfitness" because the mother had multiple opportunities to be heard on that issue by filing a 388 petition prior to the 366.26 hearing. In spite of the mother's constant visits to her autistic child along with the love between the two, the court upheld the termination of parental rights based on the opinion of a psychologist that the child needed a caretaker with access to specialized services to allow him to fully develop.
In re David L. (2008)	166 Cal. App. 4th 387 83 Cal. Rptr. 3d 14 Fourth Appellate Dist Division Three	Does the court need a 388 petition when it sets a new 366.26 hearing for a child already in a legal guardianship?	The appellate court held that the trial court, pursuant to WIC 366.3, does not need a 388 petition in order to set a new WIC 366.26 hearing for a child already in a legal guardianship. The agency must simply "notify" the court of changed circumstances. Since the agency must simply "notify" the court of the changed circumstances , the agency must only show a prima facie case for a change of circumstances to have the 366.26 hearing set.
In re Desiree M. (1/26/10)	181 Cal. App. 4th 329 104 Cal. Rptr. 3d 523 Fourth Appellate Dist Division One	Discussion of proper notice to children for WIC §366.26 hearing and opportunity for children to be present.	The appellate court reiterated that WIC §349(d) and §366.26(h)(2) require the Court to determine whether a child over 10 was properly noticed, inquire whether the child was given an opportunity to attend, and inquire why the child is not present (if they aren't in court).The court shall continue the hearing if the child(ren) were not properly noticed or given an opportunity to be present. The parent does not have the right to raise those issues on appeal, however.
In re Fernando M. (2006)	138 Cal. App. 4th 529 41 Cal. Rptr. 511 Second Appellate Dist Division Eight	Interpretation of WIC 366.26 (c)(1)(D).	The court held that the child's relationship with his siblings who lived in the same home was relevant in considering exceptional circumstances for purposes of the section (c)(1)(D) exception. The court concluded that all of the evidence in the record indicated that it would be detrimental to the child to remove him from his grandmother's home. The court explores what the term "exceptional circumstances" mean. The court states that "if courts never considered family preference, the term "unwilling" as used in section 366.26, subdivision (c)(1)(D) would be rendered meaningless."

In re Gabriel G. (2005)	134 Cal. App. 4th 1428 36 Cal. Rptr. 3d 847 Sixth Appellate Dist	Is the order identifying adoption as the goal under 366.26(b)(2) an appealable order?	The court held that because 366.26(c)(3) no longer allows long term foster care as an option after the court identifies adoption as the goal and continues the case 180 days, the order is directly appealable. *Practice Tip:* Instead of identifying adoption as the plan under 366.26(c)(3), just order planned permanent living arrangement and identify adoption as the goal.
In re Gladys L. (2006)	141 Cal. App. 4th 845 46 Cal. Rptr. 3d 434 Second Appellate Dist Division Eight	Can a "non-offending" parent's rights be terminated absent a previous finding of "unfitness"?	The appellate court found that before a presumed father's parental rights can be terminated, there must have been a finding by clear and convincing evidence of his "unfitness" as a parent. The court found that the father had been denied due process because he had never been noticed of or been given on opportunity to challenge what the appellate court termed an implied finding of detriment even though he appeared at detention hearing and then never reappeared.
In re G.M. (1/27/10)	181 Cal. App. 4th 552 Fifth Appellate Dist	Is a legal impediment to an adoption relevant to the finding of adoptability that must be made by the court?	The appellate court held that evidence of a legal impediment to adoption under Family Code by an identified prospective parent is relevant when a social worker's opinion that a dependent child will be adopted is based (at least in part) on the willingness or commitment of an identified prospective parent. The suitability of a prospective adoptive parent to adopt is a distinct and separate issue from whether there is a legal impediment to the adoption making her ineligible to adopt the children.
In re Gregory A. (2005)	126 Cal. App. 4th 1554 25 Cal. Rptr. 3d 134 Fourth Appellate Dist Division Three	Can appellant challenge finding of adoptability for first time on appeal? Was there sufficient evidence that child would be adopted in a reasonable time?	The court held that since the burden of proof of showing adoptability was on the department, the issue of sufficiency of the evidence could be raised for the first time on appeal. In regards to the evidence that the child was likely to be adopted in a reasonable time, the court held that the child's young age, good physical and emotional health, intellectual growth and ability to develop interpersonal relationships where attributes indicating adoptability. Also, MGM and MA had committed to adopting.

In re G.S.R. (2008)	159 Cal. App. 4th 1202 72 Cal. Rptr. 3d 398 Second Appellate Dist Division Eight	Can a "non-offending" parent's rights be terminated absent a previous finding of "unfitness"?	This is a very fact specific case. The same appellate court as in Gladys L found that before a presumed father's parental rights can be terminated, there must have been a finding by clear and convincing evidence of his "unfitness" as a parent. In this case, the father had been around for the entire case but his lack of housing rendered him unable to have the children. The appellate court found that this does not make him "unfit" and the agency should have done more to assist him with housing.
In re Helen W. (2007)	150 Cal. App. 4th 71 57 Cal. Rptr. 3d 914 Fourth Appellate Dist Division Three	Discussion of adoptability.	In discussing the adoptability of the child, the appellate court held that if a current caretaker wants to adopt the child that the analysis then shifts to whether there is any legal impediment to the adoption.
In re I.I. (2008)	168 Cal. App. 4th 857 85 Cal. Rptr. 3d 784 Fourth Appellate Dist Division Two	Discussion of whether sibling set was adoptable given special needs and placement in separate homes.	The appellate court held that while the adoption assessment done by the agency was inadequate, when all the reports were read together, there was enough information for the trial court to determine that the children were adoptable even given their special needs. In addition, there were two families willing to adopt the children which added to their adoptability. Finally, there was no chance of their becoming legal orphans since 366.26(i)(2) had been enacted and parental rights could be reinstated after three years in the children were not adopted.
In re I.W. (12/15/09)	180 Cal. App. 4th 1517 103 Cal Rptr. 3d 538 Sixth Appellate Dist	Discussion of adoptability	The appellate court stated that once the Agency is able to show by the correct standard that the child is likely to be adopted by virtue of general characteristics or a single agreeable home, they have met their burden. The burden then shifts to the parent arguing adoptability to show that the child is not adoptable.
In re Jasmine G. (2005)	127 Cal. App. 4th 1109 26 Cal. Rptr. 3d 394 Fourth Appellate Dist Division Three	Notice requirements of WIC 366.26 hearing	A due diligence will not suffice for notice at the WIC 366.26 hearing when the Department knew where the mother was and in fact spoke with her several times between the time the due diligence was done and the 26 hearing without notifying her of the hearing. The court held that the trial court denied the mother due process because of failure to properly notice her.

In re Jason J. (7/9/09)	175 Cal. App. 4th 922 96 Cal. Rptr. 3d 625 Fourth Appellate Dist Division One	Can the court terminate the parental rights of a "Kelsey S" father or a biological father without a finding of unfitness?	The appellate court held: 1) Kelsey S. in an adoption case, having no relevance in dependency. 2) Even if the analysis applied, Cynthia D. (1993) clarified that in dependency, findings of detriment made at review hearings are the equivalent of detriment. Detriment is not an issue at the .26 hearing if all findings of detriment were made at the appropriate hearings. 3) The "father" was not a father in any sense contemplated by Santosky v. Kramer (1982) where the Supreme Court determined that a termination of parental rights needed a higher standard than a preponderance of the evidence. Their use of the word "parents" is interpreted to mean legal parents and the father in this case was not a legal parent.
In re Jennilee T. (1992)	3 Cal. App. 4th 212 4 Cal. Rptr. 2d 101 Fourth Appellate Dist Division Three	Does a child have to be in an adoptive home to find the child adoptable?	The appellate court held that it is not necessary pursuant to WIC 366.26(c)(1) that a child, at the time of the termination hearing, already be in a potential adoptive home. Rather, what is required is clear and convincing evidence of the likelihood that adoption will be realized within a reasonable time.
In re Joshua G. (2005)	129 Cal. App. 4th 189 28 Cal. Rptr. 3d 213 Fourth Appellate Dist Division One	Can Dept be equitably estopped to rec. Adoption after rec of LG or agreement with parents to rec less permanent plan? Do we take juri over parents or over children?	The court held that the doctrine of equitable estoppel is not applicable in dependency cases. The court found that even if the parents could have reasonably relied on CPS' recommendation, that recommendation is not binding on the Court. The court also found that the trial court has no obligation to advise parents of their trial rights and consequences of submitting at a WIC 366.21(f) or 22 hearing. (Only at juri) Also, the trial court denied that the mother's continuance request (she had transportation probs) and the appellate court found that as long as mother's counsel was present , there was no due process violation. Finally, court takes jurisdiction over children and not parents. There was no need to file a new petition against the father because the court already had jurisdiction over the child.

Kristine M. v. David P. (2005)	135 Cal. App. 4th 783 37 Cal. Rptr. 3d 748 First Appellate Dist Division Four	Can parents stipulate to terminating one parent's parental rights to avoid a continuing support obligation?	The court held that parents cannot stipulate to terminating one parent's parental rights to avoid a continuing obligation of support. The court held that public policy intervenes to protect the child's continued right to support. A judgment so terminating parental rights and the attendant obligation to support the child is void as a breach of public policy and as an act in excess of the court's jurisdiction. The court noted that the outcome might have been different if the agreement had been made prior to conception vs. Post-birth.
In re Lauren R. (2007)	148 Cal. App. 4th 841 56 Cal. Rptr. 3d 151 Fourth Appellate Dist Division Three	When does the relative preference under WIC 361.3(d) apply? When does the 366.26(k) (caretaker preference) apply?	The court held that the relative placement preference under WIC 361.3(a) did not apply to the placement order in this case because (1) no new placement was necessary and (2) it was a placement for adoption. WIC 361.3(d) (relative preference) applies to initial removal and placement and whenever a new placement MUST be made. The agency's desire to replace the child with her aunt did not constitute a necessary new placement. In fact the court found that because the placement order was for adoption that the caretaker preference under WIC 366.26(k) was applicable. 366.26(k) applies specifically to applications for adoption and its application is triggered by the INTENT to place the child for adoption and not necessarily the termination of parental rights or even termination of family reunification.
In re Marina S. (2005)	132 Cal. App. 4th 158 33 Cal. Rptr. 3d 220 Second Appellate Dist Division Two	No need for approved home study in order to terminate parental rights.	The court found that as long as substantial evidence supports that fact that the child is likely to be adopted within a reasonable time, an approved home study was not required to be able to terminate parental rights.
In re Michelle C. (2005)	130 Cal. App. 4th 664 30 Cal. Rptr. 3d 363	Did the court violate parent's due process right by terminating parental rights without parent's attorney being present? Is a parent entitled to notice of a continued 366.26 hearing?	The court held that where a parent is represented by counsel, either appointed or retained, it is error to terminate parental rights in the absence of the parent's attorney unless the parent has waived, either expressly or impliedly, the right to be represented by counsel and the right to be heard. The court also held that the parent was entitled to notice of the continued WIC 366.26 hearing. The court found that if a parent does not appear at a properly noticed 366.26 hearing, while it might be construed as an implied waiver of the parent's right to be heard and

	Fourth Appellate Dist. Division One		represented by counsel, the court could have sanctioned the attorney or relieved the attorney and appointed a new attorney.
In re Miguel A. (2007)	156 Cal. App. 4th 389 67 Cal. Rptr. 307 Fourth Appellate Dist Division One	Does the termination of parental rights render a previous sibling no longer a sibling?	The court held that the termination of parental rights is as to the rights of the parents and not the rest of the other biological relatives. Sibling relationships can be established by "blood, adoption or affinity through a common legal or biological parent." Therefore, because the children still share a biological parent, they are still siblings.
In re Naomi P. (2005)	132 Cal. App. 4th 808 34 Cal. Rptr. 3d 236 Second Appellate Dist Division One	Interpretation of 366.26 (c)(1)(E)	The court gave wide discretion to the trial court in determining the credibility of the witnesses based on the witnesses demeanor. The court also found that the testimony of the children not subject to the adoption was "powerful demonstrative evidence" that it would be in the best interest of the child who was the subject of the adoption to determine whether to apply the sibling exception under 366.26(c)(1)(E).
In re Q.D. (2007)	155 Cal. App. 4th 272 65 Cal. Rptr. 850 Fourth Appellate Dist Division Three	Addresses WIC 366.26(i).	This is a very fact specific case. The appellate court held that in spite of WIC 366.26(i) which states "the Court shall have no power to set aside, change or modify its ... order", the trial court on these facts could have readdressed the termination of parental rights order because the record in its totality could not be considered a final order terminating parental rights.
In re P.A. (2007)	155 Cal. App. 4th 1197 66 Cal. Rptr. 3d 783 Second Appellate Dist Division Three	Did the court need to find the presumed father unfit in order to terminate his parental rights.	The appellate court held that the trial court's dispositional finding by "clear and convincing evidence that there exists a substantial danger to the children and there is no reasonable means to protect them without removal from their parents custody and the custody of the children is taken from the parents and placed in the department for placement with a relative" supports the concept of detriment under dependency law, and no specific finding of unfitness of a presumed father is required.
In re P.C. (2008)	165 Cal. App. 4th 98 80 Cal. Rptr. 3d 595 Fourth Appellate Dist Division Three	Is poverty alone a sufficient ground to deprive a mother of her parental rights?	The appellate court held that poverty alone - even when it results in homelessness or less than ideal housing arrangements is not a sufficient ground to deprive a mother of parental rights to her children. The court held that the Agency was responsible to provide assistance to obtain housing.
In re Ramone R. (2005)	132 Cal. App. 4th 1339 34 Cal. Rptr. 3d 344 First Appellate Dist Division Three	Is the order identifying adoption as the goal under 366.26(b)(2) an appealable order?	The court held that because 366.26(c)(3) no longer allows long term foster care as an option after the court identifies adoption as the goal and continues the case 180 days, the order is directly appealable.

In re R.C. (2008)	169 Cal. App. 4th 486 86 Cal. Rptr. 3d 776 Fourth Appellate Dist Division One	Discussion of adoptability of child.	The appellate court agreed with the trial court that the child was generally adoptable due to his many positive characteristics. Therefore the appellate court did not have to reach the decision about whether the child was specifically adoptable or whether there were any legal impediments to the adoption.
In re R.S. (11/30/09)	179 Cal. App. 4th 1137 101 Cal. Rptr. 3d 910 First Appellate Dist Division One	Once the parents voluntary relinquish under FC 8700, does that preclude the juvenile court from terminating parental rights under WIC 366.26 and designating a prospective adoptive parent?	The appellate court held that when birth parents make a voluntary designated relinquishment to a public adoption agency under FC §8700, and the relinquishment becomes final after the WIC §366.26 hearing has been set, but before it is scheduled to commence, the relinquishment effectively precludes the need for a hearing select a permanent plan under 366.26. The juvenile court is precluded from making any order that interferes with the parents' unlimited right to make such a voluntary relinquishment to a public adoption agency. (Adoptions would not "randomly" accept a designated relinquishment, but would first need to complete an approved home study of the designated placement and determine additionally that the designated placement was in the child's best interest. – Fn #5)
In re Salvador M. (2005)	133 Cal. App. 4th 1415 35 Cal. Rptr.3d 577 Fourth Appellate Dist Division One	Should court have terminated parental rights where home study not complete in light of fact that siblings lived together pursuant to 366.26 (c)(1)(E)?	The court held that the WIC 366.26(c)(1)(E) exception should not have stopped the trial court from terminating parental rights even where the home study on the relative had not been completed and one sibling lived in that home under a legal guardianship. However, the court did find that the best practice might have been for the trial court to wait for the home study to be complete under these circumstances before terminating parental rights.
In re Sarah M. (1994)	22 Cal. App. 4th 1642 28 Cal. Rptr. 2d 82 Third Appellate Dist	Discussion of how having prospective adoptive home effects adoptability finding.	The appellate court held that a prospective adoptive parent's willingness to adopt generally indicates the minor is likely to be adopted within a reasonable time either by the prospective adoptive parent or by some other family. However, if the child is likely to be adopted based *solely* on the existence of a prospective adoptive parent who is willing to adopt the child, an inquiry may be made into whether there is any legal impediment to the adoption by that parent.

In re S.B. (2009)	46 Cal. 4th 529 CA Supreme Court	Is the order identifying adoption as the goal under 366.26(b)(2) an appealable order?	The appellate court held because 366.26(c)(3) no longer allows long term foster care as an option after the court identifies adoption as the goal (mandates either adoption or legal guardianship with a non-relative at the next hearing) and continues the case 180 days, the order is directly appealable. In addition, the court stated that although the trial court's determination of adoptability is a "finding", the court did make orders regarding the location of an adoptive home
In re Scott M. (1993)	13 Cal. App. 4th 839 16 Cal. Rptr. 2d 766 Third Appellate Dist	Is the "suitability" of a prospective adoptive family relevant to the issue of whether the minors are likely to be adopted?	The appellate court held that questions concerning the "suitability" of a prospective adoptive family are irrelevant to the issue whether the minors are likely to be adopted. General suitability to adopt is a subjective matter which does not constitute a legal impediment to adoption. If inquiry into the suitability of prospective adoptive parents were permitted in section 366.26 hearings, we envision that many hearings would degenerate into subjective attacks on all prospective adoptive families in efforts to avoid termination of parental rights. Such a result is not envisioned by the statutory scheme. Rather, the question of a family's suitability to adopt is an issue which is reserved for the subsequent adoption proceeding.
In re Sheri T. (2008)	166 Cal. App. 4th 1532 82 Cal. Rptr. 3d 410 Fourth Appellate Dist Division Three	Can the court set a WIC 366.26 hearing if the child is in a PPLA without an evidentiary hearing?	The appellate court held that the trial court can and should set a WIC 366.26 hearing for a child who is in a planned permanent living arrangement if new circumstances exist. This hearing can be set after only 6 months in the PPLA and no evidentiary hearing is necessary in order to set the 26 hearing because the party will have a full opportunity to litigate the issues at that time.
State Department of Social Services v. Superior Court of Siskiyou County (D.P.) (2008)	162 Cal. App. 4th 273 76 Cal. Rptr. 3d 112 Third Appellate Dist	When addressing the best interests of a child regarding removal from a PAP, what time frame is relevant? Does 361.4 apply?	1) The appellate court held that when the trial court is addressing the child's removal from a prospective adoptive parent (PAP), they must consider the circumstances at the time the hearing is actually held vs. the circumstances at the time the child was originally removed. 2) The requirements of WIC 361.4 do not prohibit placement back into the home of a PAP after removal because those requirements are only for the original placement.

In re Thomas R. (2006)	145 Cal. App. 4th 726 1 Cal. Rptr. 864 First Appellate Dist Division Three	Can the trial court refuse to allow parent's counsel to cross-examine the CSW on the issue of adoptability?	The appellate court held that because it is the Department of Children & Family Services burden to prove adoptability at the WIC 366.26 hearing, it is a denial of due process to deny a parent the right to test the sufficiency of the evidence supporting the social worker's position that the child is likely to be adopted. This right to test the sufficiency of the evidence includes the right to cross examine the social worker.
In re T.M. (7/20/09)	147 Cal. App. 4th 1166 96 Cal. Rptr. 3d 774 Third Appellate Dist	Can the court terminate parental rights for a parent if no FR were offered to that parent pursuant to WIC 361.5(b)(1)?	The appellate court held that the trial court could not terminate mother's parental rights at the 366.26 hearing because mother had never been offered reunification services pursuant to WIC 361.5(b)(1). The appellate court held that "because the court neither terminated services, after finding reasonable services had been provided, nor denied them pursuant to a subdivision of WIC 361.5 which would permit termination of parental rights, it should have limited the scope of the 366.26 hearing to consideration of only guardianship or long term foster care."
In re Valerie A. (2006)	139 Cal. App. 4th 1519 43 Cal. Rptr. 3d 734 Fourth Appellate Dist Division One	Is a sibling or half-sibling no longer a sibling once they have been adopted for purposes of WIC 366.26 (c)(1)(E)?	Siblings or half -siblings do not cease to be siblings even though they have been adopted for purposes of analyzing whether an exception to adoption exists pursuant to WIC 366.26(c)(1)(E). Pursuant to WIC 362.1 (c) and sibling is a child related by blood, adoption or affinity through common legal or biological parent.
In re Valerie A. (2007)	152 Cal. App. 4th 987 61 Cal. Rptr. 3d 403 Fourth Appellate Dist Division One	Discussion of WIC 366.26 (c)(1)(E)?	The appellate court discusses the factors outlined in Celine R. The appellate court clarifies that the factor the court needs to consider regarding the extent the siblings have shared experiences *or* have close and strong bonds. The court found that those prongs are disjunctive prongs and that even if the shared experiences happened in the past, if they have strong bonds, the prong will be satisfied. In addition, the court held that the trial court must consider ongoing sibling visitation subsequent to the termination of parental rights and continue that contact unless if finds the contact detrimental to one of the siblings.

In re Valerie W. (2008)	162 Cal. App. 4th 1 75 Cal. Rptr. 3d 86 Fourth Appellate Dist Division One	If the adoption assessment is insufficient, can the court find substantial evidence to find the children adoptable?	The court held that because the adoption assessment prepared by the petitioning agency under WIC 366.21(i) was not sufficient, the court did not have substantial evidence to find the children adoptable. In this case the assessment did not include an update on one child's medical condition, an assessment of one of the co-adoptive parents, whether one of the co-adoptive parents would be willing to adopt without the other co-adoptive parent or even whether the co-adoption was possible given the possible adoptive parents were mother and daughter.
Wayne F. v Superior Court of San Diego County (2006)	145 Cal. App. 4th 1331 52 Cal. Rptr. 3d 519 Fourth Appellate Dist Division One	What procedural rights do prospective adoptive parents have in a hearing brought under WIC 366.26(n)(3)(c)?	The appellate court held that both the plain language of the statute and the legislative history "make it clear that Prospective Adoptive Parents (PAPs) have standing to fully participate in any removal hearing conducted under subdivision (n). PAPs, like other litigants, may offer evidence, examine witnesses, provide the court with legal authorities and make arguments to the court.
In re Xavier G. (2007)	157 Cal. App. 4th 208 68 Cal. Rptr. 3d 478 Fourth Appellate Dist. Division One	Should the court have applied the 366.26(c)(1)(D) exception and chose guardianship vs. adoption given GM's preference for LG?	The appellate court held that the court did not err when it chose adoption over guardianship even though the grandmother preferred guardianship. It reasoned that the grandparents were not unwilling to adopt, they just preferred guardianship. Adoption is the permanent plan preferred by the legislature. The court reiterated that "family preference is insufficient" to trigger the application of WIC 366.26(c)(1)(D).

In re Amber M. (2002)	103 Cal. App. 4th 681 127 Cal. Rptr. 2d 19 Fourth Appellate Dist Division One	Considerations in granting WIC 388 petition	Before a juvenile court may modify an order pursuant to a 388, the party must show, by a preponderance of the evidence, changed circumstances or new evidence and that the modification would promote the best interests of the child. The court held that this is determined by the seriousness of the reason for the dependency and the reason the problem was not overcome; the relative strength of the parent-child and child-caretaker bonds and the length of time the child has been in the system; and the nature of the change in circumstance, the ease by which the change could be achieved; and the reason the change was not made sooner.
In re A.S. (6/19/09)	174 Cal. App. 4th 1511 95 Cal. Rptr. 3d 363 Fourth Appellate Dist Division Two	Does the trial court retain jurisdiction to rule on WIC 388 petitions once the court has terminated jurisdiction?	No. The appellate court held the trial court retains jurisdiction to rule on a WIC 388 petition only when it has jurisdiction. Section 388 states: "Any parent... having an interest in a child *who is a dependent child of the juvenile court*...may...petition the court..." (Remember, however, that when the court terminates jurisdiction with a guardianship in place, it retains residual jurisdiction over that child until the child turns 18.)
In re C.J.W. (2007)	157 Cal. App. 4th 1075 69 Cal. Rptr. 3d 197 Fourth Appellate Dist Division Two	Does the court have to have a full evidentiary hearing when granting a 388 petition?	This is a very fact specific case. The appellate court held that the fact that the trial court heard the matter on the paperwork with counsel present to argue did not violate due process. However, the court also stated that the 388 form was internally inconsistent by having boxes that both grant a hearing and deny a hearing. The court suggests that the 388 petition be redrafted to be more clear.
In re Daniel C. (2006)	141 Cal. App. 4th 1438 47 Cal. Rptr. 3d 137 Fourth Appellate Dist Division One	Is the denial of a WIC 388 petition an appealable order or must a party file a writ?	The denial of a WIC 388 petition is an appealable order.
In re D.S. (2007)	156 Cal. App. 4th 671 67 Cal. Rptr. 3d 450 Third Appellate Dist	Does the father have standing to challenge the denial of mother's 388?	The court held that the father does not have standing to challenge the denial of mother's 388 because he was not aggrieved by the order from which he appeals. Since the mother's petition did not relate to the father, his personal rights were not involved.

In re Holly B. (04/08/09)	172 Cal. App. 4th 1261 92 Cal. Rptr. 3d 80 Third Appellate Dist	Does father have standing to appeal granting of 388 where issue is rescinding psych eval ordered for minor?	The appellate court found that the father did not have standing to appeal the granting of 388 where issue is rescinding psych eval ordered for the minor. The court held that the father would have to have had *his own rights affected* by the courts decision to have standing to appeal. The 388 decision did not affect any "legally cognizable issue personal to appellant."
In re Jackson W. (4/29/10)	Fourth Appellate Dist Division One	Is a section 388 petition the proper mechanism by which to raise a claim of ineffective assistance of counsel?	The appellate court held that a parent who has a due process right to competent counsel can seek to change a prior court order on the ground of ineffective assistance of counsel by filing a section 388 petition, although the customary and better practice is to file a petition for writ of habeas corpus in the juvenile court
In re Jacob P. (2007)	157 Cal. App. 4th 819 68 Cal. Rptr. 3d 817 Second Appellate Dist Division Seven	What is standard for return when FR, which had been previously terminated, is reinstated?	The court held that when reunification services were previously terminated and are then reinstated pursuant to a 388 petition, the proper standard for possible return at the end of the new reunification services period is the best interest of the child standard under 388 vs. The substantial risk of detriment standard used at a 366.21 or 366.22 hearing.
In re Kenneth S. (2008)	169 Cal. App. 4th 1353 87 Cal. Rptr. 3d 715 Fourth Appellate Dist Division One	Does the court have to hold a hearing after granting a 388 petition?	The appellate court held that once the court found a prima facie case sufficient to warrant a hearing on a 388, it is required to hold an evidentiary hearing of some kind.
In re Lesley G. (2008)	162 Cal. App. 4th 904 76 Cal. Rptr. 3d 361 Second Appellate Dist Division Four	Once a WIC 388 petition is granted, must the court hold a hearing on that petition?	The appellate court held that once the court checked the box indicating that it would hold a hearing on the 388, it had to hold the hearing. The court did note that the 388 form was internally inconsistent by having boxes that both grant a hearing and deny a hearing. The court suggests that the 388 petition be redrafted to be more clear. However, in this case the appellate court held once the court checked the box indicating that a hearing would be granted, it needed to hold some kind of hearing and couldn't summarily deny the 388 at that juncture.
In re Mary G. (2007)	151 Cal. App. 4th 184 59 Cal. Rptr. 3d 703 Fourth Appellate Dist Division One	Is "changing" circumstances enough to grant 388 petition?	The appellate court held that a petition which alleges merely changing circumstances would mean delaying the selection of a permanent home for a child to see if a parent might be able to reunify at some point does not promote the stability for the child or the child's best interests.

In re M.V. (2006)	146 Cal. App. 4th 1048 53 Cal. Rptr. 3d 324 First Appellate Dist Division Two	What is the standard of proof at a 388 when the issue is removal from the foster parents?	The appellate court held that the agency's burden of proof on a WIC 388 petition to remove a child from de facto parents was to establish its case by a preponderance of the evidence because a de facto parent does not have the same rights as a parent or legal guardian.
In re R.N. (10/20/09)	178 Cal. App. 4th 557 100 Cal. Rptr. 3d 524 Second Appellate Dist Division Seven	Does court need to consider whether FR services should be reinstated to a parent when considering termination of or modification of an existing guardianship?	The appellate court held that when a petition is filed under WIC§388 to terminate a legal guardianship or appoint a successor guardian, a trial court must consider under WIC§366.3(f) whether the child should be returned to the parent or whether FR services should be reinstated. The parent would need to show by a preponderance of the evidence that FR services are in the child's best interests and those services may be provided for up to six months. The parent does not have to file his/her own WIC§388 petition for the court to consider these options but must do so under WIC§366.3(b).
In re S.R. (05/01/09)	173 Cal. App.4th 864 92 Cal. Rptr. 3d 838 Third Appellate Dist	Did court err in granting WIC 388 petition to vacate order for bonding study based solely on Agency's inability to find a Spanish speaking evaluator?	The appellate court held that "not every change in circumstances can justify modifications of a prior order". In spite of the fact that a bonding study is not statutorily mandated in a dependency proceeding, once ordered, the court has necessarily found it is required by the court or a party. In such a circumstance, the court is without discretion to modify, or, more correctly, vacate the order, without substantial evidence on the record that the bonding study is no longer necessary or appropriate for legitimate reasons other than difficulty by the Agency in complying with the order.

*** Please note - This case law index does not purport to be an absolutely accurate rendition of all the facts in all cases. This index was compiled using the briefs of many people. Please review the entire decision before citing to a case.

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In re Gabriel G. (2005)	134 Cal. App. 4th 1428	WIC 366.26 - Termination of Parental Rights
In re Gabriel L. (02/27/09)	172 Cal. App. 4th 644	Court Ordered Services
In re Gabriel P. (2006)	141 Cal. App. 4th 850	Parentage
George P. v. Superior Court (2005)	127 Cal. App. 4th 216	Miscellaneous
In re Gerald J. (1992)	1 Cal. App. 4th 1180	Notice Issues
In re Gina S. (2005)	133 Cal. App. 4th 1074	Confidentiality
In re G.L. (9/9/09)	177 Cal. App. 4th 683	Indian Child Welfare Act
In re Gladys L. (2006)	141 Cal. App. 4th 845	WIC 366.26- Termination of Parental Rights
In re Glorianna K. (2005)	125 Cal. App. 4th 1443	Indian Child Welfare Act
In re G.M. (1/27/10)	181 Cal. App. 4th 552	WIC 366.26 – Termination of Parental Rights
Gonzalez v. Munoz (2007)	156 Cal. App. 4th 413	Restraining Orders
Grahm v. Superior Court (2005)	132 Cal. App. 4th 1193	UCCJEA
Greene v. Deschutes County (12/10/09)	588 F.3d 1011	Warrants

In re Gregory A. (2005)	126 Cal. App. 4th 1554	WIC 366.26 - Termination of Parental Rights
In re G.S.R. (2008)	159 Cal. App. 4th 1202	WIC 366.26 - Termination of Parental Rights
In re Guardianship of L.V. (2005)	136 Cal. App. 4th 481	Legal Guardianship
In re G.W. (5/19/09)	173 Cal. App. 4th 1428	Placement Issues
In re Hadley B. (2007)	148 Cal. App. 4th 1041	Jurisdiction/Disposition Issues
Adoption of Hannah S. (2006)	142 Cal. App. 4th 988	Indian Child Welfare Act
In re Harmony B. (2005)	125 Cal. App. 4th 831	Restraining Orders, WIC 361.5 - No Reunification Services
In re H.B. (2008)	161 Cal. App. 4th 115	Indian Child Welfare Act
In re H.E. (2008)	169 Cal. App. 4th 710	Jurisdiction/Disposition
In re Hector A. (2005)	125 Cal. App. 4th 783	Restraining Orders
In re Helen W. (2007)	150 Cal. App. 4th 71	Appellate Issues & WIC 366.26 - Termination of Parental Rights
In re Henry S. (2006)	140 Cal. App. 4th 248	Delinquency Issues
In re H.G. (2006)	146 Cal. App. 4th 1	Placement
In re Holly B. (04/08/09)	172 Cal. App. 4th 1261	WIC 388 & Indian Child Welfare Act
Holly Loeffler v. William Medina (6/18/09)	174 Cal. App. 4th 1495	Restraining Orders
Hossanna Homes v. County of Alameda (2005)	129 Cal. App. 4th 1408	Placement
H.S. v. Superior Court of Riverside County (4/22/10)		Parentage
In re Hunter S. (2006)	142 Cal. App. 4th 988	Visitation
In re I.G. (2005)	133 Cal. App. 4th 1246	Indian Child Welfare Act
In re I.I. (2008)	168 Cal. App. 4th 857	WIC 366.26 - Termination of Parental Rights
In re Iris R. (2005)	131 Cal. App. 4th 337	Incarcerated Parents
In re I.W. (12/15/09)	180 Cal. App. 4th 1517	WIC 366.26 - Termination of Parental Rights
In re Jacob P. (2007)	151 Cal. App. 4th 819	Termination of Reunification Services/ Reasonable Efforts also in WIC 388
In re Jaheim B.(2008)	169 Cal. App. 4th 1343	UCCJEA
In re James F. (2007)	42 Cal. 4th 901	Guardian ad Litem
In re James R. (7/15/09)	176 Cal. App. 4th 129	Jurisdictional/Dispositional Issues
In re James W. (2008)	158 Cal. App 4th 1562	Placement Issues
In re Janee W. (2006)	140 Cal. App. 4th 1444	Miscellaneous
In re Jasmine G. (2005)	127 Cal. App. 4th 1109	WIC 366.26 - Termination of Parental Rights
In re Jason J. (7/9/09)	175 Cal. App. 4th 922	WIC 366.26- Termination of Parental Rights
In re Javier G. (2005)	130 Cal. App. 4th 1195	Jurisdictional/Disposition Issues
In re J.B. (7/20/09)	178 Cal. App. 4th 751	Indian Child Welfare Act

In re Jennifer O. (5/6/10)		Notice Issues
In re Jennifer T. (2007)	159 Cal. App. 4th 254	Appellate Issues
In re Jennilee T. (1992)	3 Cal. App. 4th 212	WIC 366.26 - Termination of Parental Rights
In re Jeremiah G. (04/14/09)	172 Cal. App. 4th 1514	Indian Child Welfare Act
In re Jesse W. (2007)	157 Cal. App. 4th 49	WIC 366.26 - Termination of Parental Rights
In re Jessica A. (2004)	124 Cal. App. 4th 636	Termination of Reunification Services/ Reasonable Efforts
In re Jessica C. (2007)	151 Cal. App. 4th 474	Legal Guardianship
In re Jesusa V. (2004)	32 Cal. 4th 588	Incarcerated Parents
In re J.H. (2007)	158 Cal. App. 4th 174	Notice Issues
In re J.K. (6/17/09)	174 Cal. App. 4th 1426	Jurisdictional/Dispositional Issues
In re J.L. (2008)	159 Cal. App. 4th 1010	Parentage Issues
In re J.N. (2007)	156 Cal. App. 4th 523 156	Miscellaneous
In re J.N. (2006)	138 Cal. App. 4th 450	Visitation and Indian Child Welfare Act
In re J.N. (1/6/10)	181 Cal. App. 4th 1010	Jurisdiction/Disposition Issues
In re J.O. (9/9/09)	178 Cal. App. 4th 139	Parentage
In re Joanna Y. (1992)	8. Cal. App. 4th 433	Evidence
In re Joel T. (1999)	70 Cal. App. 4th 263	Emancipation/Terminating Jurisdiction/ Court Ordered Services
In re John M. (2006)	141 Cal. App. 4th 1564	Jurisdictional/Disposition Issues
Jonathan L. v. Superior Court (2008)	165 Cal. App. 4th 1074S	Miscellaneous
In re Jonathan S. (2005)	129 Cal. App. 4th 334	Indian Child Welfare Act
In re Jorge G. (2008)	164 Cal. App. 4th 125	Notice Issues
In re Jose C. (2007)	155 Cal. App. 4th 844	Indian Child Welfare Act
Jose O. v. Superior Court (2008)	169 Cal. App. 4th 703	WIC 361.5 (No Reunification)
In re Joseph P. (2006)	140 Cal. App. 4th 1524	Indian Child Welfare Act
In re Joseph T. (2008)	163 Cal. App. 4th 787	Placement
In re Joshua G. (2005)	129 Cal. App. 4th 189	WIC 366.26 - Termination of Parental Rights
In re Joshua S. (2007)	41 Cal. 4th 261	Funding Issues
In re Josiah Z. (2005)	36 Cal. 4th 664	Appellate Issues
In re J.T. (2007)	154 Cal. App. 4th 986	Indian Child Welfare Act
In re Justice P. (2004)	123 Cal. App. 4th 181	Notice
In re Justin L. (2008)	165 Cal. App. 4th 1406	Indian Child Welfare Act
In re Justin S. (2007)	150 Cal. App. 4th 1426	Indian Child Welfare Act
In re Karen R. (2001)	95 Cal. App. 4th 84	Jurisdictional/Dispositional Issues
In re Katie V. (2005)	130 Cal. App. 4th 586	Termination of Reunification Services/ Reasonable Efforts

In re K.B. (5/13/09)	173 Cal. App. 4th 1275	Indian Child Welfare Act
In re K.C. (4/26/10)		Placement Issues
K.C. v. Superior Court (3/18/10)	182 Cal. App. 4th 1388	WIC 361.5 - No Reunification Services
In re K.D. (2004)	124 Cal. App. 4th 1013	Legal Guardianship
In re Kenneth M. (2004)	123 Cal. App. 4th 16	WIC 361.5 - No Reunification Services
In re Kenneth S. (2008)	169 Cal. App. 4th 1353	Legal Guardianship/ WIC 388
In re Kevin N. (2007)	148 Cal. App. 4th 1339	WIC 361.5 No Reunification Services
Kevin Q. v. Lauren W. (6/19/09)	175 Cal. App. 4th 1119	Parentage
K.M. v. E.G. (2005)	37 Cal. 4th 130	Parentage
In re K.M. (03/16/09)	172 Cal. App. 4th 115	Indian Child Welfare Act
In re Kobe A. (2007)	146 Cal. App. 4th 1048	Notice
In re K.P. (6/22/09)	175 Cal. App. 4th 1	Indian Child Welfare Act
In re Kristen B. (2008)	163 Cal. App. 4th 1535	Miscellaneous
Kristine H. v. Lisa R. (2005)	37 Cal. 4th 156	Parentage
Kristine M. v. David P. (2005)	135 Cal. App. 4th 783	WIC 366.26 - Termination of Parental Rights
In re L.A. (12/18/09)	180 Cal. App. 4th 413	Jurisdiction/Disposition
In re Lauren R. (2007)	148 Cal. App. 4th 841	WIC 366.26 - Termination of Parental Rights
In re Lauren Z. (2007)	158 Cal. App. 4th 1102	Placement Issues
In re L.B. (04/28/09)	173 Cal. App. 4th 562	Appellate Issues
In re Lesley G. (2008)	162 Cal. App. 4th 904	WIC 388
In re Lisa I. (2005)	133 Cal. App. 4th 605	Parentage
In re Madison W. (2006)	141 Cal. App. 4th 1447	Appellate Issues
Mira Manela v. LA Superior Court (9/22/09)	177 Cal. App. 4th 1139	Evidence
Manuel C. v. Superior Court (01/26/10)	181 Cal. App. 4th 382	Miscellaneous
In re Marcos G. (2/4/10)	182 Cal. App. 4th 369	Notice Provisions
In re Mardardo F. (2008)	164 Cal. App. 4th 481	WIC 361.5 - No Reunification Services
In re Mark A. (2007)	156 Cal. App. 4th 1124	Jurisdiction/Disposition
In re Mark B. (2007)	149 Cal. App. 4th 61	Appellate Issues
In re Mariah T. (2008)	159 Cal. App. 4th 428	Jurisdiction/Disposition
In re Marina S. (2005)	132 Cal. App. 4th 158	WIC 366.26 - Termination of Parental Rights
In re Marriage of Brown & Yana (2005)	37 Cal. 4th 947	Family Law Issues
In re Marriage of David & Martha M. (2006)	140 Cal. App. 4th 96	Family Law Issues
In re Mary G. (2007)	151 Cal. App. 4th 184	Parentage/ WIC 366.26 - Termination of Parental Rights
In re Matthew F. (2005)	132 Cal. App. 4th 883	Restraining Orders
In re M.B. (3/22/10)	182 Cal. App. 4th 1496	Indian Child Welfare Act

In re Melissa R. (8/28/09)	177 Cal. App. 4th 24	Indian Child Welfare Act
In re M.F. (2008)	161 Cal. App. 4th 673	Guardian ad Litem
In re Michelle C. (2005)	130 Cal. App. 4th 664	WIC 366.26 - Termination of Parental Rights
In re Miguel A. (2007)	156 Cal. App. 4th 389	WIC 366.26 - Termination of Parental Rights
In re Miracle M. (2008)	160 Cal. App. 4th 834	Indian Child Welfare Act
In re M.L. (03/23/09)	172 Cal. App. 4th 1110	Miscellaneous
In re M. M. (2007)	154 Cal. App. 4th 897	Indian Child Welfare Act
Monteroso v. Moran (2006)	135 Cal. App. 4th 732	Restraining Orders
In re M.R. (2005)	132 Cal. App. 4th 269	Legal Guardianship
M.T. v. Superior Court (10/30/09)	178 Cal. App. 4th 1170	Review Hearings
In re M.V. (2006)	146 Cal. App. 4th 1048	WIC 388
In re M.V. (2008)	167 Cal. App. 4th 166	Termination of Reunification Services/ Reasonable Efforts
Nakamura v. Parker (2007)	156 Cal. App. 4th 327	Restraining Orders
In re Naomi P. (2005)	132 Cal. App. 4th 808	WIC 366.26 - Termination of Parental Rights
In re N.E. (2008)	160 Cal. App. 4th 766	Indian Child Welfare Act
In re Neil D. (2007)	155 Cal. App. 4th 282	Jurisdictional/Disposition Issues
In re Nicole K. (2006)	146 Cal. App. 4th 779	Indian Child Welfare Act
In re N.M. (05/27/09)	174 Cal. App. 4th 329	Indian Child Welfare Act
In re N.M. (2008)	161 Cal. App. 4th 253	Indian Child Welfare Act
In re N.M. (2003)	108 Cal. App. 4th 845	Court Ordered Services
In re Nolan W. (03/30/09)	45 Cal. 4th 1217	Miscellaneous
In re Olivia J. (2004)	124 Cal. App. 4th 698	Termination of Reunification Services/ Reasonable Efforts
Adoption of O.M. (2008)	169 Cal. App. 4th 672	Parentage Issues
In re P.A. (2006)	144 Cal. App. 4th 1339	Jurisdictional/Disposition Issues
In re P.A. (2007)	155 Cal. App. 4th 1197	Notice & WIC 366.26 - Termination of Parental Rights
In re Patricia L. (1992)	9 Cal. App. 4th 61	Defacto Parents
In re Paul W. (2007)	151 Cal. App. 4th 37	Miscellaneous
In re P.C. (2008)	165 Cal. App. 4th 98	WIC 366.26 - Termination of Parental Rights
In re Phoenix H. (12/21/09)	47 Cal. 4th 835	Appellate Issues
In re P.L. (2005)	134 Cal. App. 4th 1357	DeFacto Parents
In re Q.D. (2007)	155 Cal. App. 4th 272	WIC 366.26 - Termination of Parental Rights
In re Ramone R. (2005)	132 Cal. App. 4th 1339	WIC 366.26 - Termination of Parental Rights
In re Rayna N.(2008)	163 Cal. App. 4th 262	Indian Child Welfare Act
In re R.C. (2008)	169 Cal. App. 4th 486	WIC 366.26 - Termination of Parental Rights
In re R.D. (2008)	163 Cal. App. 4th 679	Miscellaneous

In re Rebecca R. (2006)	143 Cal. App. 4th 1426	Indian Child Welfare Act
In re Rebecca S. (2/810)	181 Cal. App. 4th 1310	Legal Guardianship
In re Ricardo V. (2007)	147 Cal. App. 4th 419	Appellate Issues
In re Rita L. (2005)	128 Cal. App.4th 495	Termination of Reunification Services/ Reasonable Efforts
In re R.J. (05/23/08)	164 Cal. App. 4th 219	Defacto Parents
In re R.M. ((7/13/09)	175 Cal. App. 4th 986	Jurisdictional/Dispositional Issues
In re R.N. (10/20/09)	178 Cal. App. 4th 557	WIC 388
In re Robert A. (2007)	147 Cal. App. 4th 982	Indian Child Welfare Act
In re Rosa S. (2002)	100 Cal. App. 4th 1181	Court Ordered Services
In re R.S. (2007)	154 Cal. App. 4th 1262	Court Ordered Services
In re R.S. (03/03/09)	172 Cal. App. 4th 1049	Confidentiality
In re R.S. (11/30/09)	179 Cal. App. 4th 1137	WIC 366.26- Termination of Parental Rights
In re Rubisela E.(2000)	85 Cal. App. 4th 177	Jurisdictional/Dispositional Issues
In re R.W. (03/26/09)	172 Cal. App. 4th 1268	Miscellaneous
In re S.A. ((3/15/10)	182 Cal. App. 4th 1128	Appellate Issues/ Evidence
In re Sabrina H. (2007)	149 Cal. App. 4th 1403	Placement
In re Salvador M. (2005)	133 Cal. App. 4th 1415	WIC 366.26 - Termination of Parental Rights
In re Samuel G. (05/28/09)	174 Cal. App. 4th 502	Funding Issues
In re Sara M. (2005)	36 Cal. 4th 998	Termination of Reunification Services/ Reasonable Efforts
In re Sarah M. (1994)	22 Cal. App. 4th 1642	Termination of Parental Rights
In re Savannah M. (2005)	131 Cal. App. 4th 1387	Jurisdictional/Disposition Issues
In re S.B. (2005)	130 Cal. App. 4th 1148	Indian Child Welfare Act
In re S.B. (05/28/09)	46 Cal. 4th 529	WIC 366.26 - Termination of Parental Rights/ICWA
In re S.B. (6/3/09)	174 Cal. App. 4th 808	Indian Child Welfare Act
In re S.C. (2006)	138 Cal. App. 4th 396	Evidence, ICWA, Visitation
In re Scott M. (1993)	13 Cal. App. 4th 839	WIC 366.26 - Termination of Parental Rights
In re Sencere P. (2005)	126 Cal. App. 4th 144	Placement
In re Shane G. (2008)	166 Cal. App. 4th 1532	Indian Child Welfare Act
In re Sheri T. (2008)	166 Cal. App. 4th 334	WIC 366.26 - Termination of Parental Rights
In re Shirley K. (2006)	140 Cal. App. 4th 65	Placement
In re Silvia R. (2007)	159 Cal. App. 4th 337	Jurisdiction/Disposition Issues
In re S.J. (2008)	167 Cal. App. 4th 953	Legal Guardianship
In re S.R. (5/1/09)	173 Cal. App.4th 864	WIC 388
S.T. v. Superior Court (8/28/09)	177 Cal. App. 4th 1009	Review Hearings
In re Stacey P. (2008)	162 Cal. App. 4th 1408	Miscellaneous

State Department of Social Services v. Superior Court of Siskiyou County (D.P.) (2008)	162 Cal. App. 4th 273	WIC 366.26 - Termination of Parental Rights
In re Summer H. (2006)	139 Cal. App. 4th 1315	Placement
In re S.W. (2005)	131 Cal. App. 4th 838	Placement
In re S.W. (2007)	148 Cal. App. 4th 1501	Jurisdiction/Disposition Issues
S.W. v. Superior Court (5/15/09)	174 Cal. App. 4th 277	Termination of Family Reunification Services
In re Tabitha W. (2006)	143 Cal. App. 4th 811	Appellate Issues
Tameka Ross v. Oscar Figueroa (2006)	139 Cal. App. 4th 856	Restraining Orders
In re Tamika C. (2005)	131 Cal. App. 4th 1153	Emancipation/Terminating Jurisdiction
In re Terrance B. (2006)	144 Cal. App. 4th 965	Indian Child Welfare Act
In re Thomas R. (2006)	145 Cal. App. 4th 726	WIC 366.26 - Termination of Parental Rights
In re Tiffany A. (2007)	150 Cal. App. 4th 1344	Delinquency Issues
In re T.M. (7/20/09)	147 Cal. App. 4th 1166	WIC 366.26 - Termination of Parental Rights
In re Tonya M. (2007)	42 Cal. 4th 836	Termination of Reunification Services/ Reasonable Efforts
In re T.R. (2005)	132 Cal. App. 4th 1202	Parentage
In re T.S. (7/14/09)	175 Cal. App. 4th 1031	Indian Child Welfare Act
In re Tyrone W. (2007)	151 Cal. App. 4th 839	WIC 361.5 (No Reunification)
In re Valerie A. (2006)	139 Cal. App. 4th, 1519	WIC 366.26 - Termination of Parental Rights
In re Valerie A. (2007)	152 Cal. App. 4th 987	WIC 366.26 - Termination of Parental Rights
In re Valerie W. (2008)	162 Cal. App. 4th 1	WIC 366.26 - Termination of Parental Rights
In re Vanessa M. (2006)	138 Cal. App. 4th 1121	Evidence
In re Veronica G. (2007)	157 Cal. App. 4th 179	Indian Child Welfare Act
In re V.F. (2007)	157 Cal. App. 4th 962	Jurisdiction/Disposition
In re Victoria M. (1989)	207 Cal. App. 3d 1317	Termination of Reunification Services/ Reasonable Efforts
In re Vincent M. (2007)	150 Cal. App. 4th 1247	Indian Child Welfare Act
In re Vincent M. (2008)	161 Cal. App. 4th 943	Parentage
V.S. v. Allenby (12/22/08)	169 Cal. App. 4th 665	Miscellaneous
Wayne F. v. San Diego County (2006)	145 Cal. App. 4th 1331	WIC 366.26 - Termination of Parental Rights
In re Wilford J. (2005)	131 Cal. App. 4th 742	Notice
In re William B. (2008)	163 Cal. App. 4th 1220	WIC 361.5 (No Reunification)
In re William K. (2008)	161 Cal. App. 4th 1	Parentage
In re Xavier G. (2007)	157 Cal. App. 4th 208	WIC 366.26 - Termination of Parental Rights
In re X.V. (2005)	132 Cal. App. 4th 794	Indian Child Welfare Act
In re Y.G. (6/23/09)	175 Cal. App. 4th 109	Jurisdictional/Dispositional Issues
In re Yvonne W. (2008)	165 Cal. App. 4th 1394	Termination of Reunification Services/ Reasonable Efforts

In re Z.C. (10/2/09)	178 Cal. App. 4th 1271	Legal Guardianship
In re Z.N. ((12/29/09)	181 Cal. App. 4th 282	Miscellaneous

Not Citable - On Review

LAST UPDATED 05/06/10

In re A.R. (01/26/09)
170 Cal. App. 4th 773; 88 Cal. Rptr. 3d 448
Fourth Appellate District; Division One

Facts

On 11/1/2007, A.R. was detained from his parents based on new and old subdural hemorrhages. Both parents appeared at the initial hearing. The trial was continued a number of times due to the need for more medical testing of the child. During the course of these continuances, the father, Robert L. was deployed to Iraq. On April 17th , father's counsel filed a motion to stay the proceeding pursuant to the Servicemembers Civil Relief Act (hereafter SCRA). A letter from the Navy was attached indicating the Robert would be deployed in Iraq from March 17 until November. The letter did not fully comply with the SCRA. On April 23rd, A.R. was detained with his mother. On May 19th, father's attorney filed a letter from the Navy that did comply with SCRA and again requested a stay of the proceeding. The trial court denied the request for the stay citing the time constraints that apply in Juvenile Dependency and indicating that the stay under the SCRA was discretionary. The court sustained the petition, removed the child from the father and placed the child with his mother. This appeal ensued.

Issue

Did the trial court err when it refused to stay the proceedings pursuant to the Servicemembers Civil Relief Act and proceeded to disposition?

Holding

The appellate court held that the trial court did err in refusing to grant the stay requested by the father under the SCRA. The court held that the stay requirements under the SCRA are mandatory and override the 6 month requirement of WIC 352(b). The court must allow for at least a 90 day continuance pursuant to the SCRA.

Query

What if the child had not been released to the mother? Is the other parent not entitled to a timely trial?

In re A.S. (6/19/09)
174 Cal. App. 4th 1511; 95 Cal. Rptr. 3d 36
Fourth Appellate Dist, Division Two

Issue:

Does the trial court retain jurisdiction to rule on WIC § 388 petitions once the court has terminated jurisdiction?

Facts:

In 2000, the child welfare agency filed 300 petition after the father admitted he had hit A.S., then eight-months old to get her to stop crying and tied the baby's arms down to keep her from putting her hands in her mouth. Father submitted on the jurisdiction/disposition reports and the court sustained the petition, declared A.S. a dependent and gave reunification services.

Eventually, the child was returned to the mother and in August, 2002, the case was terminated by stipulation with a family law order giving full legal and physical custody to the mother and visitation to the father.

The father filed a 388 petition in December, 2002 seeking to set aside all orders going back to jurisdiction alleging an improper relationship between the trial judge and the agency attorney. The petition was dismissed for lack of jurisdiction and affirmed on appeal.

In May, 2008, father filed a new 388 seeking reversal of all orders back to jurisdiction, citing as new evidence 1) that the trial judge had made inappropriate romantic advances towards the agency attorney, and 2) that the agency had granted father's request for administrative review, changed the "substantiated allegation conclusion" to "unfounded" and removed his name from the CACI. The trial court summarily denied the 388 due to lack of jurisdiction, the case having been terminated with the family law order.

Father appealed

Holding:

Dismissed for lack of jurisdiction.

Section 388(a) states "Any parent . . . having an interest in a child *who is a dependent child of the juvenile* court . . . may . . . petition the court. . ." The child is not currently a dependent and neither the trial court nor the appellate court cannot enlarge its jurisdiction beyond what the legislature has granted.

(Note, the outcome would be different where the court retains residual jurisdiction after termination, such as in cases where the child remains in a dependency court created legal guardianship. Section 366.4 provides in pertinent part: "(a) Any minor for whom a guardianship has been established resulting from the selection or implementation of a permanency plan pursuant to Section 366.26 is within the jurisdiction of the juvenile court." Section 366.3, subdivision (b) sets forth the procedure for terminating a legal guardianship, except for termination by emancipation; and, if the guardianship is

terminated, the dependency court may reassert jurisdiction and develop a new permanent plan for the child. (See *In re Carlos E.* (2005) 129 Cal.App.4th 1408, 1418.)

In re A.S. (12/17/09)
180 Cal. App. 4th 351
Fourth Appellate District, Division One

Issue

A parent who was non–offending in the original 300 petition can have parental rights terminated under 366.26.

Facts

A petition was filed in April 2006 because of mother's drug arrest. Although the mother said Joseph was the father, the mother's husband was found to be presumed. Joseph did not appear at detention, although he had verbal notice. He didn't give the CSW his phone number or address, and said he was in no position to take the children. Only the mother was given FR. After detention, Joseph visited twice, but made no contact with CSW. The children were later placed with mother. A 387 was filed in August 2007 after mother's second relapse.

Joseph first appeared in February 2008, after being located in custody. After HLA testing, Joseph was found to be the presumed father of A.S. and biological father of the sibling. At disposition of the 387, FR was terminated. The contested .26 hearing was held one year later. Joseph filed a 388 on the same day seeking FR, or a continuance of the .26.

Joseph argued that once he was found to be the presumed (and biological) father, he should have been given services and/or custody. However, at disposition of the 387 held three months after that finding, the court found by clear and convincing evidence that return of the children to mother and Joseph would create a substantial risk of detriment.

His 388 was denied without a hearing. Subsequently, at the .26 hearing, the court found adoption to be in the best interest of the children and no exception applied. The court then terminated parental rights. Joseph appealed.

Holding

Affirmed. The court held that the father's due process rights were not violated when the juvenile court terminated his parental rights.
WIC 366.26(c)1 identifies what circumstances constitute sufficient basis for terminating parental rights. It does not require an initial finding of unfitness as to each parent. If the court finds the child adoptable, and no exception applies, the court is required to terminate parental rights, if the court has made any one of the following findings: (1) That FR was not offered under 361.5(b) or (e)1; (2) the whereabouts of the parent have been unknown for six months or the parent has not visited or contacted the children for six months; (3) the parent is convicted of a felony indicating parental unfitness; or (4) the court has continued to remove the child from parental custody and has terminated reunification services.

The trial court had made an adequate finding of detriment since Joseph initially refused to participate in dependency proceedings, his whereabouts were unknown, and he did not visit the children for more than six months. Joseph's showing of changed circumstances was insufficient because he did not state

he was able to provide a safe home for the children, and he did not demonstrate why it would be in the children's best interest to grant his §388.

In re B.R. (8/13/09)
176 Cal. App. 4th 773; 97 Cal. Rptr. 3d 890
First Appellate District, Division One

Issue:

Do ICWA notice provisions apply when the presumed father alleges his own *adoptive* father has one-quarter ancestry in a federally recognized Indian tribe?

Facts:

Based on information provided by father's biological sister, the Department noticed the Seneca and Delaware tribes. At a subsequent hearing, father's mother reported that father was adopted and his adoptive father was one-fourth Apache Indian. Minors' counsel suggested notice might not be required because father was not the biological child of the parent reported to have Apache Indian ancestry. The court indicated the Apache tribes "will be noticed if required by law." The Department apparently decided no notice was required because the children were not biological descendants of an ancestor with Apache heritage. No notices were mailed to the Apache tribes. When the Seneca and Delaware tribes stated the children were not members or eligible for membership, the court made a finding that ICWA did not apply. Mother (not the parent with alleged Indian heritage) raised the issue of ICWA compliance for the first time on appeal after parental rights were terminated.

Holding:

Reversed. The question of whether a minor is an Indian child is for the tribe to determine. As a matter of law under ICWA, that decision is not to be made by the state court or a social worker. The court erred by allowing the Department to determine whether the minors were Indian children for purposes of ICWA. In fact, the definition of "Indian child" under ICWA does not by its terms automatically exclude minors who are grandchildren by adoption of an ancestor with Indian blood. The court should have ordered notice be sent to the Apache tribes to determine whether the minors qualified. Mother had standing to raise the issue even after failing to do so via an earlier writ.

In re B.S. (3/17/09)
172 Cal.App. 4th 183; 90 Cal.Rptr.3d 810
Fourth Appellate District, Division Two

Issue

Can the juvenile court issue a restraining order when a criminal protective order is already in effect?

Facts

The criminal court issued a criminal protective order against the father in this case naming the mother and the child, B.S. as protected persons based on allegations of spousal battery. Three days later the juvenile court also issued a temporary restraining order against the father also protecting the mother and the child, B.S., but also including the maternal grandmother with whom the mother was then living. The juvenile court did add the order "If a criminal restraining order conflicts with a juvenile restraining order, a law enforcement agency must enforce the criminal order… Any non conflicting terms of the juvenile custody or visitation order remain in full force." Father appealed .

Holding

The appellate court held that the issuance of criminal protective order by the criminal court did not divest the juvenile court of jurisdiction to issue its own protective order.

The rule of exclusive concurrent jurisdiction does not prevail because the parties in the two actions are different (ie. – the Agency and in this case, the grandmother).

CRC 5.630(l) provides: "If a restraining order has been issued by the juvenile court under WIC 213.5, no court other than a criminal court may issue any order contrary to the juvenile court's restraining order."

Penal Code Section 136.2(e)(2) indicates that a restraining order issued by a criminal court against a defendant charged with domestic violence "has precedence in enforcement over any civil court order against the defendant…"

Both of these code sections suggest that the Legislature anticipated more than one restraining order being issued from separate courts.

Penal Code Section 136.2(f) directs the Judicial Council to "promulgate a protocol … for the timely coordination of all orders against the same defendant and in favor of the same named victim or victims" and indicates that any such protocol must "permit a family or juvenile court order to coexist with a criminal court protective order …". This code section along with the CRC 5.450(c) again show the Legislature's intent to have coexisting protective orders.

In this case, there are no actual conflicts between the two orders even if the juvenile order is slightly more restrictive than the criminal court order. It is possible for the father to comply with both orders. In any event the juvenile order provided that any conflict between the orders resolved in favor of the criminal order making any actual conflict impossible.

Burke v. County of Alameda (11/10/09)
586 F. 3d 725
United States Court of Appeals for the Ninth Circuit

Issue

Did the police officer interfere with the family's constitutional right of familial association by removing B.F. without a protective custody warrant?

Facts

On June 21, 2005, the fourteen year old, B.F., ran away from her mother and step-father. Two weeks later, she returned home. When the police officer interviewed B.F. about the circumstances surrounding her runaway, she disclosed that when she returned from her runaway (9 days earlier at this point) that her stepfather physically abused her and that her mother indicated that she deserved the beating. She also indicated that her step-father had not hit her since that day but previously beat up her stepsister and stepbrother. In addition, B.F. stated that she feared that it would "be worse for her" when she arrived home from this interview because her parents would know that she had talked to the police and her stepfather would "go off". B.F. also disclosed sexual touching that occurred "every couple of days". B.F.'s mother had physical custody and joint legal custody with B.F.'s father. B.F. disclosed no abuse by her biological father but indicated that she felt unwelcome in his home. Immediately after the interview, B.F. was removed and placed in protective custody, without a warrant. Both mother and biological father subsequently sued under 42 U.S.C. §1983 claiming that removing B.F. without a warrant interfered with their constitutional right of familial association.

Holding

The court held that the officer had not violated the parents' right by the removal of B.F. from there home without a warrant. The court looked at the claims by the mother and father individually. As to the mother, who had physical custody of B.F., the court found that the officer acted reasonably in determining that the risk to B.F. was imminent allowing him to take her into custody without a warrant. Based on the child's statements that the sexual abuse happened "every couple of days" (and it hadn't happened since she had run away) and didn't indicate that it would happen at a specific time of day etc, it was reasonable for the officer to believe that the stepfather might engage in inappropriate and abusive sexual conduct during the time it would take to procure a warrant and remove B.F. The additional risk of beatings also tipped the scale in favor of imminent risk and allowed the warrantless removal.

As to the biological father, the court stated that non-custodial parents have a reduced liberty interest in the companionship, care, custody and management of their children. However, he was not without an interest at all. The court extended the holding in *Wallis* to parents with legal custody, regardless of whether they possess physical custody of their child. They did note that the test in Wallis, however, must be flexible depending on the factual circumstances of the individual case. For instance, if the parent without legal custody does not reside nearby and a child is in imminent danger of harm, it is probably reasonable for a police officer to place a child in protective custody without attempting to place the child with the geographically distant parent. However, in this case, the officers made no attempt to contact the non-custodial father and did not explore the possibility of putting B.F. in his care

that evening rather than placing her in government custody. Therefore the reasonableness of the scope of the officers' intrusion upon the biological father's rights was for the jury to decide.

In re Calvin P. (10/08/09)
178 Cal. App. 4th 958
Fourth Appellate District, Division One

Facts:

Children were removed from their mother and ultimately placed with their father. The Court ordered family maintenance services for the father and no services for the mother. After mother appealed the no services order, the appellate court reversed and ordered the trial court to determine whether offering services to the mother was in the childrens' best interest (Section 361.5(c). The Department was then ordered to provide family reunification services. Despite being ordered to do so, the Department did not provide services to the mother who was incarcerated. (Services were available to the mother at her place of incarceration.) Additionally, Mother had no visits with the children.
At the six month review date the court ordered family maintenance services for the father and indicated mother was not provided with reasonable services but it was moot because the children were with their father. The next six month review was set.
The mother and the children appealed contending the court should have ordered family reunification services for the mother along with the family maintenance services for the father.

Issue:

May the trial court provide family reunification services to the parent who had custody of the children when they removed when the children have been placed with the previously non-custodial parent and family maintenance services have been ordered?

Holding:

The Appellate Court held that this may be appropriate in certain circumstances and this case was one of them. The Court discusses the differences between family maintenance and family reunification services citing section 361.2.
The crux of this case was that the Department conceded that they did not provide ANY services for the mother despite the family reunification services order.

In re Carlos T. (6/3/09)
174 Cal. App. 4th 795
Second Appellate Dist., Division

Issues:

1. Father and Mother appeal court's order sustaining a subsequent petition filed under WIC section 342.
2. Parents contend that there was insufficient evidence of substantial risk of harm to children at the time of the jurisdictional hearing.

Facts:

Parents initially came within the juvenile court's jurisdiction in 2005 based upon sustained allegations that father sexually abused daughter Linsey, eleven years old at the time, and that mother failed to protect her. Linsey and her brother Carlos were removed from parents' custody and declared dependents. Linsey subsequently recanted, the children returned to parents, and jurisdiction terminated in January 2006. In May 2006, mandated reporters informed the Department that Linsey was pregnant, and the child revealed that father had raped her in December 2005. Mother knew about the rape, as she had walked in on Father with Linsey in bed. But she failed to call the police or DCFS. Again, the children were removed and the children declared dependents. Neither parent was given FR services. Neither parent visited either child after the contested disposition in October 2006.

In the summer of 2007, Carlos disclosed that Father had sexually abused him as well, and the Department filed a subsequent petition under WIC section 342 with allegations under sections 300 (b), (d), and (j). Father denied abuse of Carlos, although he acknowledged having sex with Linsey "one time." Mother denied knowledge of the abuse of Carlos. The trial court sustained the petition, and both parents appealed.

Holding:

1. The appellate court held that there was substantial evidence to support sustaining the petition. The Court rejected parents' argument that because father had been incarcerated at the time of the jurisdictional hearing and was convicted on criminal charges, there was no current substantial risk to the children.

With respect to the (d) count, the appellate court found that the language of the statute did not require that the trial court find *a current* substantial risk of detriment. It held that there was substantial evidence that Carlos "has been sexually abused." WIC section 300 (d). With respect to the (b) and (j) counts, the appellate court found that under the language of the statute, substantial evidence of a *current* risk at the time of the jurisdictional hearing was required. However, the Court found that because father could still appeal his convictions, with reversal possible, the children both remained at risk. According to the Court, mother's continued inability or unwillingness to accept responsibility for her complicity in the abuse also constituted a current risk to the children.

In re C.C. (4/13/09)

172 Cal. App. 4th 1481; 92 Cal. Rptr. 3d 168

Second Appellate Dist, Division Seven

Issue

What is the correct legal standard for denying a parent visitation to his/her child during the family reunification period, including disposition?

Facts

In July, 2007, a 300 petition was filed against mother under subsection (a) and (b) in connection with her then-10 year old son ("CC"). In short, it was alleged that mother was physically abusing CC, and that she had serious mental health and anger management issues. Monitored visits were ordered at detention. These visits did not go well for several reasons, including the fact that CC did not want to visit with his mother at all, and he refused to engage with her at any of these visits. As such, the court initially suspended any and all visits (based on a "detriment" finding) and at a subsequent hearing it ordered visits to occur in a therapeutic setting. This all occurred prior to the jurisdiction hearing. While the jurisdiction hearing was ongoing, the DCFS filed a 388 petition requesting that any and all visits be suspended again, based upon the child's therapist's opinion that visits were not in the "best interests" of CC (because the child had threatened to harm himself and his mother if he was forced to visit, he sat on the floor and banged his head against the wall crying during a forced visit), and upon the fact that CC did not want to have any visits with his mother. That petition was denied and visits were allowed in a "neutral" setting, under the direction of the therapist. Those visits did not go well, mainly due to the anger and the unwillingness of CC to visit with his mother, and due to the confrontations at such visits between the mother and CC. At the disposition hearing in June, 2008, the court ordered no visitation at all between mother and CC (despite the fact that mother was to receive reunification services). The court denied such visitation based upon a "detriment" finding, and it stated that the visitation issue could be revisited at the subsequent review hearings.

Holding

If a parent is to receive (or is receiving) family reunification services for a child, the court can only deny (or terminate/suspend) visitation between that parent and child IF the court finds that such visits would "pose a threat to the child's *safety*." [As will be explained, *infra.*, this is not a finding of "detriment."] The key in determining what test to use regarding whether to allow any visits between parent and child is based upon whether the parent is in reunification mode or not. IF the parent is in reunification, the test is whether such visits "pose a threat to the child's *safety*."

Visitation is a critical component to reunification. Hence, it can only be denied during the reunification process based upon the *safety* of the child, not the "best interest" or "detriment" of the child. [*See*, section 362.1 (a)(1)(B)] In this case the court indicated that there was no evidence in the record that the mother posed a threat to the child's *physical* safety during monitored visitation in a therapeutic setting.

However, if the parent is not in a reunification mode, then visits are determined by the "best interests" of the child, and whether such visits are "detrimental" to the child. [*Compare*, sections 361.2 (a); 361 (c)(1); 366.21(h); 366.22(a); and 366.26 – these sections essentially utilize a "best interest"and/or "detriment" approach for determining whether visits should be allowed.]

NOTE: The court did state, though, that the "frequency" of such visits during the reunification period can be based upon the child's "well-being," which could include the *emotional* well-being of the child. [*See*, section 362.1 (a)(1)(A); *but see also, In re: Christopher H* (1996) 50 Cal.App.4th 1001, 1008 – court may deny visitation if "visitation would be harmful to the child's emotional well-being."] So, does "safety" include "emotional well-being"?

In re Cole C. (6/3/09)
174 Cal. App. 4th 900
Fourth Appellate District, Division One

Issues:

1) Can the psychotherapist-patient privilege be asserted by counsel for the children even when the therapy occurred before the children entered care, was waived by the mother, and the information may be exculpatory for Father?

2) Is due process violated if a petition concerning abuse of sisters is found true before the trial on whether that abuse places a half-sibling at substantial risk of harm under WIC 300(j)? Is due process violated due to social worker bias and destruction of evidence?

3) Is evidence of abuse of half-siblings sufficient to find that a child was in sufficient risk of harm under WIC 300(j) and remove child from Father's care?

Facts: Allegations arose that Father physically and sexually abused two sisters. A half-brother was also living in the home. Allegations included that father disciplined the girls through the use of cold showers and ice packs as well as spraying them with the water hose. There were also allegations that he sexually abused the girls. The mother had been confronted with these allegations and denied them. After a contested jurisdiction and disposition hearing, Father and Mother reached partial settlement and submitted on reports on WIC 300(b) allegations of physical abuse of the two girls. WIC 300(d) charge of sexual abuse was dismissed. Mother also submitted on WIC 300(j) petition for half-brother, but father did not. The court then proceeded with the father's trial on the WIC 300(j) petition for the half-brother.

The sisters had been receiving therapy from a doctor before dependency case to discuss mother's divorce and to integrate Father into the girls' life. Mother submitted a letter from doctor which provided details about therapy sessions in her motion to have girls returned to her care and custody and DCFS later included the doctor's information in a report without an objection. Father then includes the letter in his motion to dismiss and the doctor in his witness list for trial. The girls' attorney then asserts the privilege before trial and the court finds the privilege applied, however, allowed the doctor to testify as to therapy provided to mother, not the girls.

After the trial, the court found the petition true and declared the half-brother a dependent removing him from Father's care after finding there had been reasonable efforts to prevent the need for removal.

Holding: **Affirmed.**

1) Once minor's counsel is appointed to represent a minor in a dependency case, they hold the psychotherapist-patient privilege. The holder of the privilege is determined at the time the

disclosure of confidential communications is sought to be introduced into evidence. Otherwise, all discussions that happen before the dependency proceedings would be unprotected.

The privilege was not waived if minor's counsel raised it before the doctor was called to testify but months after given notice of the intent to call him as a witness. However, the privilege is not absolute and the court erred by preserving the privilege and disallowing the doctor's statements. However, here allowing the doctor to testify as to the girls would not have impacted the outcome.

2) The court's finding that the sisters' petition for WIC 300(b) was true before the trial for the half-brother's WIC 300(j) petition does not deprive the Father of a fair hearing or violate his due process rights. The Father had the opportunity to disprove that the half-brother was at risk of suffering the same type of harm and the court heard ample evidence on this issue.

   Father's additional allegations of social worker bias and discovery abuses also are not due process violations because the court heard evidence and argument on these issues and the court disallowed DCFS from raising erased voice mail messages in its case.

3) There was substantial evidence to support the finding that the half-brother was at substantial risk under WIC 300(j). The evidence presented demonstrated that Father utilized excessive disciplinary methods on the sisters including ice packs, cold showers, hosing them down, and locking them in the garage or outside in the dark and there were allegations of sexual abuse. In addition, Father had stated that he would utilize harsher techniques on the half-brother because he was a boy. He also never acknowledged the excessive nature of the discipline techniques.

   These harsh discipline techniques and danger of potential sexual abuse also justified removing the half-brother from the father's care due to the social worker's belief that the child remained at risk. In addition, Father had not participated in services including voluntary service referrals and visits with the half-brother. These services and attempts at visitation amounted to reasonable efforts to prevent the need from removing the half-brother from his care.

In re Corrine W. (1/22/2009)
49 Cal. 2d 112; 315 P. 2d 317
CA Supreme Court

Facts:

The child Corrine was 17 years old and in foster care. She had completed driver's education, passed the written driving test, received a provisional driver's permit and begun supervising driving practice. However, she couldn't get her driver's license because no one would provide proof of financial responsibility and the Agency in Contra Costa would not pay for her liability insurance. The child's attorney asked the court to order the Agency to pay for the insurance under WIC 11460. The court declined. An appeal was taken and the appellate court affirmed. The matter was then accepted by the CA Supreme Court

Issue

Did the trial court err refusing to order the agency to pay for the child's automobile liability insurance?

Law

WIC 11460 provides that "[f]oster care providers shall be paid a per child per month rate in return for the care and supervision of [each foster child] placed with them" (*id.*, subd. (a)), and which defines "care and supervision" as including "food, clothing, shelter, daily supervision, school supplies, a child's personal incidentals, *liability insurance with respect to a child*, and reasonable travel to the child's home for visitation"

Holding

The CA Supreme Court affirmed the appellate court and the trial court. The Supreme Court indicated that "we do not understand Welfare and Institutions Code section 11460 as requiring the DSS to pay for automobile liability insurance. The section does not authorize direct claims against the state or the counties for particular expenditures by foster children or foster care providers. Instead, the statute directs the DSS "*to administer a state system for establishing rates in the AFDC-FC program*." Federal and state appropriations for foster care are finite and must be shared by all foster care providers in the state. The statute thus necessarily calls upon the DSS to exercise judgment in the use of limited resources. The statutory term "liability insurance" (Welf. & Inst. Code, § 11460, subd. (b); see 42 U.S.C. § 675(4)(A)) might well be sufficiently broad to *permit* the DSS to choose to fund automobile liability insurance for minors in foster care. No such question is before us. The term "liability insurance" is not sufficiently precise, however, in the context of a statute directing a state agency to make the best use of limited funds, to *compel* payment for everything that might conceivably bear that label, any more than the terms "shelter" or "school supplies" (§ 11460, subd. (b)) compel payment for everything that might conceivably bear those labels, however extravagant in the context of a public assistance program.

Therefore, the court held that while the Agency could use its finds to pay for automobile liability insurance, it was not compelled to do so.

In Re Damian C. (9/17/09)
178 Cal App 192, 100 Cal Rptr. 3d 110
4th App District - Division One

ISSUE:

Whether sufficient information to ***suggest*** child ***may*** be an Indian child, such that ICWA notice is required.

FACTS:

MO said may have Indian ancestry.
MGF said heard MGGF was either Yaqui or Navajo. He also heard that family did not have Indian heritage. Family attempted to research/inquire, but never successful.

HOLDING:

ICWA notice must be given.

Although MGF had been unsuccessful in establishing family=s Indian heritage, the question of membership in tribe rests with the tribe.

MGF=s lack of sufficient info did not release the agency from its obligation to provide notice.

Here the info constituted a **reason to know** that an Indian child **is** or **may** be involved, thus triggering requirement to give notice.

NOTE: App Court did not reverse Juris/Dispo.
If ICWA is found to apply, Court may be asked to invalidate its Juris/Dispo orders.

NOTE: App Court did not reverse Juris/Dispo.
If ICWA is found to apply, Court may be asked to invalidate its Juris/Dispo orders.

D.B. v. Superior Court of Humboldt County (2/18/09)

171 Cal. App. 4th 197; 89 Cal. Rptr. 3d 566

First Appellate Dist., Division Five

Facts

A.H. was born prematurely and positive for amphetamines. His mother died just days after his birth. D.B. was granted presumed father status. Father had been using drugs since his teenage years and had a lengthy criminal history. After serving four years on a 2003 conviction, father was paroled. Father twice violated the conditions of his parole by continuing his drug use and he was ordered by the parole authorities to complete a residential drug treatment program. While he completed that program, he was arrested six months later for possession and use of methamphetamine and was ordered by the parole authorities to complete another 90 days of drug rehab when he was released from jail. He did not report to the drug treatment facility and was again arrested. He was then released again and ordered to attend a drug treatment facility and again he failed to do so and continued to use drugs. He finally got into a drug treatment facility. At the contested disposition, the court denied the father reunification services under WIC 361.5(b)(13) based on father's history of drug use and his failure to comply with court-ordered treatment. Father claimed some possible American Indian heritage as well. This appeal ensued.

Issue

Does a parent's resistance to treatment ordered as a condition of parole amount to resistance to "court-ordered treatment" under WIC 361.5(b)(13)?

Did the Agency comply with the requirements of ICWA?

Holding

The appellate court construed WIC 361.5(b)(13)'s reference to "court-ordered treatment" to include treatment ordered as a condition of parole. The appellate court indicated that parole conditions, while not ordered directly by the court, are directly traceable to the court order imposing a prison sentence. The court also found that "there is no meaningful distinction between treatment ordered as a condition of probation and treatment ordered as a condition of parole for purposes of determining whether a parent's failure to comply signifies a substance abuse problem so intractable that the provision of reunification services would be a waste of time. In both situations, the parent faces incarceration as a consequence and has ample incentive to comply with the treatment condition imposed."

In addition, in accepting the concession of the Agency to remand the case based on inadequate ICWA notices, the court noted that: "The court appears to have relied on A.H.'s and father's lack of enrollment in any tribe to conclude that neither A.H. nor father were tribal "members" as necessary for Indian child status under the ICWA. Lack of enrollment is not dispositive of tribal membership: "Each Indian tribe has sole authority to determine its membership criteria, and to decide who meets those criteria. Formal membership requirements differ from tribe to tribe, as does each tribe's method of keeping track of its own membership. "*In re Santos Y.* (2001) 92 Cal.App.4th 1274, 1300 [112 Cal. Rptr. 2d 692].) "Enrollment is not required…to be considered a member of the tribe; many tribes do not have written rolls. [Citations.] While enrollment can be one means of establishing membership, it is not the only means, nor is it determinative. [Citation.] … . Moreover, a child may qualify as an

Indian child within the meaning of the ICWA even if neither of the child's parents is enrolled in the tribe. [*Dwayne P. v. Superior Court* (2002) 103 Cal.App4th 247, 254 [126 Cal. Rptr. 2d 639].) As the court acknowledged, A.H. was potentially eligible for membership in an Indian tribe. That neither he nor father were currently enrolled did not resolve the issue. § 224.3 subd. (e)(1) ["Information that the child is not enrolled or eligible for enrollment in the tribe is not determinative of the child's membership status unless the tribe also confirms in writing that enrollment is a prerequisite for membership under tribal law or custom"].)"

In re D. F. (2/20/09)
172 Cal. App. 4th 538; 91 Cal. Rptr. 3d 170
Third Appellate District

Issue

Whether WIC 361.5(b)(3) is applicable because DF was not the child who was physically abused in the 1st Dependency proceeding?

Facts

As an infant, DF was a suitably placed dependent of the court because parents severely physically abused his older sibling. DF was later placed with father who was eventually granted sole physical custody. Later mother obtained full custody in Family Court. Later still, DF disclosed father had physically abused him. Petition filed & sustained. At Disposition Trial Ct ordered reunification services. At rehearing, Court denied reunification services.

Holding

361.5(b)(3) does apply.

Reunification services need not be ordered if Court finds the child *or* sibling was previously adjudicated a dependent for physical abuse and the child (DF) was removed from the parent's custody and later returned AND removed again due to additional physical abuse.

The victim of the initial physical abuse may be this child (DF) *or* a sibling of DF.

D.M. v. Superior Court (4/13/09)

173 Cal. App. 4th 1117; 93 Cal. Rptr. 3d 418

Fourth Appellate District, Division Three

Issue

1) Does the court need to find "bad faith" in order to sustain WIC 300(g)?

2) Does a WIC 241.1 assessment have to be prepared by both the Child Welfare Agency and Probation?

Facts

Adoptive parents sought writ relief (Mandate/Prohibition) challenging dependency jurisdiction. Parents argued that the child should have been made a ward of the juvenile delinquency court instead of a dependent child so that the parents would be spared the stigma of dependency proceedings.

Child was adopted at age 9 after two prior adoptive placements had failed because of divorce. Child was prenatally exposed to drugs, had experienced years of abuse and neglect from her birth mother, and was sexually abused at age 4 by a maternal uncle. Needless to say she was a troubled child. Child is now 15.

The adoptive parents had the child arrested for animal cruelty after she had given the family dogs her adult sister=s medication causing their deaths. She spent two months in juvenile hall awaiting a hearing on criminal charges of animal cruelty filed by the DA=s office. In addition, parents complained that she was harassing her half siblings, lying, stealing, was being defiant and truant from school, and otherwise acting like any other normal adolescent child.

Eventually the animal cruelty charges were sustained and a probation report was ordered. The probation report recommended WIC 725 informal supervision while noting that the parents did not want reunification and wanted to reverse the adoption. CPS then filed a 300(a) and (g) Petition. The WIC 241.1 joint report recommended that dependency status was more appropriate than wardship for this child. The court then sustained dependency jurisdiction over the child which then led to the writ petition.

Holding**:** **Writ denied**.

1. Substantial evidence supported the sustaining of a 300(g) because the child was left without any provision for support. Petitioner's= actions left the child with no home and nowhere to go. The court rejected the argument that 300(g) requires a finding that the parents acted in bad faith. Parents argued that 361.5(b)(9) authorizes the denial of FR services under 300(g) if the actions taken by the parents were taken in bad faith. Parents here claimed that they had acted in good faith without the intent of placing the child in serious danger because they were protecting their other children in the home. The Appellate Court held that bad faith is not an element of 300(g) because the focus of the dependency system is on the child, not the parents, and that the parents= perception that they will be stigmatized and punished by the dependency findings is irrelevant. They still are afforded the dependency protections of privacy and confidentiality.

2. The parents also attacked the dependency finding claiming that the process provided in 241.1 was improperly complied with by Probation and CPS; that the recommendations in the report were made by the CSW without input from Probation, and that the Delinquency Court should have, at least, sustained a 601 Petition. The arguments were rejected as not being supported by the facts or the law. The Appellate Court held that a 241.1 report was not even required since the delinquency court had already decided that wardship was not appropriate before dependency proceedings were even initiated. If any error was made in the way the 241.1 report was prepared, it was harmless error because the appellate court held that the requirement under WIC 241.1 for the child welfare agency and probation to do a "joint assessment" for the child could be satisfied with one agency consulting the other even over the phone. Moreover, the Appellate Court held that the trial court was without jurisdiction to sustain a 601 Petition because it would be a separation of powers violation. Only executive branch employees (C.S.Ws, P.O.s, and D.A.s) have the discretion to file 601 Petitions, not the Juvenile Court.

In re E.G. (02/10/09)
170 Cal. App. 4th 1530; 88 Cal. Rptr. 3d 871
Third Appellate District

Facts

Children were detained due to mother's substance abuse. The mother alleged two possible fathers. One of the alleged fathers, A.J., claimed possible American Indian heritage. A later paternity finding showed that A.J. was not the biological father of E.G. The trial court eventually terminated parental rights to E.G. Mother filed this appeal claiming that the trial court did not give adequate notice to the Indian tribes identified by A.J.

Issue

Did the trial court have to notice the possible Indian tribes identified by the child's non-biological father?

Holding

The appellate court held that until biological parentage is established, an alleged father's claim of Indian heritage does not trigger the requirement of ICWA notice because absent a biological connection, the minor cannot claim Indian heritage through the alleged father. Since the paternity test showed that A.G. was not E.G.'s biological father, ICWA notice was not required.

In re Gabriel L (2/27/09)
172 Cal.App. 4th 644; 91 Cal.Rptr.3d 193
Fourth Appellate District, Division One

Issue

If, after a period during which both parents were offered reunification services, the child is then placed with one parent, what is the extent of the court's discretion to decide whether to continue to offer services to the noncustodial parent.

Facts

The child Gabriel was detained based on his parents drug use for the most part. The child was suitably placed in foster care at the disposition. At the WIC 366.21(e) hearing services were continued to both parents until the WIC 366.21(f) date. At the 366.21(f) date, the child was returned to his mother's care and custody and family reunification services to the father were terminated. Father appealed.

Holding

The appellate court held that the court may, but is not required to, continue services for the noncustodial parent.

The appellate court explained that the court's discretion should be examined under WIC 364 (which governs hearings concerning dependent children who are not removed from their parents' physical custody, rather than under WIC 366 and 366.21, which govern hearings concerning dependant children in foster care.) and is similar to the court's broad discretion as to whether to offer services under WIC 361.2 because in both situations the child is not in out-of-home placement, but in placement with a parent.

The court stated that the trial court's discretion to order services is the same whether the child is placed with a previously noncustodial parent or is returned to one parent after a period of offering reunification services to both parents. Like 361.2, the court can provide services to the previously custodial parent, to the parent who is assuming custody, to both parents, or it may instead bypass the provision of services and terminate jurisdiction.

The court has discretion to provide services for the non-reunifying parent if the court determines that doing so will serve the child's best interests. The court also has discretion to find that ordering of such services to the non-reunifying parent is not in the child's interest and to not order services for that parent.

"Resources available to the juvenile court are not unlimited." In this case the appellate court held that the trial court did not abuse its discretion when it terminated the father's reunification services because the father had made no progress in resolving the problems that led to the child's removal after 12 months.

In re G.L. (9/9/09)
177 Cal. App. 4th 683; 99 Cal. Rptr. 3d 356
Fourth Appellate District, Division One

Issue

Does lack of compliance with notice provisions of the ICWA require reversal of the jurisdictional and dispositional orders? Did the court err in failing to provide appropriate notice to the Indian custodian? Did deviation from ICWA placement preferences constitute error by the trial court?

Facts

On 5/28/08 a petition was filed in the juvenile court alleging that GL was at risk of harm because her parents had a history of substance abuse and DV. At the detention hearing, the parents and GL's whereabouts were unknown. Fa was an enrolled member of the Viejas tribe and GL was eligible for enrollment. The court found ICWA applied.
At the Jurisdictional hearing, the parents' whereabouts were still unknown, however, GL was present along with her PGM. The court sustained the allegations and ordered all relatives evaluated for placement. PGM gave the SW a signed form designating her as GL's Indian custodian (signed 6 days before the detention hearing)

For the dispositional hearing on 7/10/09 PGM's Indian custodian status was discussed by the court. The Department did not want to place GL with PGM because she did not pass the background checks and there was concern regarding her ability to protect GL because she failed to acknowledge the DV by Fa. A 342 petition was filed to remove GL from PGM. But then Mo filed a document revoking PGM's Indian custodian status. The 342 petition was dismissed because PGM was no longer the Indian custodian.
No relatives were appropriate for placement and GL was placed in an Indian foster home.

Holding

PGM was temporarily designated as the Indian custodian by Mo from 5/22 to 8/19 (when Mo revoked it). PGM was aware of the Jurisdictional hearing because she attended it. She did not inform the court or Department that she was Indian custodian until after the hearing. Since the court/department was not aware of her status, they are not at fault since this was under control of PGM. Although ICWA notice was never effectuated, her status as Indian custodian was revoked on 8/19 and no hearing occurred prior to that date that adversely impacted her status.

However, the appellate court indicated that "like parents, Indian custodians are entitled to ICWA's protections, including notice of the pending proceedings and the right to intervene". The court states that because of the extended family concept in the Indian community, parents often transfer physical custody of the Indian child to such extended family member on an informal basis, often for extended periods of time and at great distances from the parents. The designation of an Indian custodian by a parent does not require a writing but can be done informally.

Any error regarding lack of notice was harmless with respect to Michael. Court intervention was necessary to protect GL in this case and reversal would not lead to a change in outcome for Michael. ICWA's substantive provisions were properly applied by the court.

Furthermore, the court had good cause to bypass ICWA's placement preferences. There was substantial evidence supporting the trial court's determination that PGM was unable to provide GL with a safe and secure home and there were no other appropriate relatives to care for her. There were no Indian foster homes approved by the tribe available, so placement in an Indian foster home approved by a non-Indian licensing authority satisfied the requirements of ICWA.

Greene v. Camreta (12/10/09)
588 F.3d 1011
United States Court of Appeals for the Ninth Circuit

Issue

Whether an in-school seizure and interrogation of a suspected child abuse victim is always permissible under the Fourth Amendment without a warrant or the equivalent of a warrant, probable cause or parental consent?

Did the social worker violated the Greene's Fourteenth Amendment rights by unreasonably interfering with Sarah's right to be with her children and the children's rights to have their mother present during an intrusive medical examination?

Facts

Nimrod Green was arrested on 2/12/03 for suspected child abuse of F.S., a seven year old boy. The boys' mother told law enforcement that Nimrod's wife had talked to her about the fact that the wife didn't like the way Nimrod had their daughters S.G. and K.G. sleep in his bed when he was intoxicated among other things. The Oregon Department of Human Services heard about these allegations about a week after Nimrod's arrest and the next day they found out that Nimrod had been released and was having unsupervised contact with his daughters. Two days later, the social worker along with a deputy sheriff showed up to S.G.'s school to interview her. The social worker interviewed her for two hours. The deputy sheriff did not ask any questions but remained in the room with his gun visible although S.G. indicated that he did not scare her. The facts disclosed in the interview are in dispute. However, based on the interview of S.G. and a subsequent interview of mother and Nimrod, a safety plan was developed where Nimrod would not have unsupervised contact with his two daughters and S.G. would undergo a sexual abuse examination. Nimrod was subsequently indicted on six counts of felony sexual assault. Upon his release the social worker indicated that the mother had violated the Safety Plan and requested the Juvenile Court to issue a protective custody order which they did. Once the girls were in custody, the social worker arranged a sexual abuse exam for S.G. and refused to allow the mother to be in the room or even in the facility where the exam happened. This appeal followed.

Holding

The ninth Circuit had previously held that warrantless, non-emergency search and seizure of an alleged victim or child sexual abuse at her home violated the Fourth Amendment. (Calabretta v. Floyd) Now the ninth circuit extended those protections and held that applying the traditional Fourth Amendment requirements, the decision by law enforcement and the social worker to seize and interrogate S.G. in the absence of a warrant, a court order, exigent circumstances, or parental consent was unconstitutional. The court also held that in the context of the seizure of a child pursuant to a child abuse investigation, a court order permitting the seizure of the child is the equivalent of a warrant.

The query was whether interviews done at school for purposes of a child abuse allegation fell within the special needs doctrine where the Supreme Court has lowered traditional Fourth Amendment protections "when special needs, beyond the normal need for law enforcement, make the warrant and probable cause requirements impracticable". The argument is that the 'special needs' doctrine should be applied to searches or seizures of children during a child abuse investigation because of the

governments “special need” to protect children from sexual abuse and therefore justifies a departure from both the warrant and probable cause requirements in a case such as this one. The court held that given that law enforcement was present during the interview with the sole purpose of gathering information for a possible criminal case, this fell outside of the special needs doctrine. The court distinguished the Supreme Court case of New Jersey v. T.L.O. 469 U.S. 325 where the court made a point of distinguishing searches ‘carried out by school authorities acting alone and on their own authority’ from those conducted ‘in conjunction with, or at the behest of law enforcement agencies’”

The court stated that “We hold, as we did in Calabretta, that “the general law of search warrants applies to child abuse investigations. Once the police have initiated a criminal investigation into alleged abuse in the home, responsible officials must provide procedural protections appropriate to the criminal context. At least where there is, as here, direct involvement of law enforcement in an in-school seizure and interrogation of a suspected child abuse victim, we simply cannot say, as a matter of law, that she was seized for some ‘special need, beyond the normal need for law enforcement’.”

For the first time the ninth circuit extended the Fourth Amendment protections to include interviews by law enforcement or where law enforcement is present of potential child abuse victims at their school without parental consent or a warrant or the equivalent of a warrant. Because this was the first time that the court had extended those protections, the court found that the officer in this case had qualified immunity because he had no previous knowledge that his conduct was unlawful.

In regards to the exclusion of their mother from the sexual abuse exam, the court held that “the language of Wallis is clear and unambiguous; government officials cannot exclude parents entirely from the location of their child’s physical examination absent parental consent, some legitimate basis for exclusion, or an emergency requiring immediate medical attention.” Therefore, the court stated that the social workers decision to exclude the child’s mother not just from the examination but from the entire facility where her daughter was being examined violated the Greenes’ clearly established rights under the Fourteenth Amendment.

In re G.W. (5/19/09)
173 Cal.App. 4th 1428; 94 Cal. Rptr. 3d 53
Fifth Appellate District

Issue :May the court use WIC 360(a) after sustaining a supplemental petition?

Facts

The children were first declared dependents of the court in June 2006. At the 18 month review hearing, the children were returned to their mother. Less than one month later, the children were detained from their mother and a WIC 387 petition was filed. Four months later the court sustained the 387 petition. The court ordered that the maternal step grandmother be assessed for placement. The grandmother was assessed and found to have a criminal record (misdemeanor willful cruelty to a child) for which the agency refused to grant an exemption . At the disposition hearing on the 387 petition, the court appointed the step grandmother as legal guardian over 5 of the 6 siblings over the agency's objection citing to WIC 360(a) and the case of In re Summer H. (2006) 139 Cal.App.4th 1315. The agency appealed.

Holding

The appellate court held that case law as well as rule 5.565(f) required the juvenile court, on the facts before it to proceed directly to a section 366.26 planning and implementation hearing. Rule 5.565(f) states, "If a dependent child was returned to the custody of a parent or guardian at the 12-month review or the 18-month review or at an interim review between 12 and 18 months and a [section] 387 petition is sustained and the child removed once again, the court must set a hearing under section 366.26 unless the court finds there is a substantial probability of return within the next 6 months or, if more than 12 months had expired at the time of the prior return, within whatever time remains before the expiration of the maximum 18-month period."
The court stated that WIC 360(a) was not the proper section to use at the disposition of a supplemental petition and therefore that In re Summer H. was inapplicable to these facts. " The court in Summer H. found compelling the ability of a parent to decide at the earliest stage of the dependency proceeding, when it became clear that intervention was inevitable, to recognize his or her inability to parent a child successfully, give up that right, and assist in choosing a legal guardian for that child." That situation in not present in this case as these were the late stages of the proceedings and mother had already been given 18 months to reunify.

The court summarized the principles applicable to a disposition after a supplemental petition has been sustained. "When a juvenile court sustains a supplemental petition pursuant to section 387, the case does not return to "square one" with regard to reunification efforts. Instead, the question becomes whether reunification efforts should resume. The answer is yes if: the parent has received less than 12 months of child welfare services (366.5(a), 366.21(e); the parent did not receive reasonable child welfare services (366.21(g)(1), 366.22(a); or the case has passed the 12-month mark but there is a substantial probability the child will be returned within 18 months of the date the child was originally removed from the parent's physical custody (366.21(g)(1). Simply put, the court determines at what chronological stage of the 12-18 month period the cases is for reunification purposes and then proceeds pursuant to section 366.21 or section 366.22 as appropriate. Failure to order additional reunification services when a court removes a child from parental custody incident to a section 387 petition is reversible error only if under the particular facts of the case the juvenile court abuses its discretion in failing to order such services." (Carolyn R. 41 Cal.App. 4th at 166)

In re Holly B. (4/8/09)
172 Cal. App. 4th 1261; 92 Cal. Rptr. 3d 80
Third Appellate Dist.

Issues:

1. Father appeals court's grant of petition under WIC section 388 rescinding previous order that child have psychological examination.

2. Father also contends that court failed to comply with ICWA notification procedures.

Facts:

After either parent failed to reunify with the child, she child experienced multiple placements and AWOL episodes during the year following the termination of services to father. While the child was whereabouts unknown, the court ordered that she have a psychological examination once she was located and returned to child protective custody. The child, age 15, returned to foster care, and she objected to having a psychological evaluation. She had previously had three such evaluations, and she felt they labeled her. She felt good in her current placement, and she stabilized there over a period of months. Thus, the social worker filed a WIC 388 petition requesting that the court rescind its order for the psychological examination. Father did not appear at the hearing at which the court considered the 388, which was also a review hearing under WIC 366.3. The court granted the 388 petition, and found the social worker provided reasonable services to the minor.

Father appealed, arguing that the requirements under section 388 were not met, that the department failed to provide reasonable services, and that substantial evidence did not support the court's finding.

Father also appealed on the basis that the social worker failed to comply with ICWA despite being on notice that it might apply due to mother's claiming Indian heritage when she filed petitions under section 388 in 2007.

Holding:

2. With respect to father's appeal of the granting of the 388, the appellate court found that father did not have standing to appeal. It held that father's taking an adverse position on the issue was not enough to create standing; father would have to have had *his own rights affected* by the court's decision. The 388 decision did not affect any "legally cognizable issue personal to appellant."
3. With respect to the ICWA issue, the court held that the law was not "implicated in the orders appealed from." Rather, ICWA applied to hearings that "affected the minor's status," such as placement in foster care and adoption. The court stated ICWA did not apply to "related issues affecting the minor such as paternity, child support or, as in this case, a ruling on a petition for modification which affects only the information available to the department in making its decisions." And, thus, "any failure to comply with the ICWA is not cognizable in this appeal . . . ."

In re I.W. (12/15/09)
180 Cal. App. 4th 1517
Sixth District

Issue

Defining adoptability and ICWA forms.

Facts

Mother was a long time drug user. Given the ages and natures of the children, it took some time to find an adoptive family for all 3 siblings. A family was found and a 366.26 hearing set. Mother argued that at least one child (I.W.) was not adoptable by virtue of the fact that he had serious emotional issues, and that the home study of the only likely adoptive family had not been finally approved. She argued that the parental relationship exception should apply. She argued that the ICWA forms sent were wrong.

Holding

This court analyzed in full the specifics of adoptability, in terms of age, relationships and only one possible adopting family. The court reasoned that once the department is able to show by the correct standard that the child(ren) are likely to be adopted by virtue of general characteristics, or a single agreeable home, they have met their burden. The burden then shifts to the parent arguing either the adoptability, or the exception(s) to argue some affirmative defense. The parent's argument cannot only be a failure of the Department to meet its burden, but some effective evidence that says either the child(ren) is not adoptable, or the parent's relationship with the child outweighs the need for a permanent home. The court, once it has determined that the Department has met its burden, now weighs the parent's evidence separately. The Court found the sibling group (including I.W.) likely to be adopted, that no "backup plan" needed to be in place, and the mother's relationship with the children over the long history of the case was not enough to outweigh the need for permanency. Court terminated parental rights, with an ICWA caveat. Mother argued that the second set of possible Indian heritage notices had two boxes checked which were in opposition to each other. Court found normal person would get it. They opined that "it is not their function to retry the case". Affirmed.

In re James R. (7/15/09)
176 Cal.App.4th 129, 97 Cal. Rptr. 3d 310
Fourth Appellate District, Division One

Issue:

Was there substantial evidence to support the juvenile court's finding that mother's mental illness and substance abuse and father's inability to protect the children place the children at risk of suffering serious physical harm or illness?

Facts:

The San Diego CPS filed a petition under WIC §300(b) against the mother Violet and father James Sr. alleging that 4 year-old James, Jr., 3 year-old Wesley, and 1 year-old Violet III were at substantial risk of harm because of Violet's mental illness, developmental disability and/or substance abuse problems, and that James Sr. was unable to protect them. In July 2008, Violet was hospitalized after she drank a few beers and took eight prescription ibuprofen.

In the jurisdiction/disposition report, Violet told the SW that she had built up a tolerance to Tylenol and needed to take up to 8 pills at a time for relief. She thought she could take 8 ibuprofen but then had an adverse reaction and called for help. Violet had a history of hospitalizations. The report indicated the parents did not believe Violet's mental health or possible substance abuse problem hindered her ability to care for the children. The report also stated that both parents were devoted to the children, were bonded with them and were meeting their needs. The family had stable income and housing.

At the contested jurisdiction/disposition hearing, Violet's psychologist testified that although Violet had an attention deficit disorder, mixed type, she was not suicidal and did not pose a risk to the children, to herself, or to others. Two social workers testified that the children were well cared for and had family support, but that both parents minimized Violet's condition and they were concerned for the children's safety. One SW testified that she was concerned James Sr. might leave the children with Violet while he worked and Violet might drink alcohol or use drugs while caring for the children. The juvenile court sustained a §300(b) count against the parents, essentially stating that Violet's mental illness and alcohol consumption rendered her incapable of providing regular care for the children and that James Sr. failed or was unable to protect and supervise the children. The juvenile court also ordered the children placed with the parents but Violet was not to be left alone with the children.

The parents appealed the juvenile court's jurisdictional findings and disposition orders.

Holding:

Reversed. There is no evidence of actual harm to the children from the parents' conduct and no showing the parents' conduct created a substantial risk of serious harm to the children. Any causal link between Violet's mental condition and future harm to the children was speculative. The Department also failed to show with specificity how Violet's drinking harmed or would harm the children. Also, the evidence showed that James Sr. was able to protect and supervise the children.

In re Jason J. (07/09/09)
175 Cal. App. 4th 922, 96 Cal. Rptr. 3d 625
Fourth Appellate District, Division One

ISSUE:

Willie argues that he is "Kelsey S.'" father and the court could not terminate his parental rights without a finding of unfitness. In the alternative, the court could not terminate his rights, even as a "mere biological father" without a finding of unfitness. He also argued the beneficial relationship exception.

FACTS:

Child removed from mother pursuant to drug use by the mother and attempted murder of Jason by mother's boyfriend. (Jason apparently had broken cigarettes of boyfriend.) There was also extensive domestic violence in the home. Mother named Willie as Jason's father. Willie said he loved Jason, wanted him with his mother, and could not provide a home for him. He signed the paternity declaration, and in it he catalogued all the things he didn't do, including refusing to have his name on the birth certificate, and not providing a home or support. He requested a paternity test. The test was done, he was the father, and a judgment of paternity was entered. He then proceeded to do nothing, as did mother. Case went to WIC 366.26 hearing. The Court terminated parental rights. Willie appealed.

HOLDING:

Affirmed on all counts. 1. Kelsey S. is an adoption case, having no relevance in dependency. 2. Even if the analysis applied, Cynthia D. v Superior Court (1993) clarified that in dependency, findings of detriment made at review hearings are the equivalent of detriment. Detriment is not an issue at the .26 if all findings of detriment were made at the appropriate hearings. Willie is also not a father in any sense contemplated by the seminal case of Santosky v Kramer (1982) where the Supreme Court determined that a termination of parental rights needed a higher standard than preponderance of the evidence. Their use of the word "parents" is interpreted to mean legal parents. In the context of this case, Willie was never a legal parent within dependency statutory authority. 3. His relationship with his child wasn't even close to the required relationship for the exception.

In re J.B. (7/20/09)
178 Cal. App. 4th 751
Fifth Appellate District

Issue

Is the requirement under ICWA for expert testimony before removal from a parent waived when the placement is with another parent?

Facts

Mother was a habitual drug user, providing minimal, if any appropriate parenting. She provided a completely unsafe environment for her children who were unschooled, unkempt, unfed, unclothed and unhappy. They were removed, and in its investigation, the Department found that one of the children was American Indian, and that father was appropriate. At the dispositional hearing, mother argued that no expert was presented before the Court removed the child from her and placed with the father. The Court disagreed and removed from mother without an expert witness. She appealed all rulings.

Holding

Affirmed as to all issues. The jurisdiction was appropriate, the removals were appropriate, and the change from one parent to another is deemed to be "custodial" under ICWA and no expert is required.

In re Jeremiah G. (4/14/09)
172 Cal. App. 4th 1514; 92 Cal. Rptr. 3d 203
Third Appellate District

Issue

Do ICWA notice requirements arise when a parent indicates possible Indian ancestry and fills out the JV-130 form indicating he might have such ancestry but later retracts this claim?

Facts

When asked whether he had Native American heritage, Father replied, "That's a possibility. That needs to be researched. . . . My great grandfather was Indian. I don't know if he was part of a tribe or not." Father completed the JV-130, indicating he might have Indian ancestry. The court ordered the Department to notify the BIA. Three weeks later at a hearing also attended by Mother, Father completed a second JV-130 form indicating he had NO Native American heritage. The court found ICWA did not apply. At a subsequent hearing also attended by Mother, Father's counsel explained that while Father at first claimed there was a possibility of Indian ancestry, he had retracted that claim. At that point everyone agreed Father had no Native American heritage. Mother appealed the court's dispositional orders, contending the court erred by not providing notice of the hearing to the appropriate Indian authorities as required by ICWA.

Holding

Affirmed. Both the federal regs and WIC require more than a bare suggestion that a child might be an Indian child. The claim must be accompanied by other information that would reasonably suggest the child has Indian heritage. Here there was no information that would reasonably suggest Jeremiah had Indian heritage. Father provided no tribe name and did not even know if his great-grandfather had actually been a member of a tribe. Because Father retracted his claim of Indian heritage and there was no other basis for suspecting Jeremiah to be an Indian child, ICWA notice was not required. The assertion of a "possibility" that Father's great-grandfather was Indian, without more, was too vague and speculative to require ICWA notice to the BIA.

In re J.K. – (5/18/09)
174 Cal App 4th 1426, 95 Cal Rptr 3rd 235
Second Appellate District – Division Seven

FACTS:

FA raped daughter when she was age 9.
FA dislocated her shoulder when she was age 13.
- at medical appt. MO lied saying it was an accident.
At age 15 - daughter made the disclosure of FA=s abuses.

ISSUE:

Whether FA=s abuse was **so remote in time** as to negate finding substantial risk of harm?

DECISION:

NO - given the totality of facts in this case, it was not an unreasonable finding.

HOLDING:

Prior acts may be sufficient to sustain & remove from custody. Here acts of harm were sufficiently serious. FA=s abuse and MO=s failure to protect placed child at substantial risk of physical and emotional harm.

Further, no evidence that FA took any steps to address his behaviors which led to the abuse.

In re J.O. (10/07/09)
178 Cal. App. 4th 139
Second Appellate District, Division Four

ISSUE:

Did father=s failure to care for or to provide financial support to his children warrant rebuttal of the presumption of paternity that arises under *Family Code* ∋ 7611(d)?

HOLDING:

Although a section 7611(d) presumption may be rebutted in an Aappropriate action≅ by Aclear and convincing evidence,≅ IF the result would be to leave the child *without* a presumed father, the court should not allowed such a rebuttal.

FACTS:

At detention, mother identified appellant as the father of the children. Father resided in Mexico, and had not seen nor talked to the children for many years. He had provided no financial support since 2000. Mother and Father were never married. However, they had been living together at the time of the children=s birth and Father had always held himself out as their father and he had accepted the children openly in his open since their births (1 year for the youngest, 3 years to the middle child, and 4 years to the oldest). Father=s name appeared on all of the children=s birth certificates. Through counsel, he requested Apresumed father≅ status. The juvenile court denied that request, relying on *In re A.A.* for the proposition that Aeven if someone has held himself out as the father, and openly accepted the children into his home,≅ his presumed father status could Afall away.≅ The juvenile court ruled that father was alleged only because he had not had contact with the children or provided financial support for many years.

ANALYSIS:

A man claiming entitlement to presumed father status has the burden of proof by a Apreponderance of evidence.≅ Although more than one person may fulfill the statutory requirements for presumed status, there can be only *one* presumed father. A section 7611(d) presumption may be rebutted in an Aappropriate action≅ by Aclear and convincing evidence,≅ per ∋7612, subd. (a). The key factor in this case is what is an Aappropriate action.≅ If the result of such an action would result in the child having no presumed father, then such an Aaction≅ is not Aappropriate≅ for public policy reasons. To wit, we do not want to leave a child Afatherless.≅ As such, such an action to rebut a presumed father status must have a competing father, who is vying for such rights. The court noted that a failure to provide might effect a parent's ability to attain "presumed" status but once attained, that failure to provide cannot rebut that presumption.

In re K.B. (5/13/09)
173 Cal. App. 4th 1275; 93 Cal. Rptr. 3d 751
Fourth Appellate District, Division Two

Issue:

Parents appealed the order terminating their parental rights and placing the children for adoption. They argue that as to the remand in a prior appeal from termination [12/7/06 nonpub. opn.] for noncompliance with ICWA, **the juvenile court (Riverside County) erred by failing to vacate the disposition order and by finding "active efforts" were made to prevent the breakup of the family. They also contend there was insufficient evidence to support the adoptability finding.**

Facts

In 2001 a petition was filed that alleged mother left children with an unrelated caretaker for an extended period and mother and father had a history of criminal behavior. In December 2003 the children were returned to mother and the petition was dismissed. Father was out on parole at this time and due to a prior conviction of lewd acts on a child under 14, parole conditions prohibited contact with minors including his own children. On March 9, 2004 another petition was filed alleging father was living with the family and molested Ke (age 14) and the court determined mother knew or should have known and failed to protect the child. Also, there were allegations that the parents had engaged in DV and mother had failed to benefit from the earlier services. The allegations were found true and services were then provided again to mother, but not to father. Subsequently parental rights were terminated.

During the 2001 proceedings, father told DPSS about his Indian ancestry, but notice was not provided and was ignored again in 2004. In the appeal after the 2004 proceeding, the appellate court affirmed the finding of adoptability, but reversed termination and remanded for the narrow purpose of notifying tribal authorities with instructions that if ICWA applied, the juvenile court was to proceed in compliance with ICWA. The Choctaw Nation of Oklahoma found the children had Choctaw heritage, but the tribe did not assert jurisdiction and only made recommendations. The tribe agreed with the termination of parental rights and the adoption plan.

Holding**:** The juvenile court was affirmed.

1. Failure to comply with ICWA does not deprive the court of jurisdiction to enter disposition orders.
ICWA and WIC require that "active efforts" be made to provide services to prevent the breakup of the Indian family and that the efforts were unsuccessful. See 25 USC § 1912(d), WIC 361.7(a) and CRC 5.484(c). Parents may petition the court to invalidate the order for foster care/TPR if the order violated ICWA. The parents claim the court lacked jurisdiction to terminate parental rights due to not ordering "active efforts" and placing the children in foster care when the disposition order was not supported by an Indian tribal expert. The court declined to vacate past orders because there was no reasonable likelihood that had ICWA provisions been applied, either parent would have had more favorable results.

2. "Active efforts" to prevent the breakup of a family were not required before the disposition hearing.

Under WIC 361(d) when there is a non-Indian child involved, the court must determine if "reasonable efforts" were made to prevent/eliminate detention, or if removed, whether it was reasonable not to make those efforts. However, in an ICWA case the court must determine if "active efforts" under WIC 361.7 were made and proved unsuccessful. At the disposition hearing, the court was on notice that ICWA may apply and it found reasonable efforts had been made to prevent/eliminate removal. The parents argue this is a lower standard than "active efforts" and that the notice error was prejudicial because "active efforts" would have resulted in a different finding had father not been denied services. However, the appellate court points to *Leticia V. v Superior Court* (2000) 81 Cal. App. 4th 1009, where the court held ICWA does not require services to a parent who failed in prior proceedings to reunify despite "active efforts." The court reasoned that where a parent's history demonstrates the futility of offering services, no further services must be offered. Here the father is a sex offender and was convicted for lewd acts on one child and the molestation of another. Father did not submit evidence to show that further services would have helped him to reunify with his children. Thus, the court held that the disposition order for further services for mother complied with ICWA.

3. The court correctly found that the active efforts requirement of WIC 366.26 was satisfied.

WIC § 366.26(c)(2)(B) provides that parental rights can't be terminated on an ICWA case if the court finds no active efforts have been made or does not determine beyond a reasonable doubt that the continued custody by the parent is likely to result in serious emotional or physical damage to the child. The opinion states that expert testimony indicated that the Choctaw Nation relies on the local jurisdiction to provide services, thus it shows the outcome would not have differed, if the tribe had been involved earlier. The court determined that "active efforts" include a caseworker taking the client through the steps of the plan and helping with finding a job, housing, a rehabilitation program, etc., which was done for the mother. As to father, active efforts were not required due to the sex offense convictions. Thus, the requirement was met.

4. Active efforts were made to find appropriate family members for placement.

ICWA requires that as to the adoptive placement of an Indian child, preference be given to a member of the child's extended family, other tribe members, or other Indian families. See 25 USC 1915(a), WIC § 361.31(c). DPSS tried to place the children with maternal aunts and grandmother, but efforts were unsuccessful due to a failed ICPC, forms not being returned, criminal convictions and mother living with grandmother. Prospective adoptive father is a member of another Indian tribe and the court found the placement complied with ICWA.

5. Substantial evidence supports the finding that the children are adoptable.

Before parental rights are terminated the court must find by clear and convincing evidence that the child is likely to be adopted within a reasonable time. Because ICWA was found to apply, a new termination hearing was required, which included the need for a new adoptability finding under the current circumstances. While the parents argued that the children were not adoptable due to their special needs and being a part of a sibling group, the court found substantial evidence existed to support adoptability. Despite the special needs and sibling group issues the prospective adoptive family remained committed to adopt the children. Given that the prospective adoptive family had been identified and was willing to adopt, the court found the children to be adoptable and that it was likely the children would be adopted within a reasonable time.

Kevin Q. v. Lauren W. (6/19/09)
175 Cal. App. 4th 1119
Fourth Appellate District, Division Three

Issue

Does a man's voluntary declaration of paternity – if properly signed and filed after 1996 and never rescinded or set aside – rebut a rebuttable presumption of paternity under a subdivision of section 7611?

Facts

In 2005, the mother moved in with Kevin when she was pregnant with Matthew. Kevin was not the biological father of Matthew. Mother and Matthew lived with Kevin until Matthew was 20 months old. One month later, Kevin petitioned under FC 7630 to establish paternity and sought legal and physical custody. (Kevin was basically alleging that the mother was unfit). Multiple facts seem to support that Kevin held Matthew out to be his child and openly accepted the child into his home. In April 2007, the mother filed a response to Kevin's petition to establish a parental relationship, stating that the child's biological father (DNA test proved), Brent, had filed a declaration of paternity. Attached to mother's response was a copy of a April 25, 2007 voluntary declaration of paternity signed by Brent, the mother and a witness at the Department of Child Support Services. In June 2007, mother indicated that she and Brent had entered into a Stipulated Judgment with Brent regarding custody and visitation. In January 2008, Brent's counsel asked to be relieved because he had not communicated with his lawyer for several months. The trial court weighed Kevin's presumption under FC 7611(d) with Brent's presumption under FC 7573 and found that the weightier considerations of policy and logic dictated that Kevin was Matthew's legal father. This appeal ensued.

Holding

The appellate court reversed the trial court after looking at the plain language of the statutes. Family Code § 7570 et seq., govern voluntary declarations of paternity. Although hospitals must try to obtain signed declarations soon after the birth of infants to unwed mothers, (FC §7571(a)) parents can mail a notarized declaration to the Department of Child Support Services *at any time* after the child's birth. (FC§ 7571(d)). Under specified circumstances, a voluntary declaration may be rescinded or set aside. (This may only be done if blood tests prove that another man is the biological father amongst other factors) That was not done in this case and unless this is done that voluntary declaration (signed on or after 1/1/97) is treated as a judgment of paternity.

FC§7612(a) listing the section 7611 presumptions are rebuttable, expressly excludes presumed father status arising from a declaration of paternity as one of the rebuttable presumptions. Even a pre-1997 voluntary declaration of paternity "override[s] the rebuttable presumptions created by section 7611's subdivisions. Therefore, the appellate court held that the trial court was incorrect when it weighed and balanced the two presumptions because that is only to be done when both presumptions arise from the subdivisions of FC§7611. In sum, Brent signed and filed a valid declaration of paternity that has the force of a judgment under section 7573 and trumps Kevin's presumption under section 7611(d) (regardless of the motivations of Brent in signing the declaration or his continuing contact with the child).

In re K.M. (3/16/09)
172 Cal. App. 4th 115, 90 Cal. Rptr. 3rd 692
Second Appellate District, Division Six

Issue

How much is required for "affirmative steps" to gather information for ICWA notice?

Facts

Mother named "Cherakia" tribe at detention. Agency noticed all Cherokee Tribes. Maternal grandmother indicated Choctaw and Cherokee heritage, but refused to assist in locating great-grandparents to complete interviews to re-notice.

Holding

ICWA does not require further inquiry based on mere supposition. Citing In re Levi U (2000) 78 Cal. App. 4th 191,199, they added "the agency is not required to conduct an extensive independent investigation, or cast about, attempting to learn the names of possible Tribal units to which to send notices. Parents unable to reunify with their children have already caused the children considerable harm; the rules do not permit them to cause unwarranted delay and hardship without any showing whatsoever that the interests protected by ICWA are implicated in any way."

In re K.P. (6/22/09)
175 Cal. App. 4th 1, 95 Cal. Rptr. 3d 524
Third Appellate District

Issue:

Whether the Court had a duty to comply with ICWA notice and extend the Act to cover an allegation of mother's membership in a tribe not recognized by the federal government.

Facts:

Three separate petitions were filed against the mother by the Placer County Department of Health and Human Services (HHS). The first dependency proceeding was brought in November of 2002. At that time mother told HHS that she was a member of the Colfax/Todd's Valley Consolidated Tribe. HHS determined that the Tribe was not federally recognized and did not notify it of the proceeding. The first proceeding was terminated in 2003 after mother completed the reunification plan.

The second petition was filed in May 2005. The children were initially detained but returned to the mother in January 2006 and jurisdiction was terminated in August 2006. In September 2007, the third petition was filed and sustained under 300 (b)& (c). At this time the Court allowed the Tribe (pursuant to 306.6) to participate in the proceedings. The tribal representative expressed a preference of placement with an Indian family. The petition was sustained in December 2007. The minors continued in their foster care placement. FR was ordered for the mother. The father was denied FR pursuant to 361.5(e)(2).

In April 2008, a 388 petition was filed to limit parents' ed rights. The Court appointed a tribal representative as the surrogate ed rights holder. That surrogate failed to enroll KP in school. The Court then vacated that appointment and appointed the minor's CASA as the surrogate.

In May 2008, the Court terminated mother's FR. In October 2008, mother's parental rights were terminated. She appealed based on improper ICWA notice.

On appeal, the Appellate attorney argued that the Tribe may be affiliated with a federally recognized Tribe. The attorney had found that information on the internet. The information from the website was submitted to the Appellate Court to show that the information is easily obtainable.

Holding:
There was no evidence before the Juvenile Court that the mother's Tribe was a federally recognized Tribe. The Court had "no reason to know of any other affiliation". The information based on the internet was offered for the first time on appeal and was not known by the Juvenile Court.

The Court distinguished this case from Louis S. where the Tribe may have been consolidated with a federally recognized Tribe. "Neither HHS nor the Juvenile Court was under a duty to comply with the notice provisions of the ICWA." **"We decline to extend ICWA to cover an allegation of membership in a tribe not recognized by the federal government."**

In re L.A. (12/18/09)
180 Cal. App. 4th 413
Sixth Appellate District

Issue

Can the Court order a legal guardianship under WIC §0 360(a) without a parent explicitly waiving their right to reunification?

Facts

Children were removed from the father and the mother's whereabouts were unknown. At the jurisdictional hearing, the mother had been located, given notice but failed to appear. The department was seeking family reunification services for the parents. The father requested that the court follow Section 360(a) and appoint the paternal grandparents (caretakers) the legal guardians of the children. The Court ordered family reunification services and the father appealed.

Holding

The appellate court can order a legal guardianship under 360(a) without a parent explicitly waiving their right to reunification. As long as the Court finds proper notice (Section 291), the court reads and considers evidence on the proper disposition of the case, the court finds guardianship to be in the best interests of the child(ren), the parents waives reunification services and the parent agrees to the guardianship.

Reasoning

The appellate court found that the father was the custodial parent. The mother had been properly noticed for the jurisdiction and disposition hearings. The children had been in the home of the paternal grandparents for twenty (20) months. The appellate court found that after reading the "assessment report", the court could exercise its discretion and order a legal guardianship without the mother explicitly waiving reunification services and without the mother's agreement to the guardianship.

In re L.B. (04/28/09)
173 Cal.App.4th 562; 92 Cal. Rptr. 3d 773
Second Appellate District, Division Five

Issue:

Did the court err in finding that the time in which parents can receive reunification services begins to run at the detention hearing rather than when the children are placed in foster care, thereby denying Father six months of services?

Facts:

Mother was evicted from drug treatment program after testing positive for drugs. Mother left the program with the youngest two of her three kids. A petition was filed on November 8, 2007 for all three children (the oldest was found at her elementary school), but the two youngest children had yet to be located. On May 7, 2008, Mother and Father each made their first court appearance, and the 9-month-old was placed in foster care. The two-year-old was located five days later.

On July 11th, DCFS filed a first amended petition. The court sustained the petition and ordered family reunification services. The next hearing was set for December 17, 2008 as a .21(f) hearing. The court stated that this would be a 12-month review hearing because the timeframe for ordering reunification services ran from November 2007, when the court found a prima facie case. Father appeals the orders made at this hearing.

Holding:

The court order setting the review hearing was not appealable. Father was not aggrieved at the time of the appeal given that "the court did not order fewer or different reunification services." And, as of the date of the order from which father appeals, the court had not decided to terminate father's reunification services.

Holly Loeffler v. William Medina (6/18/09)
174 Cal. App. 4th 1495; 95 Cal. Rptr. 3d 343
Fourth Appellate District, Division One

Issue

What is the correct legal standard for deciding when to terminate a domestic violence restraining order?

Facts

For the most part, the facts in this case are irrelevant to the specific holding because they are so case specific. A restraining order was issued against William Medina to protect Holly Loeffler (and her teenage daughter) in 2001 pursuant to FC 6340. That restraining order expired in April 2004. In April 2004, Holly Loeffler filed for an extension of the restraining order. On June 23, 2004, the trial court extended that restraining order indefinitely. In August 2004, William Medina filed an application for an order terminating the permanent restraining order. The trial court denied that application after a hearing. This appeal followed.

Law

"In any action, the court may on notice modify or dissolve an injunction or temporary restraining order upon a showing that there has been a material change in the facts upon which the injunction or temporary restraining order was granted, that the law upon which the injunction or temporary restraining order was granted has changed, or that the ends of justice would be served by the modification or dissolution of the injunction or temporary restraining order." (Code Civ. Proc., § 533)

Holding

The appellate court affirmed the trial court's denial of the application to terminate the restraining order. The appellate court indicated that the trial court incorrectly used CCP 1008 in determining whether to terminate the restraining order and that CCP 533 sets forth the standards for a trial court to apply when considering whether to dissolve an injunction. In this case, the appellate court found that there had not been a material change in the facts of the case, that the law upon which the injunction was based had not changed and that finally the "ends of justice" would not be served by terminating the restraining order. In this case the court found that Mr. Medina's claim that some day he might volunteer with a law enforcement agency was not enough to satisfy the "ends of justice" argument. In addition, Mr. Medina did not meet his burden in showing that the restraining order had inhibited him from finding work in the construction industry.

The appellate court also mentioned that it was the appellant's burden to show changed circumstances under CCP 533. This differs from the case where the protected person is seeking to renew a protective order. In that case, it is the protected person's burden to show by a preponderance of the evidence that the protected party entertains a 'reasonable apprehension' of future abuse. (Ritchie v. Konrad (2004) 115 Cal. App. 4th 1275). In this case, the renewal had already been granted and therefore, it was the appellant's burden.

Mira Manela v. LA Superior Court (9/22/09)
177 Cal. App. 4th 1139; 99 Cal. Rptr. 3d 736
Second Appellate District; Division Three

Facts

During the course of a family law case, the mother raised the father's possible seizure disorder as a reason that she should have sole custody of the child and the father shouldn't be able to drive him. During the course of the proceedings, the mother subpoenaed medical records from two of father's physicians. Mother was in attendance for one of the doctor's appointments but the other doctor saw the father as a teen-ager. The father asserted the patient-physician privilege and the trial court quashed the subpoenas. This appeal ensued.

Issue

Did the patient-physician privilege or the constitutional right to privacy support the trial court's quashing of the two subpoenas.

Holding

The appellate court held that the physician-patient privilege did apply for the doctor who treated father when he was a teen-ager because there was no waiver.

The appellate court held that the trial court abused its discretion by quashing the subpoena as to the physician where mother was present. The appellate court noted that the father had waived the patient-physician privilege when he allowed the mother to be present during the doctor's appointment where the doctor had discussed father's condition. The appellate court also rejected the father's claim that his medical records as to that Dr. were protected by his constitutional right to privacy. The court indicated that the father's right to privacy was not absolute and, in this case, father's privacy interest was outweighed by the state's compelling interest in protecting the child's best interests. Therefore the appellate court indicated that the mother had shown good cause to obtain the non-privileged documents relating to the father's tic/seizure disorder.

In re Melissa R. (8/27/09)
177 Cal.App.4th 24, 98 Cal. Rptr. 3d 794
First Appellate District, Division Three

Issue:

While ICWA notices were not complied with, issue was moot and reversal and remand to require ICWA notices is futile given the dependent youth is now 20 years old.

Facts:

Melissa, at age 16, was made a dependent of the court for the third time in April 2006 as a result of her mother's drug problems. Melissa was born with a congenital chromosomal anomaly that severely retarded her development. She was a regional center client. At the contested .22 hearing, Melissa's attorney, regional center worker and counselor opposed returning Melissa to her mother. By then, Melissa was 18 years old and a plan was put in place to transition Melissa from a group home to a regional center adult-assisted placement. The juvenile court found substantial risk of detriment to Melissa if she were to return to her mother's care. The court also found that there was an emancipation plan in place for Melissa and "dismissed" the dependency case.

Holding:

While the Agency did fail to send ICWA notices even though it knew Melissa might be of Indian heritage, the error is moot. Reversal to direct ICWA compliance is pointless given that ICWA applies only when an Indian child is the subject of a child custody proceeding. An Indian child is "any unmarried person who is under age eighteen …." Since Melissa is now 20 years old at the time of the appeal, she cannot be considered an Indian "child."

In re M.L. (3/23/09)
172 Cal. App. 4th 1110; 90 Cal. Rptr. 3d 920
Second Appellate Dist., Division Six

Issue

Whether the court erred in finding exigent circumstances allowing Ventura County Human Services Agency (HSA) to take the newborn into protective custody? Does the court have to defer to mother's selection of adoptive parents?

Facts

Mother gives birth to newborn. Prior to delivery, Mother contacted Family Connections (FC) seeking adoptive parents for the unborn child. Her preference is for agency to select appropriate family and she rejects efforts to obtain prenatal care. Mother has executed a release of newborn to FC.

Mother has long history of substance abuse and has six older children who were dependents in 2006 and 2007 with whom she did not reunify. The following day, Mother comes to hospital to revoke her consent to release to FC. Hospital staff say she appears "flighty" and "hyper" when she seeks to provide adoption papers for new prospective adoptive parents. The hospital refuses to accept the documents.

That same evening, HSA hotline receives a report from hospital employees stating that mother and the newborn had positive toxicology tests for amphetamine and that mother discharged herself shortly after giving birth. Now, mother and her attorney were attempting to take the child from the hospital.

The social worker arrives. Inspects newborn's medical records, notes the release, sees a prior positive toxicology test for mother and is advised that mother has revoked the release for FC. The social worker tries to call mom to no avail. Seeing no documents pertaining to a successor plan and fearing that mother would return to remove the baby, the social worker detains the baby. A dependency petition is filed.

The juvenile court conducts a detention hearing, a contested jurisdiction and disposition hearing. The court took jurisdiction, bypassed reunification services and set the matter for a permanent plan hearing pursuant to 366.26. Mother seeks extraordinary writ.

Holding

Writ denied. A social worker may remove a child from a mother's custody because there is reasonable cause to believe that a child is in imminent danger. Court found that social workers had authority to detain without a warrant with reasonable cause to believe that a child is in imminent danger.

Here is newborn, 24 hours old, who has been exposed to drugs during gestation. Mother received little prenatal care and one year earlier, had exposed another child to drugs during gestation. She discharged herself from the hospital within an hour of giving birth and could not be reached by phone or a visit to her home. The following evening, she appeared at the hospital in an agitated condition revoking the release in favor of FC. The social worker reasonably concluded that mother might return to the hospital and remove the infant thereby endangering her.

In addition, the appellate court held that once the juvenile court sustained the allegations in the petition, that it had an independent obligation to determine the best interests of the child and therefore the court was not required to defer to mother's selection of adoptive parents for her child. The appellate court stated that "although mother has a recognized constitutional right to select adoptive parents for her child, the juvenile court is charged with determining whether that plan or another is in the best interests of the child."

M.T. v. Superior Court of San Francisco County (10/30/09)
178 Cal. App. 4th 1170
First District, Division Three

Issue:

When the children are in long-term foster care, the Court can require a parent to provide an offer of proof before setting a contested RPP on the issue of whether to set a new 366.26 hearing.

Facts:

The three children were in long-term foster care, and the parents had not been visiting for quite some time. At an RPP, the agency recommended setting a new 366.26 hearing for two of the children. The father asked to set a contest on the issue. The Court required the parties to brief the issue of whether the Court could require the father to provide an offer of proof. At the next hearing, father's counsel conceded that Sheri T. v. Superior Court (2008), 166 Cal.App.4th 334, allowed the Court to require an offer of proof to set a contested RPP, indicated he could not make the necessary showing, and withdrew his request. The Court set a new 366.26 hearing and the father filed a writ.

Holding:

Writ denied. The withdrawal of the objection does not make the issue moot; it would have been futile for the attorney to argue because the trial court was bound by Sheri T. While Sheri T. was not controlling for the First District, the Appellate Court seems to concur with the holding. At an RPP, once the agency has shown the possibility of guardianship or adoption, the burden shifts to the parent to show by clear and convincing evidence a compelling reason why a new 366.26 hearing should not be set (usually the issue would be that the child could be returned home); thus an offer of proof can be required. Also, parents' strong due process right to call witnesses while still in FR do not necessarily apply after FR has been terminated. "Due process requires a balance. … The due process right to present evidence is limited to relevant evidence of significant probative value to the issue before the court." Even if there were such a right here, the father has not shown he suffered any prejudice, so it would have been harmless error.

In re N.M. (5/27/09)
174 Cal. App. 4th 329; 94 Cal. Rptr. 3d 220
Third Appellate District

Issue:

What constitutes Agood cause≅ to go outside ICWA preference? What is the Court=s jurisdiction concerning placement pursuant to A fit and willing≅ exception?

Facts:

On 4/05 N.M. and J.S. Jr. removed from mother, and fathers. Second time for J. S., Jr.. Mother said no ICWA. Court found ICWA did not apply. Detained children in foster care. At first jurisdictional hearing, father of N.M. stated Indian membership. Tribe noticed. Child eligible, ICWA applies .Expert letter received.

10/05- Second jurisdictional/dispositional hearing. Parents pled, and no reunification services were offered to mother or either father. WIC 366.26 hearing was set.

2/06- Only placement issues determined. Former foster parent of J.S., Jr. (in Arkansas) wanted both children placed with her. PGM of N.M.(In Oregon) only wanted her grandchild. ICPC negative for PGM, as her husband had an unwaivable offense. ICWA expert said children should remain together, even if in a non-Indian home. They declined to intervene, and agreed with the plan of adoption.

9/14/06- Hearing- PGM stated she had divorced her husband, and wanted both children placed with her.

10/19/06- Termination of parental rights.

11/06- Motion for reconsideration by minor=s counsel, requesting reinstatement of parental rights, with legal guardianship as plan. (At some point, it appears J.S., Sr. had filed a successful WIC 388, and regained custody of his child, J.S., Jr.)

11/30/06-Court heard motion. Department argued to maintain termination of parental rights, but move N.M. to the PGM in Oregon.

1/11/07- Court reinstated parental rights.

2/21/07- ICPC for PGM in Oregon. PGM visiting regularly. Recommendation- terminate parental rights again, place with PGM. If the new ICPC is negative- adoption by the foster parent, Y.C.

3/19/07- ICPC for PGM in Oregon is approved. Recommendation is to move N.M. to PGM. PGM said she would facilitate visits in Sacramento with sibling. PGM preferred ICWA placement, even though it is in Oregon.

4/30/07 (6th addendum) ICWA expert. Legal Guardianship with the PGM now the plan proposed by the Tribe.

7/22/07- (8th addendum)- Y.C. can no longer adopt. Her son was accused of sexually molesting a child in her home. Department determined N.M. safe there anyway, until Y. C. loses her license.

8/16/07-WIC366.26. Recommendation is legal guardianship with PGM. Minor=s counsel argues for legal guardianship with Y.C. Tribe, and expert want PGM. Court finds for legal guardianship with Y.C., and good cause to go outside ICWA.

Holding and Analysis:

Legal guardianship with foster mother. PGM not well known. Home study was cursory. She did not come forward for 2 years, and then only to visit at court hearings. She never called independently to ask about the well-being of her grandson. She had no plan for sibling contact. She was not, in fact, divorced from her husband, and had not even started proceedings. Y.C. had a strong parental bond with the child. She had regular contact with the sibling and his father, and they got along well. Her son was not going to return to her home; he was to be sent to relatives away from Sacramento. Father also argues that A fit and willing relative≅ means that if the Court has a relative to look at, there is no comparison with other prospective caretakers, only an analysis as to the fitness and willingness of that relative alone. Court did not agree, and said that section applies only to Along term foster care≅.

In re Nolan W. (3/30/09)
45 Cal. 4th 1217; 203 P. 3d 454
California Supreme Court

Issue

Can the juvenile court use contempt sanctions as punishment when a parent fails to satisfy the conditions of the reunification plan?

Facts

This is a case in which the mother and minor tested positive for drugs at birth. The minor was suitably placed and the San Diego Dependency Court, as part of the reunification plan for mother, ordered her to an intensive substance abuse program. The San Diego Dependency Court had in place a local rule that authorized contempt proceedings to punish a parent who failed to comply with the reunification plan, and allowed the imposition of a sentence of up to five days in jail for each violation. In this case, mother was sentenced to a combined total of 300 days in jail for failing to enter drug treatment and test. The decision was affirmed by the Court of Appeal, but the California Supreme Court granted mother's petition for review to address the following issue: Does WIC Section 213 give the court the power to impose contempt sanctions as punishment for a parent's failure to comply with reunification orders?

Holding

NO. Reunification services are voluntary in nature and cannot be forced on an unwilling or indifferent parent (citations omitted). Parents can waive their right to reunification services. Under our statutory scheme, if a parent fails to comply with the reunification plan, the parent then faces the risk (and penalty) of losing further reunification services and the loss of parental rights. In dependency proceedings, the court's jurisdiction is over the child not the parents. The court is intervening to protect the child, not to punish the parents.

This decision is limited to the use of contempt solely to punish a parent's failure to comply with conditions of a reunification case plan. Contempt is still available to control the proceedings before it and protect the dignity of its exercise of jurisdiction. Likewise, contempt proceedings are also available to punish extreme parental misconduct that jeopardizes the child's safety, such as taking the child without permission, or engaging in dangerous acts during visitation.

In re R.M. (7/13/09)
175 Cal. App. 4th 986; 96 Cal. Rptr. 3d 655
Second Appellate District, Division One

Issue

Was there evidence of current risk of harm by clear and convincing evidence to allow court to take jurisdiction?

Facts:

There was a previous family law order awarding custody to Mother and visitation to Father. DCFS filed a petition under WIC 300(b) alleging that RM and SM had suffered and were at substantial risk of suffering serious physical harm as a result of the parents inability to adequately supervise them. The parents submitted on amended language and the court sustained language stating that the parents' divergent approaches to parenting resulted in SM's exposure to inappropriate sexual conduct by her brother.

The court further found that Mother's physical and emotional problems periodically rendered her unable to provide adequate care and supervision for the children, thereby placing them at risk …. Mother appealed and claimed the evidence was insufficient.

Holding

The appellate court reversed the Juvenile Court's order taking Jurisdiction and removing them from Mother's custody. The AC agreed with Mother, noting that a juvenile dependency petition must be "reasonable, credible, and of such solid value" such that the court could find the child to be dependent of the court by CLEAR AND CONVINCING EVIDENCE (caps added).

The AC further noted that WIC 300b requires that the child will suffer, serious physical harm or illness as a result of the failure of his parent… to adequately supervise or protect the child. Most of the evidence in this case concerned acts that RM committed, but did not pose a threat of serious physical harm to SM.

The AC did acknowledge that some of the behavior consisted of acts of sexual acting out, but found that there was no evidence supporting the conclusion that Mother failed to recognize the inappropriate conduct or failed to supervise the children once she found out.

The AC found that Mother had taken remedial steps to prevent further incidences such as admonishing the children and locking SMs bedroom door. After these remedial steps had been taken, there was no evidence of further inappropriate conduct occurring between RM and SM. Although evidence of past events may have some probative value, there must be evidence of circumstances existing at the hearing that make it likely that the children will suffer the same type of harm or illness.

Subsequent information that the parent's ongoing custody battle endangered the children's emotional health did not confer a basis for jurisdiction under subsection(b).

Jurisdictional and dispositional findings reversed.

In re R.M. and S.M. (5/5/09)
173 Cal. App. 4th 950; 93 Cal. Rptr. 3d 316
Second Appellate District, Division One

Issue:

Whether evidence was sufficient to sustain a petition and remove children from Mother's home where children engaged in "inappropriate sexual conduct" and mother was alleged to inadequately supervise and failed to protect.

Facts:

A 2004 Family Law order awarded custody of RM and sister SM to Mother and visitation rights to Father. In June 2008, DCFS filed a petition under 300 (b) alleging failure to protect and adequately supervise or protect the children from engaging in inappropriate sexual conduct. The parents **waived** their rights to a trial and **submitted** on the reports presented by DCFS.

The evidence of "inappropriate sexual conduct consisted of "watching adult films on parent's computers and TV's". The children also admitted to rubbing each other's private parts either with or without clothing. There was no evidence that the Mother condoned or facilitated the conduct. The evidence did show that once the Mother was aware of the conduct, she took steps to prevent it, including admonishing the children and locking SM's door while she slept. Further, there was no evidence that the conduct continued once Mother took these steps. The Appellate Court also found that "None of the behavior posed a threat of serious physical harm" to RM or SM.

There was also evidence presented that mother had physical and emotional problems. But, a 2003 psychological evaluation for the Family Court concluded that Mother's depression and physical disabilities did not have any adverse effects on her parenting abilities. The report also stated *"the data does not reveal any significant parenting deficits"*. (Italics added by Appellate Court).

The Juvenile Court found that "periodic episodes of inadequate supervision of the children" caused by Mother& Father's "divergent approaches to parenting" resulted in the "inappropriate sexual conduct". The Court further found that Mother's "physical and emotional problems [and depression]…periodically render her unable to provide adequate care and supervision for the children "thereby placing them at risk of physical and emotional harm and damage

Holding:

The orders of the Juvenile Court are reversed. The court is ordered to dismiss the petition and return the children to the Mother "**unless new circumstances would justify a new finding of jurisdiction. "** The Court concluded that the evidence was insufficient to support the petition as to the Mother.

In re R.N. , (10/20/09)
178 Cal. App. 4th 557
Second District, Division Seven

Issue:

Court must consider, under the provisions of 366.3, whether family reunification services should be reinstated to a parent when considering termination or modification of an existing guardianship.

Facts:

Paternal grandparents were appointed R.N.'s legal guardians in April of 1996. Family reunification services had been terminated for both parents in October of 1995 on a petition that had been filed April 1994 immediately after R.N. was born. Both parents had been drug abusers and did not comply with the reunification plan.

The grandfather died in 2006, and the grandmother in February of 2008. In April of 2008, R.N.'s paternal aunt D filed a petition seeking to become a successor Guardian. The petition had been filed in Ventura County (where the grandparents had lived) and was transferred to Los Angeles County which was the county of original jurisdiction.
Father opposed the appointment of D as guardian of RN. He contended that the grandmother's nomination of D was "misguided" because only a parent could nominate a guardian of the minor.

He further sought termination of the dependency proceedings. In his motion to the opposition to the guardianship, he also stated he had turned his life around and was an elder of his church. A report prepared by DCFS stated that father's house was unkempt, that he did not get along with other family members. He had angry outbursts and was accusatory with the aunt. Also, RN stated that when she stayed with her father she was often left alone and had to fend for herself. The Department recommended that a 366.26 hearing be set and D (paternal aunt) be appointed the guardian.

Father opposed this recommendation and a contested hearing was held July11, 2008. After the hearing, the court granted D's 388 petition and appointed D as the legal guardian. Jurisdiction was again terminated. The court noted that if the father was now asking for return of RN, he needed to file his own 388 petition.

On September 26, 2008, the father filed a 388 petition asking for reinstatement of reunification with RN. The court denied the motion on the basis that it was not in the best interest of the child to reinstate jurisdiction and grant the petition.

Holding:

Reversed and remanded for further proceedings consistent with 366.3 (366.3(f) provides that parents whose rights have not been terminated may participate in a guardianship termination hearing and may be considered as custodians and the child returned if they establish by a preponderance that reunification is in the child's best interest. If such a finding is made reunification services may be provided for up to six months.

In re R.S. (3/3/09)
172 Cal. App. 4th 1049; 91 Cal. Rptr. 3d 546
Fourth Appellate District, Division Three

Issue

Should the Court have ordered the disclosure and release of a taped interview with a 7 year old victim to the victim's father when no other proceedings were pending against the perpetrator?

Facts

The victim's father retained an attorney to pursue monetary damages against R.S.'s parents. The victim's attorney contended that he attempted to negotiate a settlement with the insurance company but claimed that the insurance company would not pursue negotiations until it saw a copy of the victim's tape.

Victim's father filed a Section 827 motion to seek disclosure of the tape and a copy of the police report. R.S. opposed. The trial court ordered the disclosure of the tape but not the police report. The court also imposed protective conditions that the tape was not to be copied in any way and only disclosed to counsel and parents. The court authorized the insurance company to view the tape but the tape had to remain in the custody of the attorney and returned to the court at the conclusion of any litigation.

Holding

The order was upheld. The trial court struggled with keeping the tape away from the parents of the child who was interviewed in the tape. The court discusses the balancing of the interests of the parties involved as required in Section 827 and Rule 5.552. The court found the rights of the parents to the tape of their child's interview outweighed the rights of R.S. and his parent's privacy concerns.

The case covers in detail the statutory scheme and the balancing of interests the court must do to determine when to disclose all or any portion of juvenile court files.

In re R.S., (11/30/09)
179 Cal. App. 4th 1137
First Appellate District, Division One

Issue:

Whether a voluntary relinquishment by parents in conformance with Family Code Sec. 8700, which becomes final before a 366.26 hearing is scheduled to commence, precludes the juvenile court from making any order that interferes with the parents' unlimited right to make such a relinquishment to a public adoption agency.

Facts:

Birth parents made a voluntary designated relinquishment of their parental rights and named an aunt and her husband as the intended adoptive placement. The 366.26 hearing date had already been set but had not yet been heard when the relinquishment was made.

Subsequently the 366.26 hearing took place. At that hearing the court terminated parental rights and designated the foster parents as the prospective adoptive parents. The birth parents appealed the juvenile court orders.

Holding:

The Appellate Court reversed. The appellate court held that when birth parents make a voluntary designated relinquishment to a public adoption agency under FC §8700, and the relinquishment becomes final after the WIC §366.26 hearing has been set, but before it is scheduled to commence, the relinquishment effectively precludes the need for a hearing select a permanent plan under 366.26. The juvenile court is precluded from making any order that interferes with the parents' unlimited right to make such a voluntary relinquishment to a public adoption agency. (Adoptions would not "randomly" accept a designated relinquishment, but would first need to complete an approved home study of the designated placement and determine additionally that the designated placement was in the child's best interest. – Fn #5)

In re R.W. (3/26/09)
172 Cal. App. 4th 1268; 91 Cal. Rptr. 3d 785
Fourth Appellate District, Division Three

Issue

Order limiting mother's educational rights was not an abuse of the juvenile court's discretion where child urgently needed emotional, behavioral and educational services.

Facts

RW had been in the dependency system for seven years and was sixteen years old, when the court limited Mother's educational rights. She had been in eighteen placements during that time including a return to mother for 60 days before reunification was terminated in 2002.
She was terminated from all of these placements because of her severe emotional and behavioral problems. A CASA and an educational attorney were appointed in an effort to stabilize her situation and find the right placement for her. During the time RW remained in placement, the mother was "inconsistent" in her cooperation in "matters relating to the minor's educational needs".

In February 2008, her educational attorney requested an "emergency, expanded IEP" to assure that RW was receiving appropriate services. The social worker reported in March 2008 that RW's behavior makes her impossible to place. In April, the educational attorney reported that Mother agreed with the decision to conduct a mental health assessment to determine if a residential treatment center placement was appropriate. The IEP team met again after looking into several possible placements and a recommendation was made to place RW in a residential placement in Laramie, Wyoming. It was after getting this information that mother suddenly became active in her daughters case and opposed the placement. As a result the Educational Attorney expressed to the court that mother's "recent activism" was not in RW's best interest and asked that mother's educational rights be limited and a surrogate right's holder be appointed.

Holding

The Juvenile Court did not abuse it's discretion in limiting Mother's educational rights. The Mother was not acting in the minor's Best Interest. The motion to limit those rights was based on the urgent need to address the minor's behavioral, emotional & educational needs before the "window of opportunity" closed. The order limiting parents' educational rights and the "Consent Order" consenting to the IEP recommendation for placement are **affirmed.**

In re Samuel G.(5/18/09)
174 Cal. App. 4th 502; 94 Cal. Rptr. 3d 237
Fourth District, Division One

Issue:

The Juvenile Court may order the agency to pay for the travel of a dependent child's education representative to visit the child in an out-of-county placement.

Facts:

Samuel was in a planned permanent living arrangement. He had numerous failed placements and at least two involuntary hospitalizations. The mother had moved out-of-state, and the Court appointed his CASA (Ms. So) as the responsible adult for educational decision making, using the appropriate JV-535 form. Ms. So was actively involved, and attended all of Samuel's IEP meetings. The San Diego County Health and Human Service Agency (Agency) eventually placed Samuel in a group home in Redding, and he was making progress.

After exploring funding sources and learning that the CASA program had limited funding, the Court granted Samuel's attorney's request that Agency be ordered to pay for quarterly visits to Redding by Ms. So, in her capacity as his educational representative. Agency appealed on the grounds that the order violated the separation of powers doctrine and amounted to an improper gift of public funds.

Holding:

Affirmed. (See detailed discussion of education issues below.) Ordering the agency to pay for the CASA's travel expenses would be inappropriate (without an MOU), but in this case, the order was made regarding Ms. So in her separate capacity as the educational decision maker. According to the case law, "if appropriated funds are reasonably available for the expenditure in question, the separation of powers doctrine poses no barrier to a judicial order directing the payment of funds. (Note: In this case, the educational representative had been involved for three years, so ensuring continuity may have been a major factor in determining that the Court properly exercised its discretion.)

(Education is a fundamental interest that must be made available to all on an equal basis. The Juvenile Court may limit a parent's right to determine how their children are educated, but the Court is also responsible for ensuring that a dependent child's educational needs are met, and must provide oversight of the agency to ensure that the child's educational rights are investigated, reported, and monitored. In doing so, the Court may issue reasonable orders for the child's care, supervision, custody, etc., including the child's education. All educational decisions must be based on the best interest of the child. The Rules of Court require the educational representative to participate in and make all decisions regarding all matters affecting the child's educational needs, acting as the parent in all educational matters. The agency is required to provide child welfare services to children and families who need them, including transportation.)

In re S.B. (5/28/09)
174 Cal. 4th 529
Calif. Supreme Court

Issue

The only issue before the Supreme Court was whether a trial court's finding of adoptability under W & I § 366.26(c)(3) is appealable.

Facts

Then underlying facts in this case were not articulated by the Court in its decision, because the issue is a pure matter of law. However, it appears in this case the trial court applied 366.26(c)(3) to the subject child: that termination of parental rights would not be detrimental; that the child has the probability of adoption; but, there is no identified or available prospective adoptive parent. Under such circumstances, the agency is mandated to make efforts to locate a prospective adoptive home and the 366.26 hearing continued for up to 180 days.

Mother appealed the finding of adoptability. The Court of Appeal dismissed the appeal as premature. The Supreme Court took the case because there is a split of authority among the various appellate courts on the issue.

Holding

Reversed. The Supreme Court held that 366.26(c)(3)orders are appealable. Although the trial court's determination of adoptability is a "finding" the court did make orders regarding the location of an adoptive home. Additionally, the Court noted that the recent amendments to 366.26(c)(3) make the 180 period not a mere continuance of the 366.26 hearing, but mandates either adoption or legal guardianship *with a non-relative* at the next hearing (removing the third option of "long-term foster care"). Thus, the trial court's orders are not idle gestures, noting that in those situations where a trial court in similar circumstances does not apply (c)(3), the agency may have the basis for an appeal.[1]

[1] The court did note an anomaly in the recent amendments to 366.26(c)(3) that if adoption is not the ultimate plan, the language of (c)(3) provides only for "nonrelative" legal guardianship, even though the statutory scheme calls for relative guardianship as preference before nonrelatives. The Supreme Court urged the legislature to fix this problem.

In re S.B. (6/3/09)
174 Cal. App. 4th 808; 94 Cal. Rptr. 3d 645
Second Appellate District, Division Four

Issue

Are only the Agency's counsel and minor's counsel responsible to advise the trial court of any problems with notices issued under the Indian Child Welfare Act?

Facts

This case was back in the trial court for the third time after being reversed on inadequate ICWA notices twice before. The court looked at the new notices provided by the Agency to the Indian tribes but asked counsel for the parents whether they had any objections with regard to ICWA compliance. Father's counsel had none. Mother's counsel indicated that she had not had the opportunity to look through them yet. The court granted the mother's counsel what amounted to a two month continuance. Two months later, upon another inquiry the mother's counsel replied that she had looked at the record and had not seen anything wrong but said that she was not an expert on ICWA and did not feel competent to make that assessment. When further queried about any legal objection, she replied, "Not that I know of, no." The court found that the notices were good and that the child didn't fall under the ICWA. This third appeal followed claiming inadequate notices to the Indian tribes.

Holding

The appellate court affirmed the trial court and held that counsel for the parents share responsibility with the Agency and minor's counsel to advise the trial court of any infirmities in these notices in order to allow for prompt correction and avoid unnecessary delay in the progress of the dependency case.

The court stated "An attorney practicing dependency law in the juvenile court should be sufficiently familiar with ICWA notice requirements to point out a flaw in notice if the record shows that there is one – especially when specifically asked to do so. One court has observed that 'trial counsel for a parent in dependency proceedings rarely brings ICWA notice deficiencies to the attention of the juvenile court. That job, it seems is routinely left to appellate counsel for the parent.' (In re Justin S. (2007) 150 Cal.App.4th 1426,1436)"

The court added that counsel for parents bear a responsibility to raise prompt objections in the juvenile court to any deficiency in notice so that it can be corrected in a timely fashion. This will best serve the interests of the dependent children, the Indian tribes, and the efficient administration of justice.

In re S.R. (5/1/ 2009)
173 Cal.App.4th 864; 92 Cal. Rptr. 3d 838
3rd Appellate District

Issue:

The granting of a WIC §388 petition to vacate a court-ordered EC §730 evaluation for a bonding study was abuse of discretion where there had been no change in circumstance and was not in the best interest of the children.

Facts:

The Sacramento DHHS removed three children, all 6 years and younger, from the parents due to domestic violence and failure to protect charges. The parents are Spanish-speaking and required interpreters. The parents failed to reunify with the children by the 18-month date. The juvenile court terminated reunification services, set a §366.26 hearing and ordered a bonding study.

Two months later, DHHS filed a §388 petition to modify the bonding study order. DHHS indicated that it had contacted Dr. Jayson Wilkenfield, who declined to do the bonding study because he did not speak Spanish and would not be able to "detect and appreciate the significance" of the subtleties of the parent-child interaction which he felt was necessary. At the first hearing on the §388 petition, the juvenile court ordered DHHS to try again to locate a Spanish-speaking psychologist, or to provide specific information that it had attempted to find one at nearby hospitals and universities.

At the second hearing on the §388 petition, DHHS told the juvenile court it had contacted Dr. Blake Carmichael at UC Davis Medical Center and was told there was no Spanish-speaking professional who could do a bonding study. DHHS also contacted CSU Sacramento and found it was closed for the summer. The juvenile court suggested a Dr. Anthony Urquiza, who apparently is a clinical psychologist at UC Davis Medical Center and is familiar to the court since he has testified before.

At the third hearing on the §388 petition, DHHS reported it had contacted 6 Spanish-speaking clinical licensees in the area and none could do the bonding study. DHHS had not been able to contact Dr. Urquiza. The juvenile court accepted DHHS's representation, noted that there is a no statutory right to a bonding study, indicated it would be futile to continue the order for such a study, and granted DHHS' §388 petition. The juvenile court held the §366.26 hearing, found no exception to TPR and terminated parental rights. The parents appealed.

Holding:

Reversed. The Court of Appeal held that not every change of circumstance warrants a modification of a court order. The change must relate to the purpose of the order. Here, the purpose of the bonding study was to determine the degree of attachment between the parents and the children. The fact that DHHS cannot find a Spanish-speaking psychologist is not a change of circumstance. Also, there is no evidence that the change is in the children's best interest. The juvenile court does not have the discretion to modify, or vacate the order without substantial evidence that the bonding study is no longer necessary or appropriate for legitimate reasons other than DHHS not being able to comply with the court's order.

S.T. v. Superior Court (8/28/09)
177 Cal. App. 4th 1009, 99 Cal. Rptr. 3d 412
Second Appellate District, Division One

Issue:

Does the trial court have discretion to continue reunification services at a 366.21(e) review where the court cannot find the parent has complied with the requirements of 366.21(g)(A-C). (Maintained regular and consistent contact; made substantial progress in completing the case plan; and, demonstrated the capacity and ability to complete the case plan and provide for the children.)

Facts:

Child was born with methamphetamine in her system. Both parents were incarcerated. The petition was adjudicated and father was provided with reunification services. Due to the age of the child, no visits were ordered for father while incarcerated and monitored when released. The child was placed with the paternal grandparents.

While in local custody, father wrote to the social worker advising that he was only allowed to attend NA meetings but was willing to do anything to comply with the case plan. Father was transferred to state prison and the social worker was informed by the prison counselor that none of the court ordered services were available.

At the 366.21(e) hearing, the agency recommended continued reunification services. The court found that father had not met any of the three criteria set forth in 366.21(g), terminated reunification, finding that it did not have discretion to extend reunification under those circumstances. A 366.26 permanency planning hearing was set.

Father appealed and the agency did not oppose the extension of services.

Holding: Reversed.

The Court of Appeal found that the trial court abused its discretion in terminating reunification. 36621(e) states that if the court finds that the parent has not made substantial progress in the case plan, the court *may set* a 366.26 hearing. Pursuant to M.V. v. S.C. (167 Cal App.4th 166) the court is not required to set the 366.26. If the court does not set the permanency hearing, the court shall direct that any services previously ordered *shall* continue. Failure of the court to excercise its discretion was error.

In this case, the court noted that the mitigating factors for discretion included: the 1/1/09 amendments set forth in AB 2070 regarding the obligation of the court and agency to identify the barriers to reunification of incarcerated parents; the fact that father was willing to comply; his imminent release date; the fact that the child was with relatives; and, that the agency was not opposed.

S. W. v. Superior Court (5/15/09)
174 Cal. App. 4th 277; 94 Cal. Rptr. 3d 49
Fourth Appellate District, Division Three

Issue:

WIC 366.21e, allowing the Court to terminate reunification services at a 6-month review hearing if the parent fails to contact and visit the child, requires that a parent both visit and have contact.

Facts:

The father moved out of state. After disposition, the father spoke to the child on the telephone once and left one phone message. The social worker repeatedly called the father, left a message, and the father never called back. At the 6 month review hearing, the Court terminated the father's reunification services and set a selection and implementation hearing. The father filed a writ, contending that either contact or visitation would be sufficient for further FR, and citing Rule of Court 5.710.

Holding:

Writ denied. 366.21e allows the Court to set a 26 hearing if the parent has failed to contact and visit the child. Since the parent must both contact and visit the child to receive additional services, the failure to either contact or visit the child allows the Court to terminate services. Rule of Court 5.710 is inconsistent with statue insofar as it deletes the visitation requirement. Even if contact alone were enough, one telephone conversation in six months is not substantial contact; contact that is casual, chance or nominal is not enough to warrant further FR. Extenuating circumstances might be just cause for further FR, but the father voluntarily moving out of state doesn't qualify.

In re T.M. (7/20/2009)
147 Cal. App. 4th 1166; 96 Cal. Rptr. 3d 774
Third Appellate District

Issue

Can the court terminate a parent's parental rights if no reunification services was offered to that parent pursuant to WIC§ 361.5(b)(1)?

Facts

The baby was detained from the mother's custody in 8/07 when the mother was placed on a psychiatric hold. At the jurisdictional hearing, the mother's whereabouts were unknown and so no reunification services were offered to her pursuant to WIC 361.5(b)(1). The court set a six month review hearing. Over the next several months, the social worker was apprised of sightings of the mother. In November the social worker found the mother in a locked psychiatric facility. A conservator had been appointed. The social worker did not develop a case plan with the mother because the worker felt that the mother was being provided all the necessary services at her facility. The mother's counselor at the facility said that mother had made no progress in treatment since she had refused to participate and address her treatment goals. The mother's conservator told the social worker that the mother had been diagnosed with a psychotic disorder and that visitation with the minor would not be constructive and appellant's anger issues might make visits harmful for the minor. . The social worker never informed the court that the mother had been located until the six month review hearing. At the six month hearing, the court set a 366.26 hearing over mother's attorney's objection. The court terminated mother's parental rights at the 366.26 hearing. This appeal ensued.

Holding

The appellate court held that the trial court could not terminate mother's parental rights at the 366.26 hearing because mother had never been offered reunification services pursuant to WIC 361.5(b)(1). The appellate court held that "because the court neither terminated services, after finding reasonable services had been provided, nor denied them pursuant to a subdivision of section 361.5 which would permit termination of parental rights, it should have limited the scope of the section 366.26 hearing to consideration of only guardianship or long term foster care."

The appellate court found that when the Legislature in 1991 deleted that provision of section 366.22 and added subdivision (c)(2)(A) to section 366.26, which barred termination of parental rights, but not other permanent plans, when reasonable efforts were not made or reasonable services were not offered. (Stats. 1991, ch. 820, § 5, p. 3648.) Section 361.5, which permits denial of services under subdivisions (b) and (e), states that "[i]f the court, pursuant to paragraph (2), (3), (4), (5), (6), (7), (8), (9), (10), (11), (12), (13), (14), or (15) of subdivision (b) or paragraph (1) of subdivision (e), does not order reunification services, it shall … determine if a hearing under Section 366.26 shall be set in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the child … ." (§ 361.5, subd. (f).) This subdivision of section 361.5 has not significantly changed (see Stats. 1990, ch. 1530, § 6, p. 7176) since before subdivision (c)(2)(A) was added to section 366.26, and the Legislature is presumed to have been aware of it when amending section 366.26, subdivision (c)(2)(A). However, section 361.5, subdivision (b)(1), the basis for the denial of services to appellant, is not listed in section 361.5, subdivision (f) as one of the circumstances which can directly lead to setting a section 366.26 hearing at which adoption may be considered.

In re T. S. ,(7/14/09)
175 Cal. App. 4th 1031, 96 Cal. Rptr. 3d 706
Third Appellate District

Issue:

Is the court obligated to adopt the permanent plan identified by the tribe?

Facts:

The dependency petition alleged substance abuse by the minor's parents. The minor's mother had Indian heritage. Her tribe informed the juvenile court that the minor was an Indian child and that the tribe was appearing in the proceedings. The allegations in the petition were sustained. The father declined to participate in further reunification services. The tribe indicated that it wanted the minor placed in a guardianship with maternal cousins. The cousins had criminal histories, however, and placement with them was not approved. An adoptive placement was identified in which one of the parents was a member of the tribe.

Holding:

The court held that the juvenile court did not abuse its discretion when it declined to apply an exception to adoption under Welf. & Inst. Code, § 366.26, subd. (c)(1)(B)(vi)(II). ***Although the minor's tribe had identified guardianship as the permanent plan for the minor, the juvenile court was not obligated to adopt the permanent plan designated by the tribe without conducting an independent assessment of detriment. Because there were no appropriate family or tribal members who were willing to assume guardianship of the minor, the juvenile court did not err.***

OUTCOME: The court affirmed the order terminating parental rights.

In re Y.G.(6/23/2009)
175 Cal. App. 4th 109, 95 Cal. Rptr. 3d 532
Second Appellate District, Division Four

ISSUE:

Whether the statutory language of WIC 300, subdivision (b) permits the juvenile court to consider a parent's misconduct with an unrelated child in determining a substantial risk of serious physical harm by the parent to their own child.

FACTS;

Jocelyn G. a child of 18 months was under the care of Y.G.'s grandmother. Mother and Y.G. were at the grandmother's home on the day Jocelyn G. was injured. Y.G. and Jocelyn G. were approximately the same age. Jocelyn G. sustained significant swelling and bruising to her face and head. Jocelyn G's mother took her to the hospital, photos clearly showed a hand print on her face. Police were called when it was determined she was a victim of physical abuse.

Mother and grandmother of Y.G. gave false explanations for the injuries. After failing a lie detector test mother admitted to hitting Jocelyn in the face because she would not stop crying. Mother later recanted her confession saying she made the statements because of police threats to take Y.G.

At the jurisdictional hearing, the Police detective and the CSW testified as to mother's inconsistent statements. The police detective also denied any threats were made. The court explicitly found the mother not credible. The court rejected mother's contention that it could not consider her misconduct in determining whether it should sustain the petition. This contention was brought up at Detention and during the Jurisdictional hearing by an oral motion to dismiss the petition . The court asked mother's counsel if they had any authority on this issue. They did not and the court took the matter under submission to do its own research. The next day the court, after a hearing, sustained the (b).

HOLDING:

A. **Mother did not need to file a demurrer to raise the same points that were raised orally.** By raising the contention at Detention & Jurisdiction, the record had been preserved for appellate review.

B. Subdivision (B) permits consideration of a parent's actions with an unrelated child. The appellate court looked to the legislative intent under 355.1(b) which provides that evidence of a parent's misconduct with another child is admissible at a hearing under WIC 300. "This provision is consistent with the principle that a parent's past conduct may be probative of current conditions if there is reason to believe that the conduct will continue. "
Factors that the court can consider, in making a determination of substantial risk: when the conduct occurred, whether the unrelated child is of the same age as the child in the petition, and the reason for the misconduct.

In re Z.C. (10/02/09)
178 Cal. App. 4th 1271
First Appellate District, Division Two

ISSUE:

Whether the court had the authority, pursuant to WIC 366.3(b), to order a county to provide reunification services to a legal guardian when deciding if it was in the best interests of the child to maintain the existing legal guardianship.

FACTS:

In 1992, Z.C. was removed from mother's custody just after birth and Z.G., maternal aunt, was appointed legal guardian pursuant to WIC 366.26. Eventually Z.C. developed behavior problems and in 2004 was placed in foster care. Her behavior improved and she was placed back with legal guardian under informal supervision.

In 2008, due to the child's behavioral problems and the legal guardian's poor health, Alameda County Social Services filed a WIC 387 petition seeking a more restrictive placement and recommended six months of reunification for the legal guardian. The child was detained. On November 6, 2008, the agency filed a WIC 388 petition, requesting the court to terminate the legal guardianship and that it would be in the best interests of the child to attempt to return the child to the home of the legal guardian with six months of services. A hearing was granted.

At the hearing, the agency argued that reunification services should be limited to six months. Moreover, the agency argued that the court had no authority to order the agency to provide services to the legal guardian, that the court could only recommend to the agency to provide services. Therefore, the agency had the discretion to provide services and also had the discretion when to terminate them. Z.C. and Z.G. contended that reunifications services to the legal guardian under WIC 366.3 were not subject to a time limit of six months. The court found that WIC 366.3 did not contain a maximum length of time that services should be offered to maintain a legal guardianship but rather, the length of time should be in the best interests of the child. The court dismissed the WIC 388 petition, sustained the WIC 387 allegations and ordered the agency to "provided services under WIC 366.3 in the best interests of the minor."

HOLDING:

Under the plain meaning of the statute WIC 366.3(b) when considered within the context of juvenile dependency law, WIC 366.3(b) provides the juvenile court with the power to order the social services agency to provide reunification services to a legal guardian when deciding whether it is in the best interests of the child to maintain the existing legal guardianship.

The court observed that the dependency scheme presumptively favors guardianship over long-term foster care. The court opined that requiring the dependency court under WIC366.3(b) to consider the county's report regarding the necessity of reunification services to maintain the legal guardianship without providing it with the concomitant power to order reunification services would result in an absurdity

Further, the court concluded that the dependency court did not violate the separation of powers doctrine when it ordered the county to provide reunification services to the legal guardian.

THURSDAY – JUNE 3, 2010

11:00 am – 12:15 **Workshop Session II**

II.H.

target audience:
attorneys
CASAs
judicial officers
probation officers
social workers

Juvenile Collaborative Courts: Special Courts or a Model for All Juvenile Courts?
Do the juvenile collaborative courts personify the original intent of the juvenile courts to treat youth differently than adults and to implement an informal, non-adversarial, flexible, service-based approach to each case? Should we return to this model for all juvenile courts? Explore the history of the juvenile court and the evolution into juvenile collaborative courts, with special focus on specific courts including: juvenile mental health, juvenile drug, and other juvenile collaborative courts.

Learning Objectives:

- Analyze the genesis of juvenile delinquency court.
- Describe specific juvenile collaborative courts with special attention to what makes them successful.
- Discuss from a philosophical as well as a practical standpoint a model juvenile court.

Faculty:

- **Hon. Kurt Kumli**
  Supervising Judge, Superior Court of Santa Clara County
- **Hon. Linda McFadden**
  Judge, Superior Court of Stanislaus County
- **Hon. Lynn Duryee**
  Judge, Superior Court of Marin County
- **Hon. Paul Seeman**
  Judge, Superior Court of Alameda County

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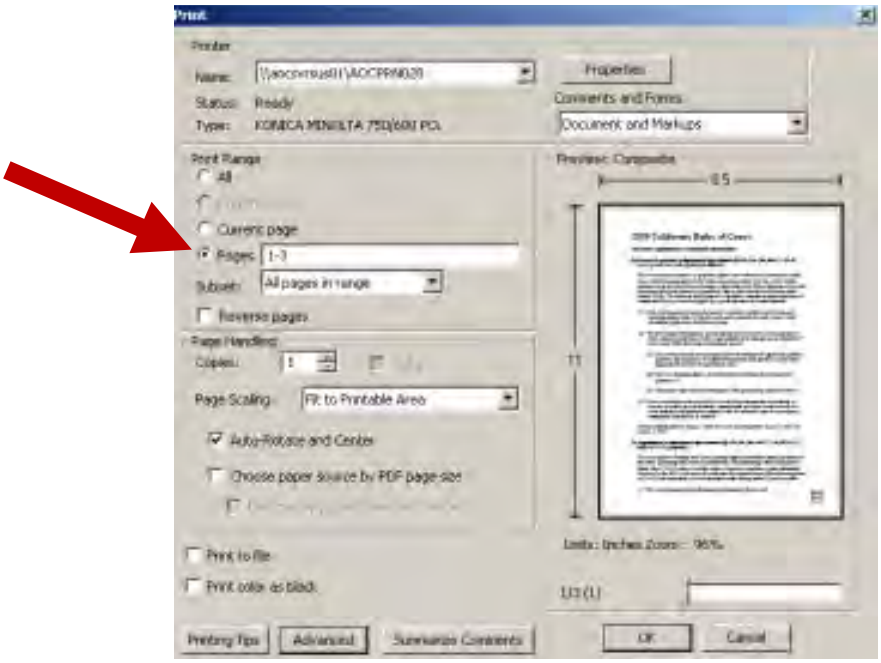

Collaborative Court Process

Policy Group	= Representatives of all institutional stakeholders: Court, Probation, Behavioral Mental Health, District Attorney, Public Defender, Bar Association, Social Services, Civil Advocates, Service Providers, and others.
Working Group	= Individual team members: designated bench officer, probation officer, BMHCS case manager, civil advocacy coordinator and providers, social services representative, clinicians and other service providers as necessary
Individual Multi-Disciplinary Team	= Interested members of Working Group, parents, minors, specific service providers

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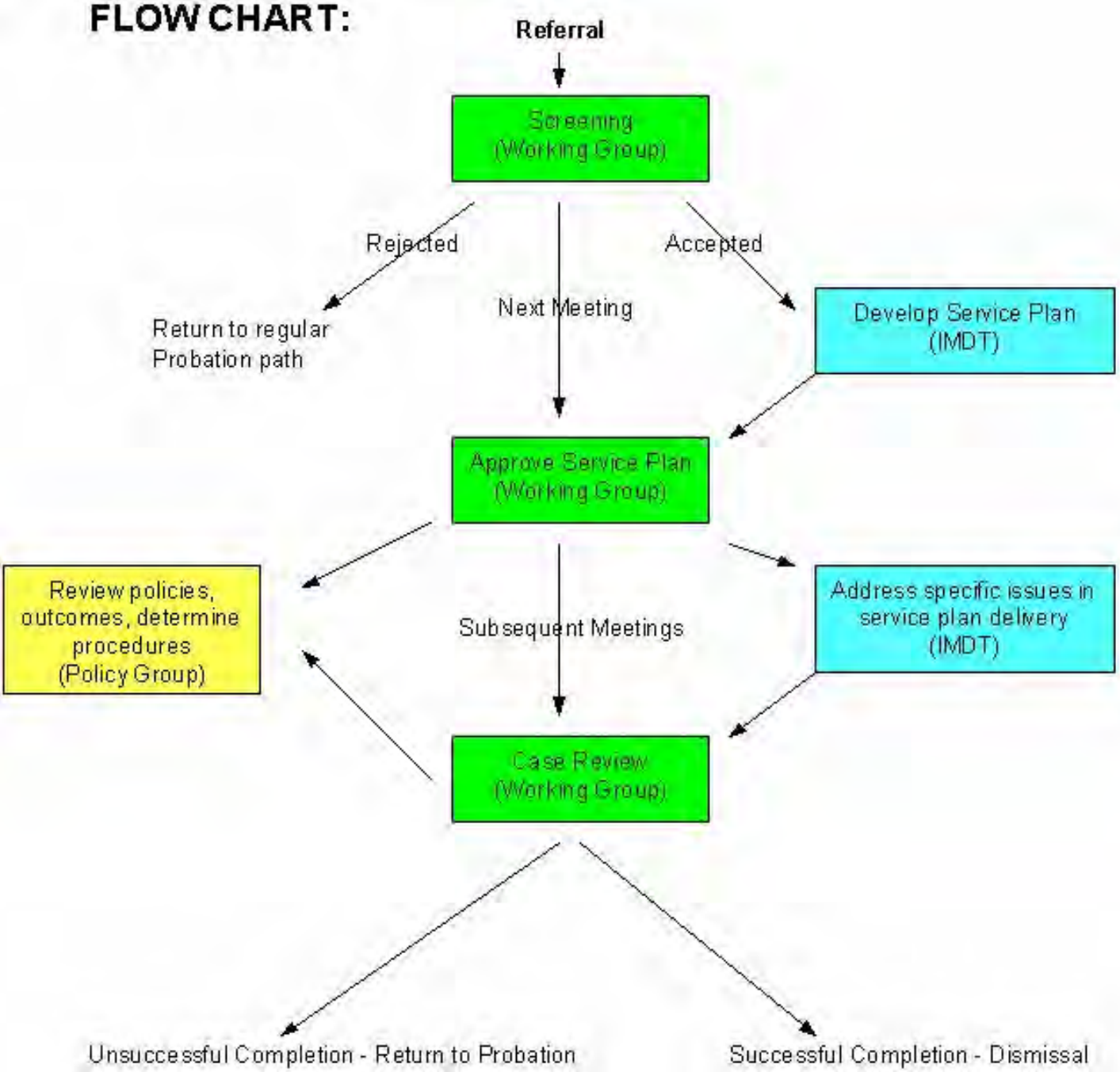


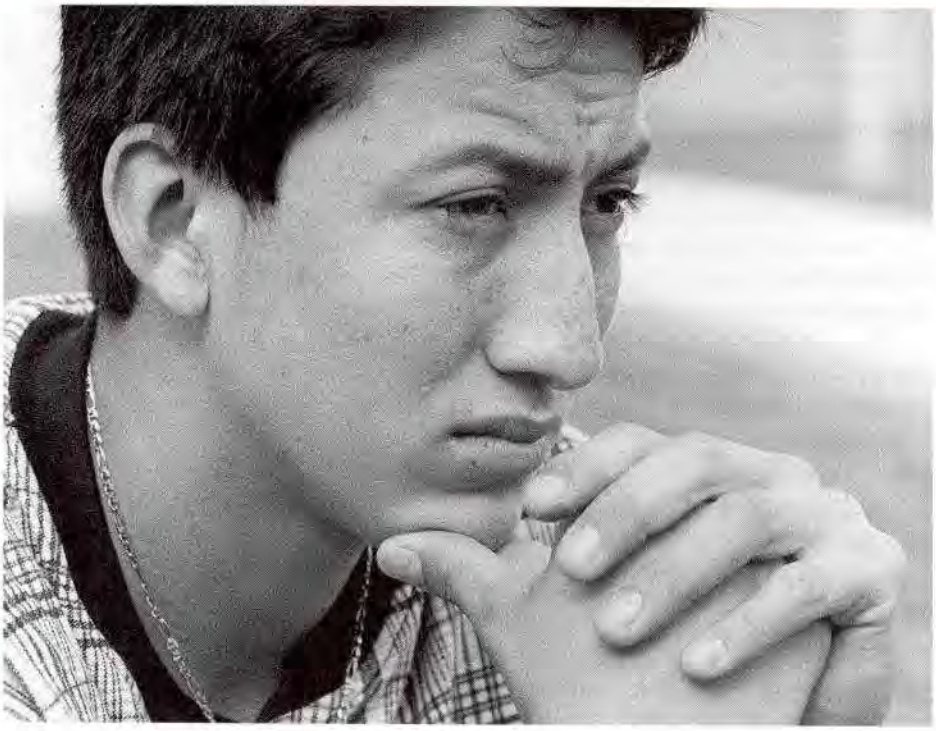
Youth Law News

Journal of the National Center for Youth Law

N C Y L

Vol.XXIX No.1

JAN-MAR
2008



Harry Cutting

A newly established juvenile mental health court in Alameda County, California, plans to divert many mentally ill youth from detention to treatment.

Hope for Mentally Ill Youth
in Alameda County Juvenile Justice System

by Demoya Gordon, Catherine Wollard, Edward Opton, and Patrick Gardner

On any given day, more than 100,000 minors are held in detention facilities across the United States,[1] many thousands of them with unmet mental health needs.[2] The juvenile justice system is ill-equipped to meet the needs of these youth. Unfortunately, this leads to youth languishing in detention centers without treatment, and with little hope of getting better or returning home.

In an effort to better serve these youth, Alameda County, California established the Alameda County Juvenile Collaborative Court (ACJC) in 2007. The ACJC, one of approximately 15 juvenile mental health courts nationwide, is an effort to "enable youth to remain safely in their homes, succeed in school, avoid continued involvement with the delinquency system, and make a successful transition to adulthood."[3] The ACJC's goal is to "divert mentally ill youth from detention by providing them with better access to the mental health services and community support" they need in order to safely return to their homes and communities.[4] (Continued on page 3)

1. Melissa Sickmund, *Juveniles in Corrections*, Nat'l Report Series Bull. (U.S. Dep't of Justice), June 2004, at 3, http://www.ncjrs.gov/pdffiles/ojjdp/202885.pdf

2. Thomas Grisso, Why we need mental health screening and assessment in juvenile justice programs, in T. Grisso, et al. (eds.), *Mental Health Screening and Assessment in Juvenile Justice* (New York: Guilford Press, 2005), p. 7; United States House of Representatives Committee on Government Reform, *Incarceration of Youth Who Are Waiting for Community Mental Health Services in the United States*, at 2 (2004).

3. *Alameda County Collaborative Juvenile Court Protocol* (hereinafter *ACJC Protocol*), at 2. On file with Patrick Gardner at the National Center for Youth Law. The Court for the Individualized Treatment of Adolescents (CITA) in Santa Clara County, California served as a model for the ACJC. As such, much of the language contained in the ACJC Protocol, and in the sections of this article describing the philosophy and operation of the ACJC, mirrors the description of the CITA court in David E. Arredondo et al., *Juvenile Mental Health Court: Rationale and Protocols*, Juv. & Fam. Ct. J., Fall 2001.

4. *ACJC Protocol*, *supra* note 3, at 1.

Hope for Mentally Ill Youth in Alameda County Juvenile Justice System

by Demoya Gordon, Catherine Wollard, Edward Opton, and Patrick Gardner (Continued from page 1)

Mental Illness in the Juvenile Detention Population

A majority of the tens of thousands of minors residing in juvenile detention and correctional facilities nationwide have at least one diagnosable mental disorder.[5] Mentally ill youth often enter the juvenile justice system because of behaviors caused by their mental illness. Key risk factors include "low caregiver involvement, maltreatment by family members, and poor school performance."[6] These stressors are often aggravated by a lack of economic resources and an inability to access adequate mental health treatment.[7]

National and Statewide Problem

The sheer number of detained youth with serious unmet mental health needs has overwhelmed the juvenile justice system. In many jurisdictions, court and probation staff cannot adequately screen or identify youth with mental illnesses, much less offer appropriate treatment. Instead, detained youth with unrecognized or untreated mental illness may languish in detention centers for months at a time waiting for proper assessment. The Congressional Committee on Government Reform in 2004 found that two-thirds of juvenile detention facilities hold youth unnecessarily due to a lack of available mental health treatment(s).[8] On average, these youth are jailed longer than the general population of juvenile detainees.[9] Many of these youth are held for minor offenses that ordinarily would not result in long-term detention.

Local Problem: Alameda County

In 2004, a study of 111 minors in Alameda County's Juvenile Hall revealed that more than 60 percent of those detained had been previously diagnosed with a psychiatric

5. Kathleen R. Skowyra & Joseph J. Cocozza, *Blueprint for Change: A Comprehensive Model for the Identification and Treatment of Youth with Mental Health Needs in Contact with the Juvenile Justice System* (Nat'l Ctr. for Mental Health & Juvenile Justice, Delmar, N.Y.), June 2006, at 128, http://www.ncmhjj.com/Blueprint/pdfs/Blueprint.pdf.; see fn.2, *supra*.

6. Kahn, Barbara et. al., *Making the Connection: Legal Advocacy and Mental Health Services*, 45 Fam. Ct. Rev. 486, at 488 (2007), referencing Serious and Violent Juvenile Offenders: Risk Factors and Successful Interventions 407 (Rolf Loeber & David P. Farrington eds. 1998).

7. Goldkamp, J.S., & Irons-Guynn, C. (April, 2000). Emerging judicial strategies for the mentally ill in the criminal caseload: Mental health courts in Fort Lauderdale, Seattle, San Bernardino, and Anchorage. U.S. Justice Department, Office of Justice Programs, Bureau of Justice Assistance, NCJ182504.

8. Cocozza et al., GAINS TAPA Center Easy Access Net/Teleconference: Diverting Youth with Mental Health Needs from the Juvenile Justice System: Critical Issues and Model Approaches. Slide 8.

9. U.S. House of Representatives Comm. on Gov't Reform, *supra* note 2, at 9.

10. Huskey & Associates, Inc., *Alameda County, California Comprehensive Study of the Juvenile Justice System* 5.42 (Huskey & Associates, Inc.) (2004).

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disorder.[10] The minors examined comprised only 45 percent of the total population at Juvenile Hall, leaving many instances of disorders possibly unreported.[11] Of those minors with a previous diagnosis, more than 42 percent of them were diagnosed with two or more psychiatric disorders.[12] In addition, a self-reported survey of 109 of the youth in Juvenile Hall showed that 79.8 percent of them had used illegal drugs prior to being placed in Juvenile Hall.[13] Although four out of five detainees may struggle with drug abuse and dependency, minors do not receive substance abuse treatment in the hall or upon their release.[14]

Alameda County's experience is typical. For youth, as for adults, incarceration is the substitute for an adequate public mental health system. Considering the high percentage of youth detained in Alameda County who have psychiatric disorders, it is likely that many of them find themselves on the wrong side of the law as a result, at least in part, of their unmet mental health needs.

Addressing the Problem: The Alameda County Juvenile Collaborative Court

In 2007, under the leadership of Commissioner Paul D. Seeman and Presiding Juvenile Judge Gail Bereola, Alameda County established the Alameda Collaborative

11. *Id.*
12. *Id.* at 5.43.
13. *Id.* at 5.46.
14. *Id.* at 6.11.

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The goal of the Alameda County Juvenile Collaborative Court is to divert mentally ill youth from detention by providing them with better access to services and community support, so they can return home.

Juvenile Court (ACJC). The ACJC's intent is to avoid criminalizing youth who have become involved in the juvenile justice system primarily because of their mental illnesses. It is believed that both the troubled youth and the community will benefit when youth remain in their homes and communities, avoid continued contact with the delinquency system, and transition successfully into adulthood.[15] As a collaborative court, the ACJC seeks to improve coordination between the juvenile justice and mental health systems so that juveniles with serious mental health needs get the treatment they need to keep them out of trouble with the law.[16]

Program Goals

The ACJC attempts to place mentally ill minors with their families or in the most family-like, least-restrictive, practical alternative. The assumption is not that the youths' families are ideal—many are far from it—but that restrictive, congregate care alternatives are almost always worse. The ACJC works through a Multi-Disciplinary Team structure to reach a common understanding of how the best interests of the child with mental illness, his or her family, victims, and the community might be served.[17]

Program Participants

Candidates for the program are minors charged with a criminal offense and suffering from a mental illness, disorder, or problem. These afflictions include depression, bipolar disorder, schizophrenia, severe anxiety disorders, and attention deficit hyperactivity disorder (ADHD), as well as developmental disabilities like mental retardation, and autism spectrum disorders. Sexual offenders with serious mental illness also are eligible. Youth with "conduct disorder" or "oppositional defiant disorder," diagnoses are not eligible. Minors charged with murder, robbery or other serious crimes of violence are, with few exceptions, excluded from the court.[18]

The Collaborative Court Team

The Court's Multi-Disciplinary Team (MDT) consists of the Commissioner, representatives from Behavioral Health Care Services, Probation, the Office of the District Attorney, the Office of the Public Defender, Social Services, Bay Area Legal Aid, and the National Center for Youth Law.

The collaborative court works by consensus. Youth referred to the court are evaluated by a deputy district attorney, who places particular emphasis on whether they meet offense criteria. Behavioral Health Care staff prepare a mental health report for each youth, focusing on whether the youth's strengths and needs are a good match for the collaborative court. A deputy public defender, in consultation with the youth and his family, determines whether participation in the court is in the minor's interest, and makes a recommendation to the client accordingly. Then, the MDT determines whether to accept the child into the court.

When a youth is accepted into the court, a hearing date is set—usually within two weeks—and the MDT begins to fashion a treatment plan, called an Individualized Service Plan. Probation staff share responsibility for intensive case management, a critical part of which involves linking youth to appropriate mental health services and supports. The Commissioner presides over the MDT and supervises overall progress of the participants.

Civil Advocates

An important feature of the ACJC is its civil advocacy component. Once a minor is accepted into the court, a civil advocate conducts an intake interview with the family and reviews available records to assess civil legal needs. These needs may involve education, housing, Regional Center services,[19] and a range of other government benefits such as CalWorks, Medi-Cal, and Supplementary Security Income (SSI). The civil advocate provides advice and counsel, brief service, or full representation.

Civil advocates are key to the success of the program. Civil advocates substantially increase the array of resources available to juveniles involved with the court – resources that are often unknown to prosecutors, public defenders, probation officers and others involved with the juvenile court. Civil advocates also increase the likelihood of diversion from the juvenile justice system because services and resources accessible through civil advocacy are not dependent on the continuing jurisdiction of the juvenile court.

Individualized Service Plans

The MDT collaborates on the design of each participant's treatment plan, emphasizing the youth's individual

15. *ACJC Protocol*, *supra* note 3, at 2.

16. *Id.*

17. *ACJC Protocol*, *supra* note 3, at 2.

18. *Id.* The charges that result in exclusion are listed at section 707(b) of the California Penal Code.

19. California has a network of "regional centers" that are responsible for services to persons who are developmentally disabled or brain injured.

strengths and needs. A plan may include psychiatric and psychological evaluations; medication evaluation, monitoring and support; individual, group, or family counseling; intensive home-based services such as Therapeutic Behavioral Services; emergency services and crisis intervention; links to educational services, including special education services and the development of Individualized Education Plans; access to vocational/employment services; mentoring programs; services for transition-aged youth; and assistance with accessing government benefits or entitlements.[20]

The planning process focuses on individually tailored services, family participation, and collaboration among the ACJC partners. The Plan is approved by the team members, the minor, and his or her parents or guardian.[21]

Court Appearances

Each youth appears in court periodically, at intervals of 15 to 90 days, according to the MDT's assessment of the minor's needs. This allows the judicial officer and the team to commend youth who are doing well and to urge greater efforts by those who are not.
The youth's individualized program may be changed at these periodic sessions to account for changed circumstances. The main subjects of discussion are the youth's living arrangements, school work, vocational or work preparation, and progress in controlling behavior and coping with crises.

Completion of Program

The ACJC assumes that mental illness does not preclude successful completion of the program.[22] Many youth will face a lifetime of mental challenges, with periods of stability punctuated by episodes of crisis.

Program completion occurs when the juvenile's behavior has improved and his or her living situation is stable.[23] The goal is to put in place community supports that can sustain the family after intense case management ends.

Program termination and reversion to the regular probation/detention system may occur if the juvenile commits a new crime (not simply a probation violation), consistently fails to follow court orders or the treatment plan, or if the minor or the parent/guardian voluntarily withdraws from the program.[24]

Defining and Evaluating Program Success

Although the number of mental health courts in North America has risen dramatically in recent years, evaluations of these courts are lagging.[25] A key to evaluating any program's success is defining success itself. Given the flexible and individualized approach of the ACJC, defining its success is no simple task. The ACJC's benchmarks for success include ensuring that mentally ill youth have better access to mental health services, are connected to appropriate educational and vocational services, remain in their homes and communities, spend reduced amounts of time in detention facilities, and exit the juvenile justice system without endangering public safety.[26]

Results so far are encouraging. In the last six months, 11 of the 13 youth who entered Alameda's collaborative court with out-of-home placement orders now live at home. It is a modest beginning, but promising. Because the ACJC is one of the first juvenile mental health courts in the United States, evaluation and analysis of its accomplishments may prove valuable for planning future juvenile mental health courts across the country.

Conclusion

Untreated, seriously mentally ill youth nationwide may be headed for a lifetime of failure, including never graduating high school or getting a job and/or ending up homeless or incarcerated. Alameda County's Juvenile Collaborative Court is an innovative initiative designed to link mentally ill youth with mental health, social, educational, and civil legal services that in combination can steer these youth away from continued involvement with the juvenile justice system. Through collaborative efforts, the ACJC addresses, in an individualized manner, the underlying psychological, developmental, and social needs that contribute to juvenile offending. If successful, the ACJC will not only lead to a more cost effective system for the county, but also to a brighter outlook and better outcome for youth with serious mental illness in Alameda County.

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20. *ACJC Protocol*, *supra* note 3, at 2.
21. *Id.* at 6.
22. *Id.*
23. *Id.* at 8.
24. *Id.*
25. Richard D. Schneider, Hy Bloom & Mark Heerema, Mental Health Courts at 182 (2007).
26. *ACJC Protocol*, *supra* note 3, at 2.

Reduction in Recidivism in a Juvenile Mental Health Court: A Pre- and Post-Treatment Outcome Study

By Monic P. Behnken, David E. Arredondo, and Wendy L. Packman

ABSTRACT

A review of an evaluation of the Court for the Individualized Treatment of Adolescents (a prototype Juvenile Mental Health Court in Santa Clara, California) is presented along with admission criteria. Participant demographics are described. McNemar Test and Paired T Test results show that study participants committed violent, aggressive, and property crimes in significantly lower numbers in the 23 months following court admission than in the 18 months preceding court admission, despite escalating patterns of antisocial behavior prior to court involvement. The importance of developing multidisciplinary models to address moderately severe offenders with serious mental illness is discussed.

INTRODUCTION

Virtually all juvenile and family court judges struggle with the issue of what to do with mentally ill juvenile offenders. Some have observed that the juvenile justice system has become a "dumping ground" for many emotionally disturbed youths with behavior

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problems.[1] In a survey conducted by Arredondo (2002), 86% of juvenile and family court judges agreed that "mentally ill juveniles were being shunted into the delinquency system," and 70% of these judges believed that 15% or more of accused delinquents were "mildly or moderately mentally retarded." But it is not only judges who struggle with this issue. Probationary staff, clinicians, social service providers, district attorneys, and others also report dissatisfaction with the traditional adjudication system and complain of the mismatch between the mentally ill juvenile offender and available resources.

Although the need is undeniably great, no federal statistics exist specifically regarding mentally ill juvenile offenders in custody. Diagnostic ambiguity makes it hard to find consensus about prevalence rates of mental illness in this population (Cocozza & Skowyra, 2000). Available data suggest that serious biologically based and genetically transmitted mental illness afflicts approximately 20%-25% of the juvenile offender population (Arredondo et al., 2001; Grisso, 2004). Disorders in this population are so severe that the illness significantly impairs home, school, or interpersonal functioning (Teplin, Abram, McClelland, Dulcan, & Mericle, 2002). The rates of less dramatic but sometimes equally debilitating illnesses (including post traumatic stress reactions) are considerably higher in these offenders than in non-offending teens, especially in girls (Arredondo, 2002; Steiner & Cauffman, 1998). The prevalence of mild to moderate mental retardation is unknown, but in the experience of specialized courts, is high. Researchers agree that the rate of mental illness seen in the juvenile offender population is at least double that of the general adolescent population, and is likely to be considerably higher (Cocozza & Skowyra, 2000).

The extraordinarily high co-occurrence of juvenile offending and serious mental illness suggested a need for new approaches to treating mentally disordered offenders. The presence of a serious mental disability has a direct bearing on appropriate sanctions (e.g., detention is contraindicated during depressive psychosis), the appropriate use of juvenile beds, and the development of treatment alternatives. Indeed, 77% of surveyed juvenile and family court judges said that with better treatment options, they could reduce detention rates for offenders. These primarily community-based options would strengthen the family, bolster educational performance and vocational preparedness, and address accountability and victim restitution (Arredondo, 2002).

The detention of juveniles with a serious mental disability also raises important issues about humaneness toward children. From a medical point of view, detention of a juvenile with serious mental illness may be a violation of a fundamental ethical precept, *primum non nocere*—first, do no harm. Furthermore, in *Roper v. Simmons* (2005), the U.S. Supreme Court held that because of evolving standards of decency, laws permitting execution of murderers who committed their crimes before turning 18 constituted cruel and unusual punishment in violation of the Eighth Amendment. The Supreme Court's acknowledgment that evolving standards of decency should affect the treatment of

1 *E.g.*, National Center for Juvenile Justice., *Desktop Guide to Good Juvenile Probation Practice* (2002) (noting that "many observers also feel that, for fiscal and other reasons, the juvenile justice system has become a kind of dumping ground for emotionally disturbed juveniles who have nowhere else to go," p. 113); Cocozza & Skowyra (2000); Redding (2001); Fox Butterfield. (Dec. 5, 2000). Concern rising over use of juvenile prisons to "warehouse" the mentally ill. *The New York Times*, at A16.

juvenile offenders may signal a greater societal willingness to treat juvenile offenders differently. It could be argued that mental health courts are an example of the evolution of policy toward more contemporary standards of decency. Juvenile Mental Health Courts are part of a bigger movement toward therapeutic jurisprudence in America. Like other types of specialized courts created under therapeutic jurisprudence principles, mental health courts provide a nonadversarial forum that uses a problem-solving, treatment-focused approach when adjudicating defendants (Wexler & Winick, 1991).

BACKGROUND OF THE COURT FOR THE INDIVIDUALIZED TREATMENT OF ADOLESCENTS (CITA)

Formation and Structure

In 2001, a multidisciplinary, collaborative, problem-solving Juvenile Mental Health Court (JMHC) was piloted in Santa Clara County, California. This court was conceived and designed to utilize a multidisciplinary team model to draw attention to the needs of developing children and to address the lack of available resources for high frequency, medium-level offending by seriously mentally ill juveniles.[2] The first of its kind in the nation, it was called the Court for the Individualized Treatment of Adolescents (CITA). The court was named as such in part to avoid the unwanted stigma that could come from being associated with a program simply called a Mental Health Court (the vast majority of adolescents prefer to be perceived as "bad" rather than "mad").

Santa Clara County officials designed CITA to be more of an offender-based, rather than an offense-based, court that crafts juvenile sanctions by considering the offender's mental health, developmental stage, emotional needs, and community safety (Arredondo, 2003). They built CITA around the "Children's System of Care Core Values," which promote a child-centered and family-focused approach to treatment. The court functions on the premise that early and appropriate intervention allows mentally disordered juvenile offenders to receive humane and appropriate treatment. This approach strives to utilize culturally competent, community-based services when possible. The CITA approach also aims to involve caregivers in treatment, arrange a comprehensive array of integrated and coordinated services, and offer early identification of mental illness and intervention services while protecting the child's rights. The court furnishes services regardless of race, religion, nationality, sex, or disability.

The founders of the CITA approach hoped that this type of collaborative multidisciplinary intervention would: first, foster improved relationships between the legal and mental health systems; second, improve the delivery of care to juvenile offenders by educating the judiciary, probation, and juvenile hall staff about mental illness, safety planning, and issues concerning risk of suicide; third, reduce recidivism rates in the juvenile justice system; fourth, provide a more efficient use of limited resources; fifth,

2 This court was developed through the reallocation of existing resources. Since then, various state and federal funding streams have evolved to provide resources to similar initiatives across the country.

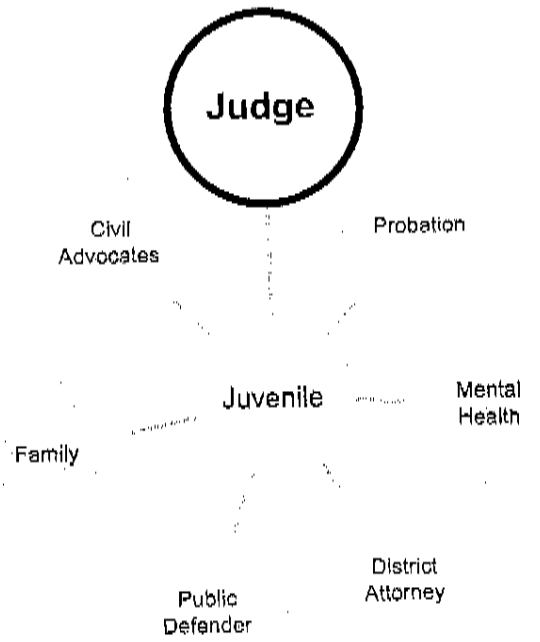


FIGURE 1. Simplified Schematic of the Multi-Disciplinary Team (MDT)

accelerate caseload processing through the cooperative efforts of all parties; sixth, educate mental health workers about forensic constraints; and last, educate families about mental illness and available resources.

Stated more concretely, the goals of CITA are: 1) increased public safety; 2) decreased recidivism; 3) increased humaneness; 4) increased treatment engagement; 5) more effective connection with community resources; 6) more effective use of existing resources; 7) lowering long-term costs created by the revolving door syndrome; and 8) directing attention to the treatment of the mentally ill juvenile offender with an individually tailored, collaborative problem-solving approach.

In the CITA approach, the juvenile is at the center of a collaborative effort among the judge, legal counsel, county organizations, civil advocates, and family members, although the judge maintains the role of lead decision maker (See Figure 1). Under the CITA approach, all parties work together to help the juvenile navigate the justice system (Behnken, 2008).

Specifically Defined Professional Roles

Arredondo et al. (2001) discussed the importance of the specifically defined roles of professionals within the CITA approach. These clear divisions ensure accountability and prevent confusion among participating departments. Each juvenile is assigned to a

Multi-Disciplinary Team ("MDT"). Various professionals from Santa Clara County's Department of Mental Health, Probation Department, Office of the District Attorney, Office of the Public Defender, and civil advocates comprise the MDT. The MDT confronts issues of jargon, different departmental goals, and differing definitions of "success" to ultimately formulate a specific individually tailored treatment plan that meets that child's needs, and then makes treatment and intervention recommendations to the court.

The mental health coordinator's role in the MDT is to present mental health assessment findings to the team in a clear and understandable manner. The assessment findings include psychological, behavioral, social, familial, and educational information. The mental health coordinator is responsible for handling all mental health aspects of the juvenile's treatment to ensure the coordination of services, medication, treatment planning, educational assistance, and movement of the juvenile through the court process (Arredondo et al., 2001).

The probation department is responsible for implementing the directives of the court for the juvenile's specific treatment plan. The probation coordinator works therapeutically and proactively with the juvenile to ensure that the treatment plan criteria—including detailed mental health treatment recommendations—are maintained and the identified educational assistance is provided. Probation officers have the important job of communicating all of this information back to the MDT, which allows for modification of the plan in areas that are not implemented appropriately or working according to the treatment goals.

A District Attorney (DA) coordinator is provided by the DA's office to participate in the MDT. The DA coordinator is responsible for assessing the juvenile's criminal history and current conduct to determine his or her appropriateness for CITA with a focus on community safety. Members of the MDT meet to discuss all aspects of the juvenile's history to identify the child's needs to help modify his or her behavior. The DA coordinator agrees to allow information learned in the MDT meetings to remain confidential to accomplish this overarching goal. Any facts disclosed in an MDT session will not be used in court to affect the ultimate sanction. To achieve this, CITA utilizes specially assigned prosecutors who are sensitive to mental health issues and willing to work as a part of a multi-agency collaboration.

Private defense attorneys or representatives of the Office of the Public Defender also participate in the MDT. The defense coordinator's role is to advocate for a treatment plan in the child's best interest. As with the prosecutor, the assigned defense counsel will remain with the youth throughout the duration of CITA involvement.

Civil advocates participate in the MDT by using the law to improve the lives of impoverished or disadvantaged children. CITA's civil advocates are attorneys and legal professionals who provide civil legal services by working directly with families to help juveniles and parents pursue resources, support, and relevant opportunities needed for a healthy and productive future. These advocates help juveniles seek out available federal, state, and local entitlement payments to access needed services.

A Supetior Court Judge is assigned to the Juvenile Delinquency Mental Health Court calendar and handles a case from its initial appearance to final resolution. The judge's role is to consider the MDT's recommendations, adjust them as needed, and

implement the most pragmatically effective disposition of the case. Community safety, the juvenile's specific needs, and the principles of accountability are paramount in the judge's order (Arredondo et al., 2001).

Admission Criteria

To qualify for admission to CITA, the youth must be arrested in Santa Clara County and have a serious mental illness that contributed to the criminal activity (Arredondo et al., 2001). CITA protocols define a serious mental illness as: 1) a brain condition with a genetic component such as major depression, bipolar disorder, schizophrenia, severe anxiety disorders, and severe ADHD; 2) developmental disabilities such as pervasive developmental disorders, mental retardation, or autism; or 3) brain syndromes, including severe head injury. Unless complicated by a recognized condition, diagnoses of adjustment disorders, oppositional defiant disorder, conduct disorder, and personality disorders would not qualify for CITA. The juvenile must also be a ward of the court and not have committed certain serious or violent felonies after age 14.[3]

Staff from the Mental Health Department, Probation Department, Office of the Public Defender, or Office of the District Attorney may refer a juvenile to CITA. Court officers evaluate the juvenile to assess his or her level of psychological functioning. This evaluation most often includes a clinical interview, interviews with the caretaker and collateral sources, consultation with a psychiatrist, and a home visit. If the juvenile agrees to participate in CITA, he or she meets with the MDT to craft a treatment program which is then presented to the judge for adjudication based upon those recommendations.

Mental Health Treatments and Other Interventions

CITA utilizes a variety of treatments and interventions for juveniles involved in the court. Because each juvenile's mental health needs are unique, the interventions designed for them are individually tailored to meet their needs. During the MDT evaluation process, each juvenile undergoes a Needs Assessment to determine the type of services required to address mental health issues and increase chances of successful program completion. This assessment results in recommendations of various interventions such as anger management, parenting classes, victim awareness classes, domestic violence classes, job training, etc. Recommendations are also made for substance abuse interventions; medical evaluations (e.g., neurological, psychiatric and dental evaluations); school interventions (e.g., Individual Education Plans); and mental health services. The options for treatment settings range between outpatient clinics to locked facilities and include juvenile hall, residential facilities, group homes, intensive home services, wraparound services, and community-based services (Behnken, 2008).

3 These felonies are listed in the California Welfare and Institutions Code section 707(b) and include most violent crimes that would result in a prison term if committed by an adult such as murder, arson, robbery, rape, sodomy, kidnapping, etc.

In addition to encouragement from the judge and intensified support from the probation department, the mental health treatment provided to juveniles is a very important feature of CITA. The model stresses identifying, assessing, and treating mental illness. Emphasis is also put on maintaining treatment gains in the form of increased medication compliance, reinforcing treatment adherence, facilitating increased access to community resources, and aftercare planning. CITA utilizes individual therapy, group therapy, family therapy, therapeutic behavioral services, intensive home services, and wraparound services to accomplish this goal.

Civil advocates work with CITA participants to identify local, state, and federal entitlement programs that may benefit the juvenile. These entitlements frequently help juveniles access the needed treatment ordered by the court. It is important to note that the court never forces medication of any kind on children or their families under the CITA approach.

Accountability is a cornerstone in the treatment of adolescents. Thus, in addition to mental health treatment, numerous other interventions are employed by CITA to meet this objective. These include court-ordered sanctions like restitution, community service, electronic monitoring, home detention, and drug testing. Ultimately, CITA's goal is for the juvenile to successfully complete the individually prepared treatment plan within the probation time span.[4] During this time, the juvenile must prove that he or she attended psychological counseling sessions as mandated, maintained medication compliance, maintained a positive attitude, and complied with all other terms of the probation. Figures 2 and 3 illustrate the flow of juveniles through CITA.

The purpose of this study was to ascertain whether the CITA approach could result in decreased recidivism for frequent juvenile offenders who committed moderately serious offenses (Behnken, 2008).

METHODS

Research Design

This research identified and described the demographic characteristics of CITA participants and quantified recidivism events of CITA graduates. Recidivism rates were examined utilizing a pre-intervention/post-intervention design with each child as his or her own control.

Participants

At the time of this study, CITA had 133 participants. Officials reported that 79 juveniles had successfully completed their treatment plans and were therefore considered graduates; however, files for only 64 of the graduates could be located for review. These 64 graduates were included in the recidivism portion of the study. All participants were

4 Probation can last from a few months to a few years, depending on the juvenile's probation goals. If not already completed, probation ends when the juvenile reaches the age of 18, at which time CITA jurisdiction ends.

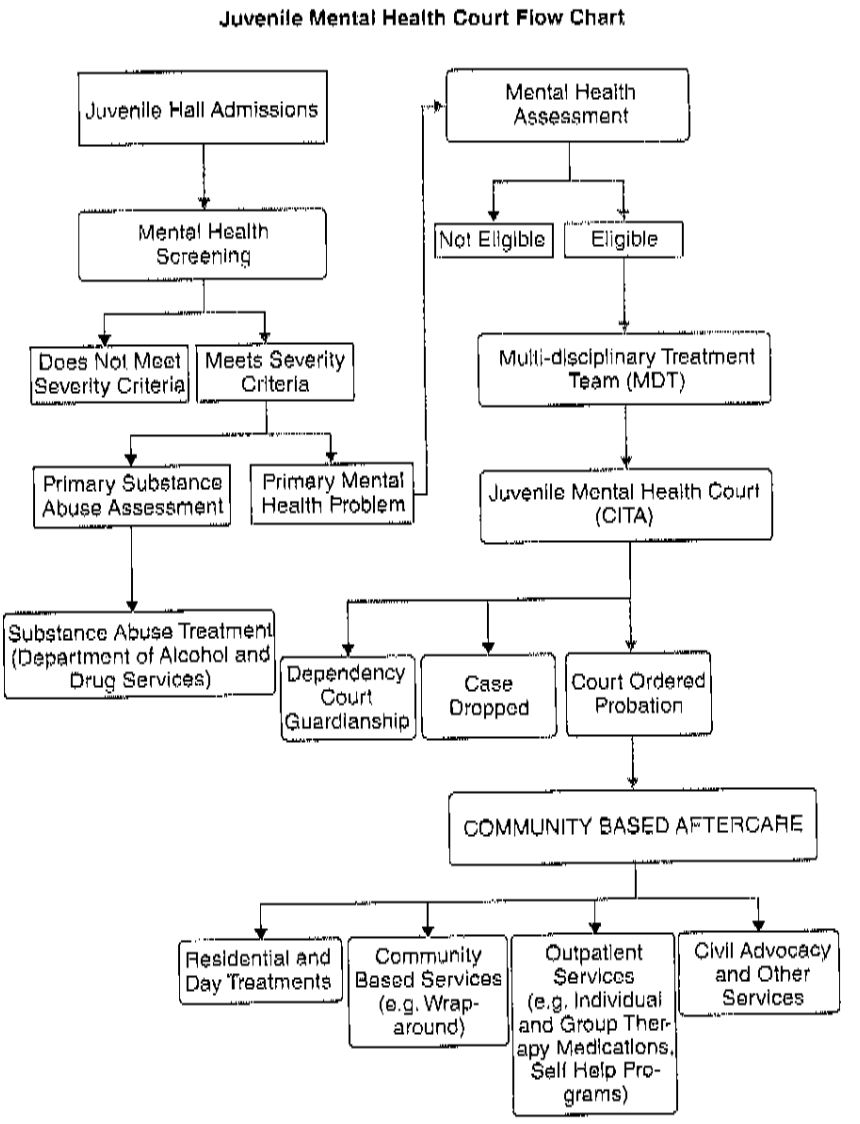


FIGURE 2. Screening and processing flow chart from the perspective of mental health personnel Adapted from Arredondo et al., 2001

on probation in Santa Clara County and were either actively enrolled in CITA or had graduated due to successful completion of their treatment plans.

Inclusion Criteria

CITA eligibility was determined by pre-existing protocols requiring a juvenile to have a serious mental illness that contributed to the delinquent conduct, to have pro-

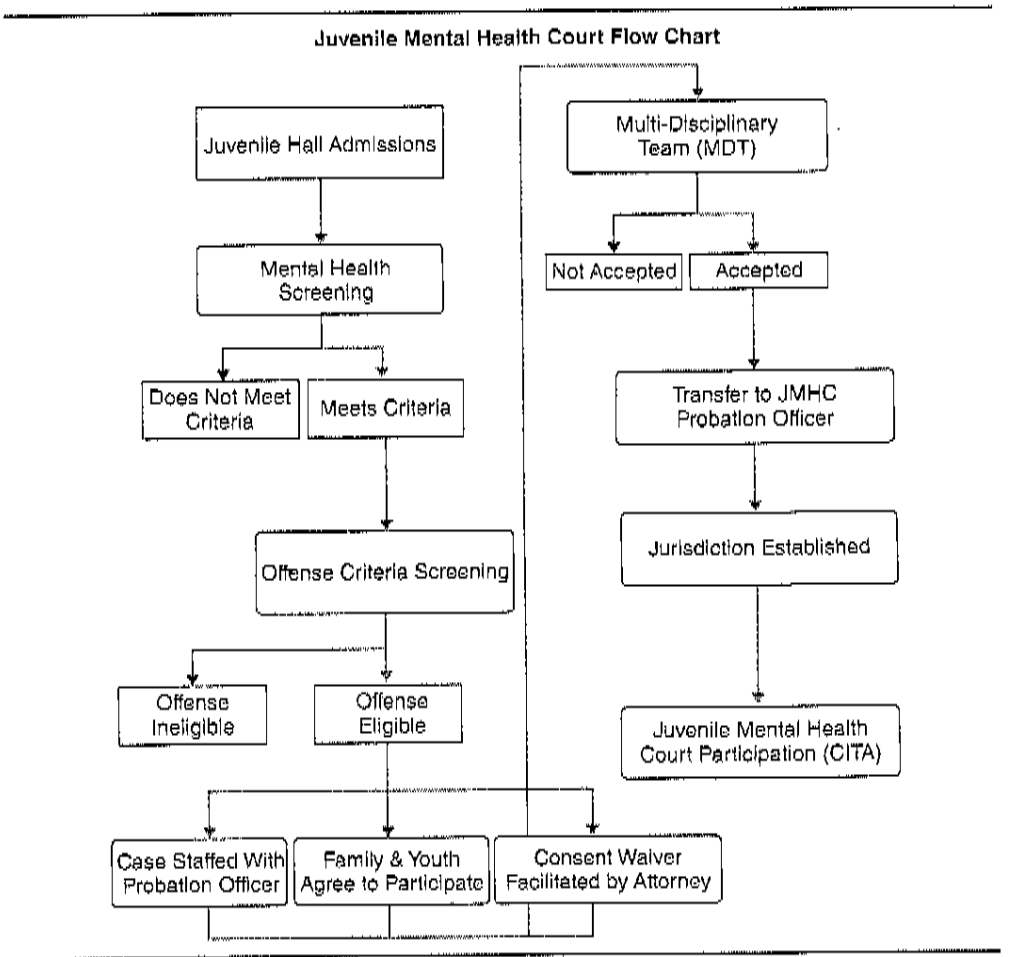


FIGURE 3. Forensic screening and processing flow chart from the perspective of probation, district attorney, and public defender
Adapted from Arredondo et al., 2001

tracted involvement with the juvenile justice system, or to be unengageable by community mental health treatment agencies (Arredondo et al., 2001). All CITA juveniles were eligible to participate in this study.

Exclusion Criteria

Juveniles who committed certain severe or violent felonies (e.g., sex crimes) after the age of 14, and juveniles suspected of committing serious offenses such as murder, arson, robbery, or kidnapping, were not eligible for participation in CITA without a closer evaluation of their juvenile record. Juveniles with a mental health diagnosis of conduct disorder, oppositional defiant disorder, impulse control disorder, adjustment

reactions, or personality disorders were not eligible for CITA unless those conditions were complicated by another biologically based diagnosis. Those juveniles were therefore ineligible for study participation.

Instruments

Data were compiled using a structured collection form for: 1) age; 2) sex; 3) race; 4) sexual orientation; 5) religion; 6) living situation; 7) psychiatric diagnosis; 8) Global Assessment of Functioning (GAF) score from the Diagnostic and Statistical Manual of Mental Disorders (American Psychiatric Association, 2000); 9) mental health history; 10) school history; 11) substance use history; 12) medical history; 13) trauma history; 14) offense history; and 15) needs assessment upon CITA admission.[5]

Data Collection Procedure

Data were collected from 2007 to 2008 through a manual review of records maintained by the Santa Clara County Mental Health and Probation Departments spanning offenses from April 1996 to March 2008. These data detail the demographic and criminal offense history of the juveniles from first arrest until they either graduated from the program or aged out of the system at the age of 18. As might be expected from archived county records, information was not reliably and consistently available for all juveniles.

Data Analysis

Descriptive statistics were used to identify the demographic characteristics of CITA participants (Rosner, 1995). Recidivism was analyzed using McNemar Tests and Paired T-Tests to determine if graduates had fewer recidivism incidents after CITA admission than they did before entering the program. A Wilcoxon Signed-Rank Test was used to determine whether the mean pre-intervention time interval was significantly different than the mean post-intervention time interval. This analysis was done to control for the amount of time each subject had to recidivate, ensuring that this study did not compare recidivism for time periods that were longer before CITA admission than after admission.

Human Subjects Considerations

This study was designed to protect the rights of human subjects as is required by the ethical principles set forth by the American Psychological Association (APA, 2002). Participants were informed that their records were maintained in confidence in accordance with existing law, and that the results would not identify any individual participant. The study protocol, procedures, and structured data collection form were approved by the Institutional Review Boards (IRB) of Pacific Graduate School of Psychology and Santa Clara County Health Services.

5 The data collection instrument was modified, with permission, from Trupin & Richards, 2003.

RESULTS

Demographics

The study population (N = 133) had a mean age at intake of 15.39 years (SD = 1.45) and ranged from 11 to 18. A majority of the participants were male (67.42% versus 32.58% female). Ethnic and racial identities were commonly non-Hispanic Caucasian (34%) or Hispanic (33%). African Americans comprised 9% of the study population followed by Asians (6%), and juveniles who did not report a racial identity, low frequency ethnicities, or those who were of mixed race (18%).

The mean years of education was 9th grade (SD = 1.47). A majority (61.65%) had received special education services in public or alternative school settings. Truancy reports or problems with excessive absences were reported for 39.10%. CITA juveniles had frequent behavioral problems in the school setting, with 48.72% displaying aggressive behavior (e.g., fighting, bullying, bringing a weapon to school) and 33.33% displaying disruptive behavior (e.g., cursing, talking back to teachers).

Many of the juveniles acknowledged using illegal substances. The most common illegal substance reported was marijuana (75.19%) followed by alcohol (63.16%), methamphetamine (43.61%), cocaine (10.53%), heroin (8.27%), and ecstasy (5.26%). The majority of juveniles who acknowledged using marijuana also acknowledged concurrent alcohol use. More than half of the juveniles also had at least one parent or sibling with a drug use history (51.88%).

Traumatic experiences complicate the clinical presentation of several CITA participants. Some reported a history of being removed from the care of their parents for investigations of abuse and neglect (17.07%) or for reasons unrelated to law enforcement and social services (8.13%). Death of at least one parent (13.83%) or grandparent (4.88%) who provided care was reported by many juveniles. Participants also experienced rape and molestation (10.57%), witnessing a murder (6.5%), physical abuse (6.5%), and homelessness (2.44%). Data on traumatic experiences were not available for 44 subjects, so it is likely that these numbers underreport the extent of traumatic experiences of CITA participants.

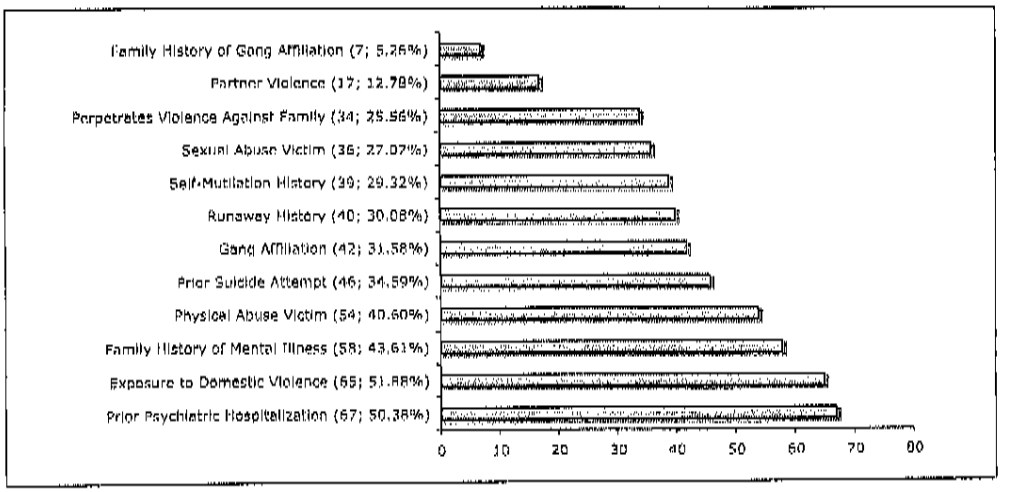
The single most common psychiatric diagnosis was Attention-Deficit/Hyperactivity Disorder (60.15%), but it was usually co-morbid with other diagnoses, especially mood disorders such as Bipolar Disorder. Table 1 denotes the lifetime history of psychiatric diagnoses received by CITA juveniles. Participants had used a mean two treatment facilities (SD = 1.74) before entering CITA. Most participants had been prescribed at least one psychiatric medication over their lifetimes, however, many juveniles had a lifetime prescription history of two or more medications. ADHD medications had been prescribed to 55.63%, while Bipolar medications had been prescribed to 54.88%. Antipsychotics had been prescribed to 48% of the juveniles, while 78.19% had been prescribed antidepressants at some time in their lives. Anxiety and/or sleep medication had been prescribed to 22.55%.

Table 2 displays the severity of risk factors for psychological disturbance of juveniles before CITA admission. This table illustrates the reported histories of suicide

TABLE 1
Lifetime Diagnosis History with Frequency and Percentage

Disorders Usually Diagnosed in Childhood	
ADHD	80 (60.15%)
Mood Disorders (N = 165) Due to multiple diagnoses, this total exceeds 100%	
Bipolar Disorder	51 (38.35%)
Major Depression	46 (34.59%)
Mood Disorder NOS	26 (19.55%)
Depressive DO NOS	22 (16.54%)
Dysthymia	16 (12.03%)
Bipolar II Disorder	4 (3.01%)
Substance Abuse (N = 63; 47.36%)	
Cannabis Abuse/Dep	25 (18.80%)
Polysubstance Dep	17 (12.78%)
Alcohol Abuse/Dep	13 (9.77%)
Meth. Abuse/Dep	7 (5.27%)
Substance Induced Persisting Dementia	1 (0.75%)
Psychotic Disorders (N = 16; 12.03%)	
Psychotic Disorder	11 (8.27%)
Schizophrenia	5 (3.76%)
Other Disorders (N = 112; 84.21%)	
Developmental Disorders	51 (38.34%)
Axis II Features	19 (14.29%)
Anxiety Disorders	18 (13.53%)
Obsess/Compul DO	5 (3.76%)
Sexual Abuse	4 (3.01%)
Trichicillomania	3 (2.26%)
Bereavement	2 (1.50%)
Malingering	2 (1.50%)
Schizoaffective DO	2 (1.50%)
Dev. Coord. DO	1 (0.75%)
Eating Disorder	1 (0.75%)
Gender Identity DO	1 (0.75%)
Physical Abuse	1 (0.75%)
Pica	1 (0.75%)

TABLE 2
Risk Factors for Violence and Psychiatric Disturbance (N = 133)



attempts, runaway behavior, self-mutilation, prior psychiatric hospitalization, family history of mental illness, and exposure to violence.

Table 3 displays the lifetime offense frequency of CITA participants. The most common offenses were assault and battery (56.39%), and the second most common offense was violation of probation (44.36%).

Graduate Recidivism

Recidivism for CITA graduates (N = 64) was measured by comparing each juvenile against his or her own number of arrests before and after admission to the program. As shown in Table 4, McNemar Tests and Paired T-Tests revealed statistically significant reductions in the number of offenses committed by juveniles after admission to CITA ($p < .001$).

Table 5 displays the frequency of offenses committed by CITA graduates. The mean number of offenses was 2.98 (SD = 2.05) with a range of 0 to 11 offenses before admission to CITA. The mean number of offenses fell to 1.14 (SD = 1.41) after entry into CITA with a range of 0 to 6 offenses.

These juveniles showed significant reduction in offenses categorized as assault or battery ($p < .001$). Significant reductions in violent threats, theft, possession of dangerous weapons, and vandalism were also found. Many of the other offenses occurred too infrequently to yield the statistical power necessary to perform statistical analyses, but the results for many of these offenses also trended in a positive direction.

A Wilcoxon Signed-Rank Test revealed a significant difference in the interval between the pre-CITA admission period and the post-CITA admission period of the

TABLE 3
CITA Juveniles Lifetime Offense History

Violent or Aggressive Offenses (N = 158) Because of multiple offenses, this total is greater than 100%	
Assault and/or Battery	75 (56.39%)
Burglary	20 (15.04%)
Making Terrorist Threats	18 (13.53%)
Possession of a Dangerous Weapon	17 (12.78%)
Robbery	9 (6.77%)
Threatened Officer or School Personnel	6 (4.51%)
Carjacking	3 (2.26%)
Obstruction/Resisting Arrest	3 (2.26%)
Attempted Kidnapping	2 (1.50%)
Indecent Exposure	2 (1.50%)
Hit & Run	1 (0.75%)
Reckless Driving	1 (0.75%)
Stalking	1 (0.75%)
Property Offenses (N = 83; 61.40%)	
Theft	36 (27.07%)
Vandalism	18 (13.53%)
Theft of a Vehicle	16 (12.03%)
Selling/Receiving Stolen Property	6 (4.51%)
Arson	5 (3.76%)
Forgery	2 (1.50%)
Offenses Involving Substances (N = 40; 30.07%)	
Dirty Drug Test while on Probation	17 (12.78%)
Drug Possession	14 (10.53%)
Public Disturbance/Public Intoxication	7 (5.26%)
Driving Under the Influence	2 (1.50%)
Miscellaneous Offenses (N = 127; 95.48%)	
Violation of Probation	59 (44.36%)
Bench Warrant (Failure to Appear)	28 (21.05%)
Escape from Detention	22 (16.54%)
Curfew Violation	6 (4.51%)
Runaway	5 (3.76%)
Trespassing	3 (2.26%)
Elder Abuse	1 (0.75%)
Extortion	1 (0.75%)
Hate Crime	1 (0.75%)
Possession of Counterfeit Money	1 (0.75%)

TABLE 4
Overall CITA Graduate Offense History

Number of Offenses Before CITA Admission	
Mean	2.98
SD	2.05
Lower Limit/Upper Limit	0/11
Number of Offenses After CITA Admission	
Mean	1.14
SD	1.41
Lower Limit/Upper Limit	0/6
Difference in Number of Offenses Before Intake and After CITA Admission	
Mean	1.84***
SD	2.26

*** Significant T-Test $p < .001$
*** Significant McNemar Test $p < .001$

participants' probation ($p < 0.07$) (Table 6). More specifically, despite the fact that juveniles had an average of five more months in which to offend, they showed significantly lower rates of re-offense.[6]

DISCUSSION

Discussion of Findings

Prior to this study, there had been no empirical investigations assessing the effect of a multidisciplinary juvenile mental health court model on recidivism. This study systematically quantifies the impact of mental health treatment under a therapeutically motivated intervention on recidivism in seriously mentally ill juvenile offenders enrolled in a mental health court. The findings have relevance across many disciplines.

More than 17% of these juveniles had been removed from parental care and there was a mean of two treatment facilities. In addition, 99% of graduates had recidivated at least once while on traditional probation before CITA involvement. This suggests at least partial failure of prior social service, judicial, or mental health interventions.

The mean age of participants in the overall sample (N = 133) was 15 (SD = 1.45) with a mean grade of 9th grade (SD = 1.47). A majority of participants were non-Hispanic

6 This is despite the fact that these children were known as "frequent fliers" and had escalating patterns of offending prior to court involvement.

TABLE 5
Graduate CITA Offense History (N = 64)

Offense	*Pre CITA Admission Offenses*	*Post CITA Admission Offenses*	*McNemar's Test p Values*
Violent Offenses			
Assault and Battery	34 (53.13%)	7 (10.94%)	<.0001***
Attempted Kidnapping	1 (1.56%)	0	0.3173*
Burglary	8 (12.50%)	3 (4.69%)	0.0956*
Carjacking	1 (1.56%)	0	0.3173*
Hit & Run	0	1 (1.56%)	0.3173^
Indecent Exposure	2 (3.13%)	0	0.1573*
Obstruction/Resisting Arrest	1 (1.56%)	1 (1.56%)	1.0000
Poss. of a Dangerous Weapon	9 (14.06%)	1 (1.56%)	0.0114***
Reckless Driving	1 (1.56%)	0	0.3173*
Robbery	0	1 (1.56%)	0.3173^
Stalking	1 (1.56%)	0	0.3173*
Threatened Officers	0	1 (1.56%)	0.3173^
Making Terrorist Threats	7 (10.94%)	1 (1.56%)	0.0339***
Property Crimes			
Arson	2 (3.13%)	0	0.1573*
Forgery	1 (1.56%)	0	0.3173*
Sell/Receive Stolen Property	3 (4.69%)	1 (1.56%)	0.3173*
Theft	18 (28.13%)	5 (7.81%)	0.0016***
Theft of a Vehicle	4 (6.25%)	1 (1.56%)	0.1797*
Vandalism	11 (17.19%)	1 (1.56%)	0.0016***
Miscellaneous Offenses			
Bench Warrant	6 (9.38%)	4 (6.25%)	0.5271*
Curfew Violation	0	3 (4.69%)	0.0833^
Driving Under the Influence	2 (3.13%)	0	0.1573*
Drug Possession	2 (3.13%)	5 (7.81%)	0.2568^
Escape from Detention	8 (12.50%)	5 (7.81%)	0.4054*
Failed Drug Screen	6 (9.38%)	5 (7.81%)	0.7389*
Pub. Disturbance/Intoxication	3 (4.69%)	2 (3.13%)	0.5637*
Runaway	0	1 (1.56%)	0.3173^
Violation of Probation	18 (28.13%)	18 (28.13%)	1.0000

*** Significant Change at $p < .05$

* Change trends in the positive direction

^ Post admission increases

TABLE 6
CITA Graduate Offense Intervals (N = 64)

Number of Days Between First Documented Offense and CITA Admission	
Mean	552.08 (18.4 months)
SD	560.93
Lower Limit/Upper Limit	298.00/500.00
Number of Days Between CITA Admission and CITA Graduation	
Mean	698.32 (23.26 months)
SD	465.71
Lower Limit/Upper Limit	512.00/751.00
Interval Difference in Time Before and After CITA Admission	
Mean	−146.24 (4.87 months)*
SD	764.15
Lower Limit/Upper Limit	−331.00/−94.00

* Marginally significant Wilcoxon Signed-Rank $p = .072$

Caucasian (34.11%) or Hispanic (33.33%) males (67.42%). Many juveniles had histories of school disruption, illegal substance use, traumatic life experiences, and mental health problems.

This study's most interesting findings relate to the graduates' decreased number of recidivism events. Results show significant reductions in the commission of violent offenses such as assault or battery, making violent threats, and possession of dangerous weapons. Offenses in these categories include fighting, domestic violence, partner violence, attempted sexual assaults, making threats to commit crimes, and taking a knife, gun, or other deadly weapon onto school grounds. There were also significant reductions in offenses of theft and vandalism. Specific offenses in these categories were shoplifting, stealing property, and destroying property—particularly school property.

Some offenses occurred too infrequently before CITA admission to warrant statistical analysis. However, marked reductions were also seen for vehicle theft, burglary, escape from detention, public disturbances, failing drug tests, carjacking, failing to appear in court (i.e., bench warrants), selling and receiving stolen property, arson, stalking, reckless driving, indecent exposure, DUI, attempted kidnapping, and forgery.

Within the group of graduates, increased incidents of hit and run (1 occurrence), running away from home (1), robbery (1), curfew violation (3), drug possession (5), and making threats to school or police officers (1) were observed after CITA admission. Despite these results, the extremely low baseline frequency of these adverse events prevents drawing statistically meaningful conclusions. Recidivism for juveniles currently completing their probation in CITA was not able to be quantified due to their current active status.

The positive results of this study are encouraging and suggest that participation in CITA is linked to decreased recidivism. In our view, a multidisciplinary team treatment approach with individually tailored interventions—including mental health treatment interventions—may have accounted for the dramatic reduction in recidivism. At a time when the public is concerned about law-breaking or violent teens, these results should come as good news. It is no surprise to clinicians that the symptoms of a treatable illness decrease with appropriate psychiatric and medical intervention. If children with biologically based mental disorders are not treated, the disorders are likely to continue to worsen into adulthood, and may contribute to the adult prison burden (Steadman, Deane, Morrissey, Westcott, Salasin, & Shapiro, 1999). In fact, this escalating pattern of violence was observed in study participants before CITA admission.

Study Limitations and Strengths

Although a randomized control group design would have been ideal, this was not feasible for several reasons including ethical constraints and the absence of funding for this study. This lack of a comparison or control group limits the internal validity of the results. Thus, we cannot rule out other confounding variables that explain our findings (e.g., history, happenstance, increased probationary supervision,[7] or maturation). While the reduction in recidivism of CITA juveniles is clear, a comparison to a control group would have allowed this study to make definitive statements about the causal connection between mental health treatment and reduction in recidivism.

Selection bias was reduced by the review of all available charts. The use of the pre-intervention/post-intervention study design allowed each juvenile to be compared to himself or herself (each child was his or her own control).

Discussion and Critique of Juvenile Mental Health Courts in General

In the experience of these authors, no judge relishes the idea of having jurisdiction over mentally ill children. They reluctantly assume the responsibility because no one else seems able or willing, for reasons primarily having to do with resources and capacity. The CITA model, paradoxically, was not developed as an answer to a problem, but as a means of dealing with this issue in the short term while trying to draw attention to the larger (and seemingly intractable) problem of what to do with mentally ill juveniles who commit crimes. Before CITA was established, this issue had gone largely ignored. Since this is the first study to review the CITA approach, replication with similar or more rigorous methodology would be useful in confirming these findings.

Juvenile mental health courts are an unfortunate necessity largely because of the collapse of mental health systems designed for disenfranchised children and their families in many jurisdictions (Grisso, 2004; Steadman et al., 1999). Children with severely disturbed behavior are processed into the juvenile justice system regardless of their

7 Increased juvenile court supervision is typically associated with increased detection of offending.

mental health status. This is not a problem localized to Santa Clara County, but an issue nationwide. In better times, children had easier access to adequate mental health services—outpatient, community based, residentially based, or even institutionally based treatment—without the involvement of the courts. But those days have long since passed, and it is unclear when or whether they will return.

The aforementioned notwithstanding, there are several thematic criticisms in the mental health court literature that warrant careful consideration in the context of juveniles:

- *There is a lack of a consistent template and structure across jurisdictions.* This criticism stems from a lack of agreement regarding what constitutes a mental health court and how these courts fit into the specialty court rubric, leaving most courts to vary widely across many dimensions including target population, accepted offenses, intensity of supervision, program duration, and the spectrum of interventions available.[8] It has been suggested that it is misleading to compare the courts because contextual factors, such as legal and mental health systems, vary due to community and resource demands (Trupin & Richards, 2003; Watson, Hanrahan, Luchins, & Lurigio, 2001). This is the current status of therapeutic jurisprudence in America, and Santa Clara County is no exception.
- *Mental health courts can serve only a limited number of defendants* (Tyuse & Linhorst, 2005; Wolff, 2002). The lack of resources to fund the breadth and depth of services to handle the mentally ill offender population caseload is problematic (Powell, 2003). This is a strong case for disseminating multidisciplinary mental health practice principles and more mental health resources throughout the juvenile justice system.
- *Mental health courts engage in a process known as "creaming" to avoid politically embarrassing violent recidivism* (Tyuse & Linhorst, 2005; Wolff, 2002). There is little doubt that in practice some courts determine eligibility based on their estimation as to whether they can help the offender. It is also likely that they want to avoid ending up on the front page of the newspaper because a violent offender has seriously hurt someone. Whether this is a good, ethical, wise, or fair use of court resources is beyond the scope of this paper.
- *The rates of court involvement among the mentally ill have increased.* It has been reported in other parts of the country that parents actually seek delinquency court jurisdiction for their children in order to receive services. This criticism of the potential misuse of mental health courts is an important concern on the national level and is a tragedy to be avoided at all costs. During the time of this study, Santa Clara County never faced this issue as resources were simply too scarce, and dockets too full, to allow for elective enrollment of children to receive mental health services. In addition, the judges and the MDT would not have allowed it.

8 Information on this and other issues is available from *Mental Health Courts, A Primer for Policy Makers and Practitioners* published by the Justice Center of the Council of State Governments and the Bureau of Justice Assistance, 2005.

- *Mental health courts use coercion, either explicit or implicit.* Traditionally, the concern about coercion in the mental health court context is whether treatment has to be voluntary to produce long lasting effects in the participant (Monahan, Bonnie, Applebaum, Hyde, Steadman, & Swartz, 2001). The law considers involvement in mental health courts to be uncoerced because its participants typically voluntarily agree to seek treatment in the community as an alternative to serving jail time (Poythress, Petrila, McGaha, & Boothroyd, 2002). Participants also maintain the right to opt out of the specialty court at any time to be adjudicated in the traditional court system. Participants have reported perceiving little coercion surrounding their choice to participate in mental health courts, have increased perceptions of procedural justice (i.e., the participant's subjective experience of the disposition process), and an increased experience of an emotional impact from their hearings than participants in the traditional misdemeanor court setting (Poythress et al., 2002). Notwithstanding, more standardized and frequent communication of the voluntary nature of mental health court participation is needed to preserve the rights of participants and the viability of the mental health court model.

  CITA protocols are explicit in their recognition of the fact that coercion in the use of medication is often counterproductive and reflects an insufficiently strong therapeutic alliance. Refraining from coercion stems primarily from the pragmatic recognition that it is impossible and clinically ill advised to force teenagers to take medications they don't want to take. While some subtle influences of authority are doubtlessly at play under this model, no author observed the threat of incarceration to coerce treatment or compliance during this study.
- *Mental health courts criminalize the mentally ill.* Some believe the court's involvement in treating mentally ill people stigmatizes them as criminal (Powell, 2003; Tyuse & Linhorst, 2005; Wolff, 2002). In the opinion of the authors, the criminalization of a child with a serious, biologically based mental illness is clinically and legally unconscionable. Because of danger to others, involvement at times may be necessary, but only because of the current lack of alternatives (e.g., mental health facilities).

CONCLUSION

Our findings support the effectiveness of the Juvenile Mental Health Court of Santa Clara County in reducing the frequency of serious, violent, and other delinquent behavior in youths who completed the program. This is both statistically and pragmatically meaningful as these juveniles were often frequent offenders for whom escalation of offenses would have been expected. It is likely that informed, multidisciplinary, and thoughtful interventions would prove to be more successful than the outcomes of a simply adversarial process.

It does not require an unreasonable leap of faith to surmise that when their mental illnesses are addressed, mentally ill offenders do better. Early identification, diagnosis, and

treatment are important to normalize developmental trajectory, relieve suffering, and help ensure public safety. The failure to treat mental illness leads to unnecessary suffering and may make the child worse. This last point is probably the strongest argument for squarely facing the issue of mental illness in juvenile offenders. The results of decreased recidivism described in this article give mental health, probation, and judiciary policy makers very good reason to develop juvenile mental health courts and other scalable models to address the current problem of systematic psychiatric neglect in the juvenile justice system.

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Alameda County Collaborative Juvenile Court Program

I. Goals:

The purpose the Alameda County Collaborative Juvenile Court ("ACJC") is to divert mentally ill youth from the juvenile justice system by linking families with individualized mental health treatment services, educational and vocational opportunities, and other community supports. The specific goals of the program are to:

- Develop an array of community-based resources not previously available to the court, in part by instituting a collaborative approach including service providers and civil advocates in the court process.
- Maintain mentally ill minors in the least restrictive status possible (DEOJ, non-wardship probation, 300 dependent) as an incentive to participation.
- Facilitate the collaborative process by operating as a specialized, separate calendar of the juvenile court on a bi-weekly basis, with an evaluation phase, where cases are accepted or rejected for the court process, and a supervision phase.
- Where possible, develop outcome measurements to provide an "evidence-based" evaluation of program success.

II. Program Philosophy:

The court is premised on a recognition that many youth become involved in the justice system as a result of their unmet mental health needs, and a belief that the justice system should not criminalize mental illness or become a de facto mental health care delivery system. The program will operate from a strength- and family-based approach, with the overarching goal of enabling youth to remain safely in their homes, succeed in school, avoid continued involvement with the delinquency system, and make a successful transition to adulthood.

The core principles of the court are as follows:

1. Youth are most effectively served in their homes and in conjunction with their families.

2. Court-involved youth should have access to high-quality evidence-based treatment modalities and assessment procedures.

3. Youth are most likely to succeed when they are provided with comprehensive strength-based services in a coordinated fashion.

4. The juvenile justice system is not designed to be a mental health services provider. It can, however, play an important role in linking youth with services in their communities.

5. Although access to appropriate mental health treatment is critical, this alone will not ensure successful outcomes.

III. Target Population:

Any young person in Alameda County who is the subject of a petition filed under Welfare and Institutions Code section 602 is potentially eligible for the Alameda County Juvenile Collaborative Court.

Inclusionary Factors:

ACJC's target population is juveniles with mental illness or co-occurring mental illness and substance abuse that have contributed to their criminal activity. For project purposes, this definition includes:

- Biologically based brain disorders with a significant genetic component, including major depression, bipolar disorders, schizophrenia, schizoaffective disorders, severe anxiety disorders, and ADHD with significant functional impairment;
- Severe PTSD (for purposes of this program severe describes severe symptoms, trauma, functional impairment, or a combination of all three of these);
- Developmental disabilities such as pervasive developmental disorders, mental retardation, and autism spectrum disorders;
- Sexual offenders with any of these characteristics who are otherwise suitable for the Adolescent Sexual Offender Treatment Program;

Exclusionary Factors:

Unless complicated by another condition, conduct disorder, oppositional defiant disorders, adjustment reactions, and personality disorders would not qualify for the ACJC.

Minors charged with 707(b) offenses are not eligible.

These factors are intended as guidelines for referral; individual cases outside these parameters may be accepted for the ACJC with the consent of the assessment team and the court.

IV. ACJC Members:

The Collaborative Juvenile Court team will include representatives from Behavioral Mental Health, Probation, District Attorney, Public Defender (and defense counsel generally), Social Services, and an Advocacy Coordinator representing the civil advocacy partners in the Collaborative Juvenile Court process. The operating principle of the team will be to work together to reach a common understanding of how the best interests of the child with mental illness, his or her family, victims, and the community might be served. The roles of the members may be generally described:

Mental Health: Responsible for presenting the mental health assessment findings – psychiatric, psychological, behavioral, social, familial, and educational issues-to the team. The mental health coordinator is an active participant who works collaboratively to coordinate overall assessment, treatment planning, and disposition of the minor. This includes case management of youthful

offenders and maintaining contact with community mental health providers in order to monitor progress and encourage treatment compliance.

Probation: A designated Probation court officer will be specifically assigned to the ACJC. The ACJC court officer will be trained in mental health issues with an emphasis on a multi-agency collaborative approach, and pending the funding of a Collaborative Juvenile Court Coordinator, will provide the same general case and calendar management as court officers in any other Department. The probation department's role in general is to implement the directives of the court and supervise each minor while assisting in the development of the minor's service plan. The probation officer acts as a liaison to community mental health treatment programs to provide for a continuum of service for minors suffering serious mental illness. The probation officer also coordinates with educational advocates to ensure that the minor's academic needs have been identified and that appropriate services are being rendered. The probation officer also provides information and recommendations to the court when appropriate as in any 602 case. Due to the intensive nature of the ACJC program, the probation officer's caseload will be capped at a number to be determined by consensus of the court's partners.

District Attorney: A designated prosecutor will be specifically assigned to the ACJC for the purpose of assessing minors' current conduct and criminal history relative to their suitability for the program. If a minor is deemed suitable and acceptable to the program, the prosecutor contributes to the formulation and implementation of the service plan. Information discussed in the context of the Collaborative Juvenile Court is shared solely for the purpose of assessing the minor and implementing his or her service plan. In this context, the role of the prosecutor in the ACJC is significantly different than that of the conventional trial advocate, and information discussed in the ACJC will not be used against the minor in subsequent court hearings.

Public Defender/Defense Attorney: A designated deputy public defender will be specifically assigned to the ACJC. The assigned attorney will be trained in, or have a particular interest in, the mission of the Collaborative Juvenile Court. The public defender (or, in some cases, the minor's court-appointed attorney, subject to the availability of resources) will review the minor's psychiatric history and determine whether it is in the minor's legal interest to participate in the ACJC. Once minors are accepted into ACJC, their attorneys continue to represent them throughout the process.

Social Services: A representative of the Department of Social Services will be assigned to the ACJC to provide information on case management or other services that may be available to qualifying juveniles, especially for those 300 dependents referred to the ACJC, and to ensure a continuum of care for those juveniles.

Court: The bench officer assigned to the ACJC calendar handles the case from acceptance through dismissal. The bench officer should have-or be willing to develop-a sensitivity to mental health issues. The court will have the responsibility of bringing other service providers and community-based organizations to the table to implement the goals of the ACJC.

Civil Advocacy Coordinator: Youth with serious mental illness often have multiple needs that require comprehensive and coordinated services. In an effort to address these challenges, the Collaborative Juvenile Court has forged an innovative partnership with the civil legal services

community. Under the leadership of the Civil Advocacy Coordinator, civil advocates work directly with families to provide assistance in key substantive areas. When youth are admitted into the Collaborative Juvenile Court, the Civil Advocacy Coordinator meets with each family to assess their civil legal needs. For example, families may need assistance with housing, educational services, regional center access, and a range of other government benefits (e.g. GA, CalWorks, Medi-Cal, SSI). Based on the intake interview and a review of relevant records, the Civil Advocacy Coordinator will 1) provide brief service to the family; 2) assign the case to a Civil Advocate; or 3) make a referral. As member of the ACJC multidisciplinary team, the Coordinator will attend all ACJC team meetings and work closely with other members of the team to ensure that civil legal needs are identified and addressed.

Community Partners: In addition to the core MDT (listed above), the ACJC will seek to incorporate community partners. These partners may include:

- Clinicians from the county department of mental health
- Representatives from mental health and substance abuse providers
- School liaisons/Education advocates
- Vocational programs
- Mentoring groups
- Civil legal services organizations
- Regional center liaisons
- Faith-based organizations

V. Protocols:

A. Referrals

Any representative of any institutional partner in the Court project may refer a juvenile for the ACJC. Acceptance of the juvenile will be at the sole discretion of the ACJC bench officer in consultation with the ACJC team.

B. Screening

1) Mental Health Screening

The Alameda County Probation Department uses the MAYSI-II to screen all youth detained at the Juvenile Justice Center. This mental health screening assists in identifying high-risk concerns, suicidal indicators, other mental health symptoms, and substance abuse.

Youth who score in the warning area on any of the three scales: suicidal, depressed anxious, or thought disordered (boys), will automatically be given a second screening by a mental health clinician. After this second screening, youth may be referred for an assessment. Youth who have

had an assessment and appear to be in need of services in the community may be referred to the Collaborative Juvenile Court.

Youth not identified by the MAYSI-II screening process may also independently come to the attention of the mental health staff who work at the Juvenile Justice center. Mental health clinic staff may refer these youth to the Collaborative Juvenile Court after an assessment, or after reviewing outside providers' evaluations and preparing a summary for the referral process.

Clinicians may also review existing caseload for potential referrals. Should the minor meet diagnostic and severity criteria for ACJC, a referral form will be completed by the clinician and forwarded to the Court for consideration.

2) Probation Screening

The investigating probation officer will coordinate with the Behavioral Mental Health representative regarding in-custody minors who meet the court's eligibility criteria. The probation officer will also review the petitioned offense and prior conduct with the district attorney in order to determine eligibility. Once eligibility is determined, the ACJC court officer staffs the case with the investigating probation officer regarding mental health issues and then contacts the family to determine their willingness to participate in ACJC. The ACJC court officer then presents the minor's case to the team to determine acceptance into the program.

3) Public Defender/Defense Attorney Screening

The assigned deputy public defender or defense counsel advises an eligible juvenile about whether s/he should participate in ACJC or proceed under the regular juvenile court process. In addition to advising the minor about the nature of the offense, the consequences of entering an admission to the offense, and the constitutional rights, the defense attorney discusses with the minor the ACJC process, including eligibility requirements, screening, assessment, the service plan, and appearances in court.

C. Service Plan

Minors deemed eligible for ACJC should receive a complete, comprehensive assessment if one has not already been completed. A thorough clinical interview, discussions with parents and/or guardians, and home visits - whenever possible - will also be performed. Based on the findings of the different multidisciplinary team members, and in collaboration with the youths and their families, an Individualized Service Plan will be developed by the multidisciplinary team and signed by the team, the minor, and his or her parents. The service plan will be comprehensive, and will include measurable goals and objectives. Specific target areas will be identified, and interventions and treatment strategies will be devised to address these needs. The use of the term "Service Plan" (rather than the more narrow, "Treatment Plan") reflects the fact that the ACJC Service Plan is not a probation department document or a mental health department document, but rather the crystallization of a multidisciplinary understanding of the services and supports necessary to enable a particular youth to be successful in the community.

Services may include:

- Individual, Group, and Family Counseling
- Intensive-home based services (e.g. Wraparound, Therapeutic Behavioral Services, Multi-Systemic Therapy)
- Psychiatric and Psychological evaluations and assessments
- Medication evaluation, monitoring, and support
- Intensive community-based mental health services for youth transitioning from high-end placements
- Emergency services/crisis intervention
- Short term stabilization beds
- Linkages to educational services (including evaluations for special education, and advocacy re: the development of IEPs)
- Linkages to regional center services
- Vocational/Employment services
- Mentoring programs
- A range of services for transition-aged youth
- Assistance accessing government benefits/entitlements

Core values of the service planning process include an emphasis on individually tailored services, robust and continuing family participation, and a process of collaboration, accountability, and transparency between the ACJC partners.

During the course of supervision, it may become necessary to modify the initial service plan. The initial plan may be revised as a result of both strides and declines made by the juvenile on the path to healthy adaptation. The probation officer will consult with the juvenile's service providers to better define what changes-positive or negative-have taken place. Community providers will be invited, and encouraged, to participate in the multi-disciplinary team round table. A revised service plan will be developed as a result of input from all multi-disciplinary team participants. Follow-up meetings, to assess the effectiveness of the newly implemented service plan, may be necessary.

D. Court Process

Each juvenile will appear before the court for consistent reviews so that the court may be kept abreast of his or her progress. This allows juveniles to be commended on their progress, allows issues to be addressed as they arise, and allows therapists/community mental health treatment agencies to participate in court reviews if appropriate. Reviews are set according to each minor's needs, no more than biweekly and no less than every 90 days. Unless a violation of probation is alleged, all prior orders will remain in full force and effect, and a subsequent review will be set. Prior to each court review, the Multidisciplinary Team will meet with the Bench Officer to discuss the youth’s progress. The goal of these pre-court meetings is to raise any issues of concern and to creatively solve any problems that have arisen re: the youth’s treatment, services, and progress.

E. Graduated Interventions

During the supervision of juveniles participating in ACJC, graduated interventions may be necessary to address violations of probation and/or deterioration of a juvenile's mental health. Interventions may include the additional structure and supervision of the electronic monitoring program, a period of time in juvenile hall, or in a treatment facility, to provide accountability, medication review-assessment-stabilization, or secure appropriate mental health services prior to returning home. Interventions may also include "positive" sanctions such as orders to participate in community activities with a therapeutic purpose (e.g. sporting events or service projects).

F. Confidentiality and Sharing of Information

In order to encourage juveniles to voluntarily participate in ACJC, the Juvenile Court and partner agencies must agree that sharing confidential information about a juvenile between agencies is vital. Moreover, to protect the psychotherapist-patient privilege, they must agree that the extent of mental health information to be shared is limited to the diagnosis, medication, and service plan. In particular, if any content-based information is disclosed, it shall not be used against the juvenile in any delinquency proceeding. Any juvenile and parent or guardian of a juvenile who wishes to participate in ACJC must execute a Consent to Share Confidential Mental Health Information. The juvenile's attorney will also sign the form to indicate approval of the juvenile's participation in ACJC. If a minor is not accepted by ACJC, all mental health records will be returned to the respective providers. The authorization to share a juvenile's mental health information will be revoked upon the successful completion of, termination, or withdrawal from ACJC, or one year from the date the consent form was executed, whichever is sooner.

G. Completion/Dismissal

Successful participation in the ACJC process for a minor is measured by: consistent engagement in community-based mental health services, the maintenance of a generally positive attitude, the development of healthy relationships with family members, and compliance with all general terms and conditions of probation such as being of good conduct, obeying all laws, and regularly attending school. Ideally, youth will also be engaged in appropriate vocational programs and otherwise making progress to successfully transition to adulthood.

Chronic or progressive mental illness should not be a bar to successful completion of the ACJC program. Many youth served by the program will face a lifetime of mental health challenges, with periods of stability punctuated by episodes of crisis. Where youth are being maintained safely in their homes (with an expectation that they will remain there successfully) and they are not committing new law violations, the ACJC has accomplished its primary goal and succeeded in its work.
Program completion by dismissal of probation may occur when:

- The juvenile has successfully completed probation;
- The juvenile's mental health issues have stabilized;
- The program has been successfully completed.

Program termination by return to the regular probation system may occur when:

- The juvenile commits a new crime or fails to follow court orders;
- The minor and/or parent withdraw from program.

F. Measuring Success

The primary goals of the ACJC are to ensure that mentally ill youth served by the program:

- Have better access to community-based mental health services
- Are linked with appropriate educational and vocational services
- Can remain safely in their homes
- Spend reduced periods of time in detention
- Exit the justice system as quickly as possible (while maintaining public safety)
- Avoid continued involvement with the delinquency system

In order to assess program impact, the multidisciplinary team will collaborate on a strategy to collect data in line with these program goals.

Read and approved:

_____	_____	_____	_____
Juvenile Court	Date	Probation	Date
_____	_____	_____	_____
District Attorney	Date	Public Defender	Date
_____	_____	_____	_____
Behavioral Mental Health Care	Date	Advocacy Coordinator (NCYL)	Date
_____	_____	_____	_____
ACBA	Date	Social Services	Date

Collaborative Court Service Plan

Name: _____ ***Date:***_____	***Next Court***
Date of Birth: _____ ***Plan:***_____	***Date of Service***

Mental Health/Behavioral Health Goals

Goal/Need	*Action Items*	*Person(s) Responsible*	*Time Frame*
1.			
2.			
3.			
4.			

Education Goals

Goal/Need	*Action Items*	*Person(s) Responsible*	*Time Frame*
1.			
2.			
3.			
4.			

Medical & Dental Goals			
Goal/Need	***Action Items***	***Person(s) Responsible***	***Time Frame***
1.			
2.			
3.			
4.			

Safety/Security Goals			
Goal/Need	***Action Items***	***Person(s) Responsible***	***Time Frame***
1.			
2.			
3.			
4.			

Relationships/Family Participation Goals

Goal/Need	*Action Items*	*Person(s) Responsible*	*Time Frame*
1.			
2.			
3.			
4.			

Recreational/Extracurricular/Community Involvement Goals			
Goal/Need	*Action Items*	*Person(s) Responsible*	*Time Frame*
1.			
2.			
3.			
4.			

Preparation For Adult Living/Vocational Goals **(if 16 or older)**			
Goal/Need	*Action Items*	*Person(s) Responsible*	*Time Frame*
1.			
2.			

3.			
4.			

Education Status
Name & Address of Child's Most Recent Educational Provider

Name:	Phone:
Address:	
Type of School: Child's current grade level placement: Child's current grade level performance: # of Credits:	Is an IEP in Place? *Yes* *No* Date of Last IEP: If no IEP, has a request for an assessment been made? *Yes* *No* Date of Request: Are Chapter 26.5 services in place? *Yes* *No* If no Chap 26.5, has a referral been made? *Yes* *No* Date of Request:

Civil Legal Needs/Civil Advocacy Goals

Goal/Need	***Action Items***	***Person(s) Responsible***	***Time Frame***
1.			
2.			
3.			
4.			

Medical & Dental Goals

Names & Addresses of Child's Most Recent Healthcare Provider

Medical	**Dental**
Name:	Name:
Address:	Address:
City/State/Zip:	City/State/Zip:
Phone #:	Phone #:

Child's Medications (list all current medications and indicate what medications are for):

Medical Coverage: ☐ **NONE** ☐ Medi-Cal ☐ Healthy Families ☐ Other:

Goal/Need	***Action Items***	***Person(s) Responsible***	***Time Frame***
1.			
2.			
3.			

Goal/Need	***Action Items***	***Person(s) Responsible***
1.		
2.		

Goal/Need	*Action Items*	*Person(s) Responsible*
1.		
2.		

Goal/Need	*Action Items*	*Person(s) Responsible*	*Time Frame*
1.			
2.			

Goal/Need	*Action Items*	*Person(s) Responsible*	*Time Frame*
1.			
2.			
3.			

Goal/Need	*Action Items*	*Person(s) Responsible*	*Time Frame*
1.			

2.			
3.			

Acknowledgement

I, the undersigned juvenile referenced above received a copy of the service plan, understand the service plan process and have been provided the opportunity to give my input during the development of this service plan.

_____ _____
Signature of Youth Date

I, the undersigned parent or guardian of the youth referenced above received a copy of the service plan, understand the service plan process and have been provided the opportunity to give my input during the development of this service plan.

_____ _____
Signature of Parent/Guardian Date

COLLABORATIVE COURT Multidisciplinary Team

_____ _____
Signature of Mental Health Clinician Date

_____ _____
Signature of Probation Officer Date

_____ _____
Signature of Youth's Attorney Date

_____ _____
Signature of Civil Advocacy Coordinator Date

If any member of the multidisciplinary team (or other required person) did not participate in the drafting of the service plan, state who and indicate reason for absence:

Name	**Unable to Locate/Not Available**	**Disagreed with Plan**	**Other (Explain)**

THURSDAY – JUNE 3, 2010

11:00 am – 12:15 **Workshop Session II**

II.J.

target audience:
CASAs
mediators
psychologists
probation officers
social workers

No Funding for Mental Health Services for Foster Youth?
Build *A Home Within* in Your Community

This workshop will describe the purpose and structure of *A Home Within*, an award-winning, national non-profit organization that identifies, trains, and supports therapists who provide long-term pro bono mental health services to current and former foster youth. The workshop will describe the theoretical underpinnings and organizational structure of the model. Participants will review the basic information and skills needed to form a chapter. At the end of the workshop participants will have the tools necessary to begin to build a local chapter of *A Home Within* in their communities.

Learning Objectives:

- Review literature from developmental, trauma, and attachment theories.
- Describe the rationale and components of a local chapter of *A Home Within*.
- Identify key stakeholders and potential community participants.
- Identify action items in a preliminary plan for forming a chapter of *A Home Within.*

Faculty:

- **Toni Vaughn Heineman**
  Founder and Executive Director,
  A Home Within

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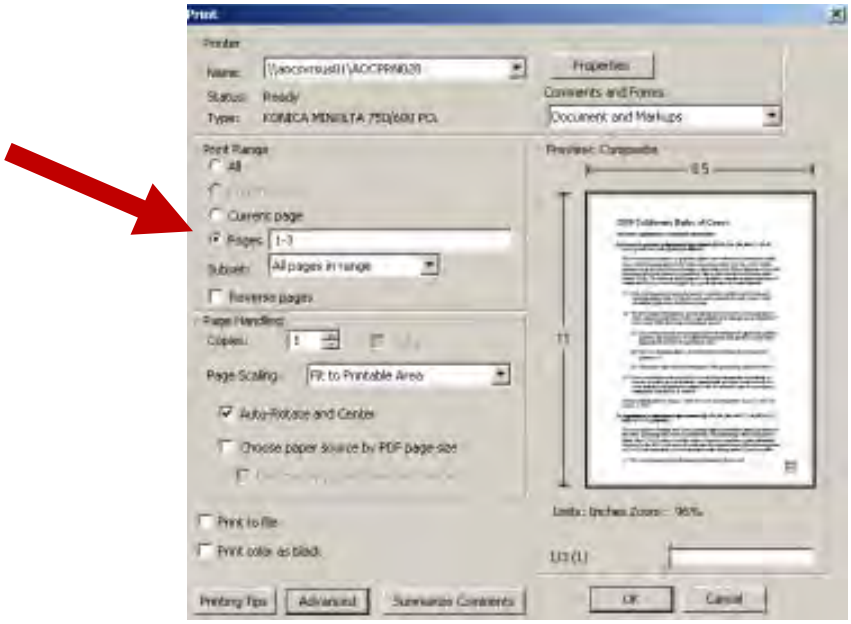


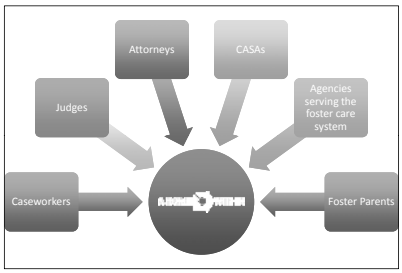
Building A Home Within

Who, What, Where, When and Why

Who We Serve

- Foster youth who can benefit from weekly psychotherapy
- Foster youth who have at least one adult who supports psychotherapy
- Young adults who request psychotherapy after leaving the foster care system

Referral Sources



Results

- Clients received approximately 3 ½ years of therapy
- 80% of therapists report "some" to "significant" improvement after one year
- Clients showed statistically significant reduction in anxiety, depression, and dissociation

Who, What, Where, When, and How?

FREQUENTLY ASKED QUESTIONS

Do you see…

- Foster parents?
- Biological parents?
- Families?
- Sibling groups?
- Children in their homes?

Answers:

- We make decisions based on clinical, rather than administrative, factors whenever possible
- Therapists, with the aid of their consultation group, determine whether and under what circumstances others are included in a child's treatment

We try to do the best we can.

Do you ever…

- Talk to the child's attorney?
- Write reports for the court?
- Testify in court?

Answers:

- We make decisions based on clinical, rather than administrative, factors whenever possible
- We also recognize that therapists of **A Home Within** have a responsibility to maintain communication with those legally responsible for the child in foster care

We try to do the best we can.

What happens if…

- A child moves?
- Is adopted?
- Is reunified with biological parents?
- Comes back into the system?
- Ages out of the system?

Answers:

- Whenever possible, we work with the responsible parties to find ways for children to maintain contact with the therapist, even if it cannot be weekly psychotherapy.
- We have a wide network of professional contacts and can often find a therapist for children if they must move to a new community.

We try to do the best we can.

What happens if…

- The therapist moves or can't continue for personal reasons?
- The child or family doesn't like the therapist?

Answers:

- If a therapist has to interrupt or discontinue treatment for personal reasons, we make every effort to support the transition to a new therapist
- We attempt to ensure that the therapist is a good match for a child and family from the beginning, but in the event that a change of therapist is clinically indicated, we work with the therapist and family to facilitate a transfer

We try to do the best we can.

Do you have any other programs?

- **Fostering Art** is a program that promotes the relationship between foster children and their CASAs
- **Fostering Transitions** helps to build healthy relationships between teen parents in foster care and their infants
- These programs are currently available only in a few locations, but we intend to make them available to all Local Chapters as time and funding allow

A HOME WITHIN

Opening Doors to Emotional Health

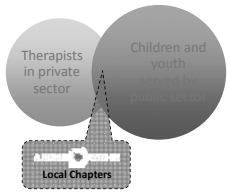
www.ahomewithin.org

A HOME WITHIN
Opening Doors to Emotional Health

Local Chapters

Clinicians in each community join together to form a Local Chapter of **A Home Within**

- A unique model for bridging the gap between therapists in the private sector, and children and youth served by the public sector



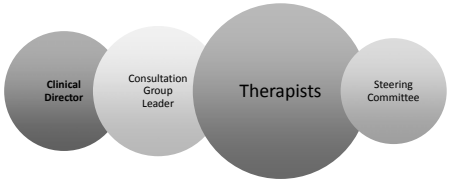
Networks

- Local Chapters draw on the unique resources in each community to meet its particular needs
- Small groups promote supportive networks of like-minded professionals
- Tightly knit networks allow for rapid responses to changes in the community

Locations

- In 2010, **A Home Within** will serve foster youth in 40 communities across the country
- 500 clinicians have joined the network of **A Home Within**

Components of a Local Chapter



- All members of Local Chapters volunteer their time

Clinical Director

- Supported by a three-year Professional Fellowship in the Treatment of Foster Youth
- Intensive annual training and support of the home office and network of other Clinical Directors
- Commits approximately four to five hours weekly
- Recruits members of the Local Chapter
- Establishes referral sources
- Oversees the work of the Chapter
- Maintains contact with the home office

Consultation Group Leader

- Facilitate a regular meeting of a small group of therapists
- Lead clinical discussion of cases
- Promote professional development through discussion of relevant readings
- Manage administrative details of Continuing Education Units earned through group meetings

Therapists

- Agree to see one current or former foster youth in weekly psychotherapy
- Participate in a consultation group
- Inform Clinical Director and home office of **A Home Within** when treatment ends

Steering Committee

- Community members who support the Clinical Director in the creation and oversight of the Local Chapter
- Promote community outreach and public awareness of the emotional needs of foster youth
- Facilitate local fundraising

Local Chapters

FREQUENTLY ASKED QUESTIONS

Can I join **A Home Within** if…

- I'm not licensed?
- I don't have a private practice?
- I don't know if I'll stay in this community?
- I don't want to join a consultation group?
- I'm not a mental health professional?

Answers:

- Clinicians who are authorized by the State in which they work to operate an independent practice are eligible to see children through **A Home Within**
- Clinicians are expected to participate fully in **A Home Within**, which includes being available for an indefinite period and supporting the professional network through participation in a consultation group
- Steering Committee Members need not be mental health professionals

How do I…

- Learn more about **A Home Within**?
- Contact the Clinical Director in my community?
- Join **A Home Within**?
- Make a referral to **A Home Within**?
- Donate money if I can't donate time?

Answers:

- By visiting ahomewithin.org you can:
  - → learn more
  - → contact the Clinical Director in your community
  - → make a referral
  - → make a donation
- If you don't find the answers to your questions, you can also contact us through the website

A HOME WITHIN

Opening Doors to Emotional Health

www.ahomewithin.org

THURSDAY – JUNE 3, 2010

11:00 am – 12:15 **Workshop Session II**

II.K.

target audience:
attorneys
court administrators
judicial officers
probation officers
self-help staff
social workers

Expanding Reentry Courts in California

It is widely known that California has high rates of incarceration and recidivism (as high as 70%) among its jail and prison populations. Reentry Courts, modeled after Drug and Mental Health Courts, are designed to assist probationers and parolees, upon release, by providing an appropriate level of court supervision—based on low, medium or high risk. These levels may hold part of the answer to reducing recidivism. California will competitively award funds to pilot courts to establish Reentry Courts. This session will discuss how reentry courts work, and their track record of reducing recidivism.

Learning Objectives:

- Describe the key components of successful Reentry Courts.
- Identify evidence-based practices that reduce recidivism.
- Discuss California's Pilot Reentry Court Project.

Faculty:

- **Shelley Curran**
  Manager of Community Corrections Program, AOC Bay Area Northern/ Central Regional Office
- **Hon. Roger Warren** (Ret.)
  Scholar-in-Residence, Administrative Office of the Courts, Judge of the Superior Court of Sacramento County.

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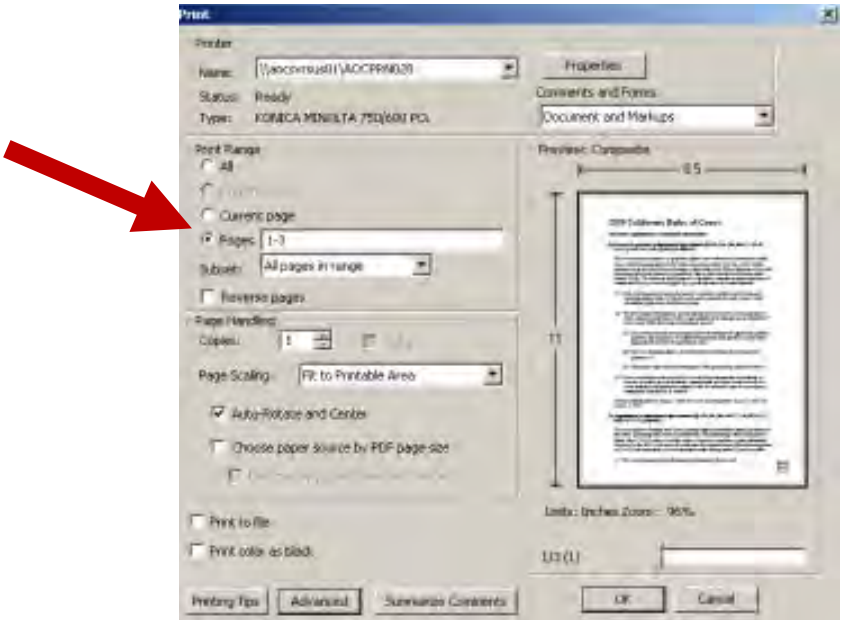

Re-Entry Court Summary

- Purpose: promote public safety, hold parolees accountable, and reduce recidivism.
- Eligibility: Parolee violators with a history of substance abuse or mental illness.
- Court determines if parolee is admitted into the program and must consider
- The court, with the assistance of the parole agent, shall determine conditions of parole, order rehabilitation and treatment services, determine incentives, order sanctions, and lift parole holds.
- The program shall include key components of drug and collaborative courts
- Reentry courts must adopt a plan that includes:
  - #of parolees in the program
  - Referral process and assessment of program...
  - Criteria for program participation, completion of, and termination
  - Description of how the program shall be administered effectively
  - Outcome measures
  - Program team

ADMINISTRATIVE OFFICE
OF THE COURTS
455 Golden Gate Avenue
San Francisco, CA
94102-3688
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TDD 415-865-4272
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www.courtinfo.ca.gov

FACT SHEET

May 2010

Community Corrections Program

The Community Corrections Program was formed by the Administrative Office of the Courts in order to manage four recent court-related initiatives designed to promote public safety by reducing recidivism among probationers and parolees.

Evidence-Based Probation Supervision (2009–2010 Budget Act)

The initiative provides a $45 million appropriation of federal Edward Byrne Memorial Justice Assistance Grant funds to be distributed over three years to all 58 California county probation departments for the purpose of providing evidence-based supervision of adult felony offenders.

California Community Corrections Performance Incentives Act of 2009 (Sen. Bill 678)

- A system is established for performance-based funding for county probation departments to support evidence-based practice for adult felon probation supervision. The act includes a provision for counties to receive a portion of state General Fund savings based on their success in reducing the number of felony probationers going to state prison because of violating their terms of probation or committing new crimes.
- An evaluation and report will be made to the Legislature regarding the effectiveness of the program and its impact on improving public safety.
- The act is due to sunset on January 1, 2015, unless reauthorized by the Legislature.

California Risk Assessment Pilot Project

The California Risk Assessment Pilot Project (CalRAPP) is a joint project of the Administrative Office of the Courts and the Chief Probation Officers of California, funded by the National Institute of Corrections and the State Justice Institute.

- Pilot projects in six California counties will explore the use by the courts of actuarial risk/needs assessment instruments to reduce recidivism and probation revocations among offenders aged 18–25 placed on felony probation.

- Recidivism and revocation rates of participating offenders will be tracked for up to three years and compared to the rates of similar offenders not participating in the project.
- Phase one of the project includes Napa, San Francisco, and Santa Cruz Counties. Phase two counties will be selected in October 2010.

Parolee Reentry Courts, Corrections Reform Package (Sen. Bill X3 18), and 2009–2010 Budget Act

- The sum of $9.5 million is available for up to seven courts to fund parolee reentry courts.
- Parolees with a history of substance abuse or mental illness who violate a condition of parole may be referred by a parole officer to a reentry court.
- If the court admits the parolee into the program, the court has exclusive authority over the parolee's supervision.
- The project will be evaluated by comparing the revocation and reoffense rates of participants and those of similarly situated parolees who are not program participants. The evaluation will also consider different models of reentry courts.

Contact:
Shelley Curran, Manager, Community Corrections Program, Administrative Office of the Courts, Bay Area/Northern Coastal Regional Office, communitycorrections @jud.ca.gov

Judge Roger K. Warren (Ret.)
Scholar-in-Residence
Administrative Office of the Courts
June 3, 2010

EXPANDING REENTRY COURTS IN CALIFORNIA

WHAT IS A REENTRY COURT?

The Reentry Court model was first developed about ten years ago for the primary purpose of reducing recidivism among parolees in transition from prison to the community. The model adopts key components of the Drug Court model, relying on active judicial monitoring and oversight and a collaborative case management process.

A process evaluation of nine early reentry courts found that they had six "core elements" in common:[1]

1. Assessment & Planning (through eligibility criteria, offender assessment and needs identification, and collaborative reentry planning
2. Active Judicial Oversight
3. Court Management of Support Services
4. Accountability to Community (through an advisory board, payment of fees and restitution, and involvement of victims' organizations)
5. Use of Graduated and Certain Sanctions (in lieu of revocations)
6. Incentives for Success (e.g., early release, graduation ceremonies)

WHAT ARE THE KEY COMPONENTS OF CALIFORNIA REENTRY COURTS?

California Penal Code Section 3015 (e) requires that California Parolee Reentry Courts include "key components of drug and collaborative courts." In California, the key principles of collaborative justice, as defined by the Collaborative Justice Courts Advisory Committee, based on the National Association of Drug Court Professionals' definition of the key components of drug courts, are as follows:

1. Collaborative justice courts integrate services with justice system processing.
2. Collaborative justice courts emphasize achieving the desired goals without using the traditional adversarial process.
3. Eligible participants are identified early and promptly placed in the collaborative justice court program.

4. Collaborative justice courts provide access to a continuum of services, including treatment and rehabilitation services.
5. Compliance is monitored frequently.
6. A coordinated strategy governs the court's responses to participants' compliance, using a system of sanctions and incentives to foster compliance.
7. Ongoing judicial interaction with each collaborative justice court participant is essential.
8. Monitoring and evaluation measure the achievement of program goals and gauge effectiveness.
9. Effective collaborative justice court operations require continuing interdisciplinary education.
10. Forging partnerships among collaborative justice courts, public agencies, and community-based organizations increases the availability of services, enhances the program's effectiveness, and generates local support.
11. Effective collaborative justice courts emphasize a team and individual commitment to cultural competency. Awareness of and responsiveness to diversity and cultural issues help ensure an attitude of respect within the collaborative justice court setting.

WHAT ARE THE KEY COMPONENTS OF SUCCESSFUL DRUG COURTS?

Research has demonstrated that the key components of successful drug courts (generally defined as successful in reducing recidivism) are:[2]

- Early engagement in treatment
- Effective treatment modalities
- Length of time in treatment
- Coerced participation in treatment
- Focus on high risk offenders
- Positive reinforcement from the judge
- Tangible rewards, of escalating value
- Consistent and fair application of sanctions
- Successful graduation from drug court

DO REENTRY COURTS REDUCE RECIDIVSM?

The most recent and comprehensive evaluation of reentry courts resulted in the following findings, conclusions, and lessons learned:[3]

- Although the findings were “somewhat mixed,” the study found that Harlem Reentry Court offenders were reconvicted less frequently than parolees under traditional parole supervision, but technical revocations occurred more frequently than among comparison parolees. (Closer

supervision of offenders in drug and reentry courts often results in increased reporting of violations and an increase in revocations—the so-called "supervision effect.")

- Alternatives to re-imprisonment upon revocation should be utilized, e.g., increased home visits, and reporting, increased testing, and use of short-term periods of incarceration.

- The minimum program duration required to produce positive outcomes is six months, and programs should probably be extended to 12-18 months.

- Marriage, educational achievement, employability, and prior substance abuse treatment were associated with better outcomes. A prior parole term was associated with poorer outcomes.

- "All parolees who meet the broad program eligibility criteria may not benefit equally from the intensive services and treatments. Like many correctional programs, the lack of evidence-based risk/needs assessments restricts the Court's ability to identify high risk cases prior to admission and any dynamic behavior changes that may occur during participation."

- Prior to program admission, evidence-based actuarial risk/needs assessment instruments should be used to focus services on high risk offenders, assess offenders for dynamic risk factors, such as criminal thinking patterns, substance abuse dependence, mental health diagnosis, vocational aptitude, etc., and to identify those most likely to benefit from the program.

- The study had not adequately accounted for the influence of offender risk level and dynamic risk factors on recidivism outcomes. The reentry court parolees may have been higher risk, for example, because they came from higher risk neighborhoods than the comparison parolees.

- Real-time feedback of interim results and indicators of success is important in order to address fidelity issues.

WHAT ARE EVIDENCE-BASED PRACTICES?

California defines "evidence-based practices" as probation or parole "supervision policies, procedures, programs, and practices demonstrated by scientific research to reduce recidivism."[4] Key principles of evidence-based practice (EBP) include:[5]

1. Actuarial risk/needs assessment instruments should be used to identify an individual offender's risk of recidivism and the primary "dynamic risk factors" (offender characteristics that are subject to change) that contribute to that level of risk.

2. The most important dynamic risk factors include: anti-social attitudes and beliefs, anti-social peers and associates; anti-social personality factors; family dysfunction; substance abuse; and educational and employment deficits.

3. Supervision, services, and the use of behavioral controls should focus on medium and high risk offenders (not low risk offenders) and on the individual offender's primary dynamic risk factors.

4. Consistent use of both positive reinforcement, and swift, certain, and fair application of sanctions, are important in changing offender behavior.

5. The most effective treatment programs for medium and high risk offenders are cognitive behavioral in nature, and for high risk offenders typically consist of 100-200 hours of treatment over a period of at least one year.

6. Effective supervision and treatment requires the continuous use of process and outcome data to monitor and evaluate agency performance.

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[1] C. Lindquist, J. Hardison, and P. Lattimore, "The Reentry Court Initiative: Court-Based Strategies for Managing Released Prisoners," *Justice Research and Policy* 6 (1): 97-118 (2004).

[2] Amanda B. Cissner and Michael Rempel, *The State of Drug Court Research: Moving Beyond 'Do They Work?'* (Center for Court Innovation, 2005). The study also found that there is little or no rigorous evidence on the impact of a collaborative team approach, the form of case management, or the extent of community outreach on recidivism reduction outcomes.

[3] Zachary Hamilton, *Do Reentry Courts Reduce Recidivism?* (Center for Court Innovation, 2010)

[4] Penal Code section 1229 (d).

[5] Roger K. Warren, "Evidence-Based Sentencing: The Application of Principles of Evidence-Based Practice to State Sentencing Practice and Policy," 43 *USF L. Rev*. 585, 596-624 (Winter 2009)