

# **Unified Courts for Families Deskbook**

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**A Guide for California Courts on  
Unifying and Coordinating  
Family and Juvenile Law Matters**



**ADMINISTRATIVE OFFICE  
OF THE COURTS**

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**CENTER FOR FAMILIES, CHILDREN  
& THE COURTS**

Judicial Council of California  
Administrative Office of the Courts  
Center for Families, Children & the Courts  
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We would also like to thank the Superior Courts of Butte, Glenn, Del Norte, Los Angeles, Napa, San Joaquin, and Yolo Counties for their energy and courage in developing and supporting the goals of unification of juvenile and family cases in their courts. Recently, the Superior Court of Placer County has joined as the seventh mentor court project. We are grateful to the presiding judges, executive officers, and presiding and supervising judges of the family and juvenile courts in these mentor court counties.

We particularly want to express our admiration and thanks to the Unified Courts for Families teams in the local mentor courts. They display daily dedication to solving the challenges of implementing a unified court strategy for the families in their communities.

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## *Preface*

The Judicial Council Operational Plan for fiscal years 2003–2004 through 2004–2005 articulates high-priority, state-level operational objectives for the California courts. In Part 3, the operational plan focuses on addressing two Judicial Council goals: Goal I, addressing the importance of access, fairness, and diversity, and Goal IV, addressing the quality of justice and service to the public. As the plan notes,

[t]hese strategic goals are interdependent: To serve the ends of justice, the courts must be accessible to all people and treat each person fairly. To be a relevant and stabilizing force in society, they must be responsive to societal needs and foster the trust and confidence of the public.

To implement these important goals, Objective 3 seeks to “[i]mprove courts’ management of family and children’s cases, with particular emphasis on unifying and coordinating court procedures.”

The California Administrative Office of the Courts’ Center for Families, Children & the Courts (CFCC) has, in conjunction the Judicial Council and with family and juvenile courts throughout the state, moved forward with implementing these aspects of the council’s operational plan. To that end, this *Unified Courts for Families Deskbook* is designed to assist California’s courts in developing approaches to unification and coordination. It is meant to assist a range of individuals working in the courts: judicial officers, court administrators, family law facilitators and other court-based self-help attorneys, case managers, mediators, clerks, and others involved with court operations or planning for implementation of a unified court. The deskbook offers a variety of suggested approaches to improving coordination; however, there exists a range of effective practices in California’s courts that may not yet be represented here. This is an evolving field and there are many different ways of approaching the issues. Over time, the deskbook will be updated with additional examples of effective practices in this field.

The deskbook is one component of California’s Unified Courts for Families Program (UCF Program). The first phase of the UCF Program was a statewide planning process in which, during 2002, the superior courts of 31 California counties received grants to develop strategies for unification or coordination of proceedings involving families and children. Several important concepts emerged during the planning process, including (1) the necessity of addressing domestic violence issues in both family and juvenile matters; (2) the value of cross-training for judicial officers and court staff in all divisions handling cases involving families and children; and (3) the importance of implementing systems that allow for appropriate information sharing and coordination throughout the courts.

Specifically in response to concerns raised about the courts’ ability to coordinate information sharing given existing technology, the council directed staff, in collaboration with the Family and Juvenile Advisory Committee and the Court Technology Advisory Committee, to

1. Assist and facilitate the development of requirements that will define the specific needs of unified family courts; and

2. Ensure that those needs are incorporated in the requirements for case management systems certified for the state courts of California.

In 2003, seeking to create and support unified court systems that will coordinate family, juvenile, and other related case types and that will be easier for children and families to navigate, the Judicial Council issued a request for proposals. From among those who responded the council selected six “mentor courts”: Del Norte, Los Angeles, Napa, San Joaquin, Yolo, and Butte and Glenn, the latter two working together as a collaborative. These courts received grants to implement their approaches and to serve as examples to other courts throughout the state. Over a three-year period, the mentor courts will develop and implement various strategies for the coordination of related cases involving families and children, with a goal of improving court procedures, improving outcomes for California’s children and families, and making better use of strained court resources. Their approaches are summarized in the appendix.

This deskbook, developed with input from the mentor courts and others, is one tool created to assist California courts in establishing unified and coordinated court practices and procedures. To further assist family and juvenile courts in this area the AOC is offering technical assistance, training, and evaluation and assessment of effective practices. Please contact CFCC for additional information and assistance if your court is considering implementing a unified court system. The experiences of those courts that have implemented unified courts and of those that are planning to are essential in increasing everyone’s understanding of how courts can coordinate procedures so as to most effectively handle the important and complex matters affecting families and children throughout the state.



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# INTRODUCTION

## I. Historical Context of Juvenile and Family Courts

Both juvenile and family courts originated near the beginning of the 20th century. The first juvenile court was established in 1899 in Chicago, Illinois.<sup>1</sup> The first family law court was established in 1914 in Cincinnati, Ohio.<sup>2</sup> The development of the first juvenile and family courts came in response to the enormous changes in social and political conditions occasioned by the industrialization and urbanization of America.<sup>3</sup>

Juvenile courts were established amid a wave of child-centered legislation that included compulsory school attendance, child welfare laws, and child labor laws.<sup>4</sup> Oliver Wendell Holmes and Roscoe Pound were vigorously advocating a new socially conscious jurisprudence and a rejection of 19<sup>th</sup>-century legal formalism.<sup>5</sup> The legal doctrine of *parens patriae* was adopted to provide justification for intervention by the state in matters affecting the welfare of children. The state was assigned the duty to protect children from abuse as well as to provide a rehabilitative approach to their wrongdoings.<sup>6</sup> Juvenile courts were set up as a venue for the state to carry out this duty.

The family court, on the other hand, was established not on the basis of social welfare ideology, but rather as a response to the rising number of divorces occasioned by the move from an agricultural to an industrial economy. The structure of families and the roles played by those within them were changing. For example, by the mid-19<sup>th</sup> century the literacy rate for women had equaled that of men; and by 1900, almost 20 percent of those Americans who had graduated from college were women.<sup>7</sup> Women had become employed in the industrial workforce as well as in the service industries. The first national divorce statistics collected and reported to the U. S. Congress in 1889 indicated that there had been a 157-percent increase in divorces between 1867 and 1886.<sup>8</sup> The justice system was facing an ever-growing need to provide adjudication of divorce and the issues related to it.

Court systems were also changing during this period. These new juvenile and family courts were part of an increasingly complex set of urban court systems. As cities grew, so did the number of

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<sup>1</sup> Robert W. Page, “Family Courts’: A Model for an Effective Judicial Approach to the Resolution of Family Disputes,” in *ABA Summit on Unified Family Courts: Exploring Solutions for Families, Women and Children in Crisis*. (American Bar Association, 1998).

<sup>2</sup> Barbara Babb, “America’s Family Law Adjudicatory Systems” (1998) 32 *Fam. L.Q.* 37.

<sup>3</sup> Barry C. Feld, “Race Politics and Juvenile Justice: The Warren Court and the Conservative ‘Backlash’” (1999) 87 *Minn. L. Rev.* 1447, 1456.

<sup>4</sup> *Ibid.*

<sup>5</sup> Oliver Wendell Holmes, *The Common Law* (New York: Dover Publications, 1881); See also Roscoe Pound, “The Scope and Purpose of Sociological Jurisprudence. Part I” (1911) 24 *Harv. L.Rev.* 591; “The Scope and Purpose of Sociological Jurisprudence. Part II” (1912) 25 *Harv. L.Rev.* 140; “The Scope and Purpose of Sociological Jurisprudence. Part III” (1912) 25 *Harv. L.Rev.* 489.

<sup>6</sup> Feld, 1999.

<sup>7</sup> Herma Hill Kay, “From the Second Sex to the Joint Venture: An Overview of Women’s Rights and Family Law in the United States During the Twentieth Century” (2000) 88 *Cal. L. Rev.* 2017, 2023.

<sup>8</sup> *Id.* p. 2029.

courts within them. New legal issues arose, law became increasingly complex, professionalism and specialization became necessary, and the number of courts within the developing urban centers grew rapidly. Chicago, for example, had created 556 different courts in an overlapping array of jurisdictions.<sup>9</sup> This situation evoked confusion, political conflict, and a general lack of trust in the judicial system among members of the public. Similar problems developed in other urban areas, leading finally in the 1930s to a movement for court consolidation. As a consequence, today Chicago has a single court with one main courthouse and ten satellite courts in various locations. By the 1950s, this movement toward centralization and coordination was found in almost all major metropolitan areas.<sup>10</sup>

Currently, as a result of the increasingly complex array of cases involving children and families, courts are again experiencing the need to coordinate. During the second half of the 20th century, staggering changes have affected the justice system as a whole, and juvenile and family courts in particular. For example, the “baby-boom” generation reached the age of parenting between 1960 and the present.<sup>11</sup> The divorce rate quadrupled between 1960 and 1985. Births outside of marriage increased from a rate of 5 percent in 1960 to 22 percent in 1985 and have continued to increase.<sup>12</sup> The economic resources available to families have continued to decline as relative poverty has increased.<sup>13</sup> This increasing poverty has three important effects: it decreases access to services within the community, including legal services; it increases the difficulty of keeping children safe; and it adds to the number of people appearing in family and juvenile courts.<sup>14</sup>

Family structure itself has continued to change. The number of women entering the workforce increased enormously in the last half of the 20th century. In 1960, 19 percent of married mothers with children under the age of 6 worked outside the home; in 1986 that figure had risen to 54 percent.<sup>15</sup> Even though more women are working in the labor force, many are working at low-wage service and clerical jobs, which have replaced those well-paid unskilled and semiskilled jobs that have disappeared from the national economy.<sup>16</sup> With the additional pressure of providing child care during work hours, the economic disadvantages for single parents, male or female, can be particularly harsh.<sup>17</sup> The issue of child support has become increasingly pressing for both custodial and noncustodial parents. Most young families cannot afford to own their own homes and many lack health insurance.<sup>18</sup> Because of job requirements, families tend to be more mobile; parents have less time to spend with their children and are more socially isolated from friends, relatives, and neighbors.<sup>19</sup> This situation tends to foster reliance on social services to

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<sup>9</sup> David Rottman, H.S. Efke, Pamela Casey, *A Guide to Court and Community Collaboration* (National Center for State Courts, Pub. No. R-208, 1998).

<sup>10</sup> *Ibid.*

<sup>11</sup> Todd Clear, *Societal Responses to the President’s Crime Commission: A Thirty-Year Retrospective* (Department of Justice, 1998) NCJ Report No. 170029.

<sup>12</sup> Gary Melton, “Children, Families and the Courts” (1993) 66 *S. Cal. L. Rev.* 1993; See also, Paul Dutton, & T.J. Matthews, “Trends in Characteristics of Births by State: United States, 1990, 1995, 2000 and 2002” (2004) 52 (19) *National Vital Statistics Reports*, retrieved 6/14/04 at: [http://www.cdc.gov/nchs/data/nvsr/nvsr52/nvsr52\\_19acc.pdf](http://www.cdc.gov/nchs/data/nvsr/nvsr52/nvsr52_19acc.pdf)

<sup>13</sup> *Ibid.*

<sup>14</sup> *Ibid.*

<sup>15</sup> *Ibid.*

<sup>16</sup> Clear, 1998.

<sup>17</sup> Jessica Pearson, “Court Services: Meeting the Needs of Twenty-First Century Families” (1999) 33 *Fam. L. Q.* 617.

<sup>18</sup> Melton, 1993.

<sup>19</sup> *Ibid.*

address needs formerly met by extended family, friends, and neighbors, and on the court to resolve problems and serve as a gateway to other services. Additionally, along with the high divorce rate is a corresponding high rate of remarriage and resulting blended families. Parents may find themselves involved in more than one case involving complex issues related to various family and extended family members.

These economic pressures affect the ability of the public to gain access to attorneys. The sheer size of the pro per demand on the family courts is remarkable. In California, during the 1980s, the proportion of family law cases in which at least one party was unrepresented grew from 30 percent to 67 percent,<sup>20</sup> and continued to grow throughout the 1990s. In San Diego County, for example, the number of divorce filings involving at least one pro per litigant rose from 46 percent in 1992 to 77 percent in 2000.<sup>21</sup> A review of case files involving child support issues conducted by the California Administrative Office of the Courts between 1995 and 1997 showed that at least one party was unrepresented in 84 percent of the cases.<sup>22</sup> Two years later in 1999, in a similar study of case files, the pro per rate had increased to 89 percent.<sup>23</sup> In a 2003 survey of pro per assistance plans submitted by local trial courts to the California Administrative Office of the Courts, estimates of the pro per rate in family law cases from the larger counties (with more than fifty judicial positions), averaged 72 percent.<sup>24</sup> The pro per rate increases again if data are collected at the time of disposition rather than at the time of filing. In 2003, the available California Judicial Branch Statistical Information System (JBSIS)<sup>25</sup> data indicate that at the time of disposition, petitioners were pro per in dissolution cases 80 percent of the time, in paternity cases 96 percent of the time, and in legal separation and nullity cases 76 percent of the time. This suggests that some of those who can access legal representation at the start of a case are not able to maintain it throughout the process.

California provides legal representation in juvenile dependency cases for children and indigent parents. The process of appointing counsel for parents varies from county to county. Often lack of resources limits the quality of that representation. Counsel for both parents and children sometimes carry very large caseloads. Caregivers are usually not provided representation by the court. In juvenile delinquency, most jurisdictions provide legal counsel for the child, but the parents are not represented. In probate guardianships, neither the guardian nor the parents are entitled to court-appointed representation, and appointment for the child is discretionary.

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<sup>20</sup> Deborah L. Rhode, "The Delivery of Legal Services by Non-Lawyers" (1990) 4(209) *Geo. J. Legal Ethics* 214–215 as cited in Russell Engler, "And Justice For All – Including the Unrepresented Poor: Revising the Roles of Judges, Mediators, and Clerk" (1999) 67 *Fordham L. Rev.* 1987.

<sup>21</sup> Deborah J. Chase and Bonnie Rose Hough, "Family Law Information Centers: Benefits to Courts and Litigants" (2003) in press, *Journal of the Center for Families, Children and the Courts*.

<sup>22</sup> Judicial Council of California, *Review of Statewide Uniform Child Support Guideline* (1998) p. ES-5 <http://www.courtinfo.ca.gov/programs/cfcc/pdffiles/suppguide.pdf>

<sup>23</sup> *Id.* p. 39

<sup>24</sup> Deborah J. Chase & Bonnie Rose Hough, *A Report and Analysis of Action Plans Throughout California: Integrating Services for Self-Represented Litigants into the Court System* (June 2003) (report created for the State Justice Institute)(hereinafter called *Pro Se Action Plans*)

<sup>25</sup> Judicial Branch Statistical Information System is a new reporting system for statewide data on court operations. It has not yet been implemented in all California courts. Represents data from 11 counties.

## **The Need for Coordination Within the Juvenile and Family Courts**

In California superior courts, juvenile and family cases constituted 40 percent of the total number of civil cases filed in superior courts in California during the 2001–2002 year.<sup>26</sup> Indeed, these types of domestic cases are the fastest-growing area of civil litigation in the country.<sup>27</sup> The Judicial Council’s 2000 Annual Report states that cases involving families and children have increased by more than 36 percent during the past 10 years. Filings regarding child abuse or neglect have increased by 129 percent over the past 20 years.

The wide array of potential underlying issues in family and child cases has become quite complex<sup>28</sup> and can require protracted planning involving social service interventions.<sup>29</sup> According to the Judicial Council’s 2000 Annual Report, domestic violence has been identified in 55 percent of child custody mediation cases. Courts are dealing with cases involving allegations of child abuse, substance abuse, and other behavioral problems that can appear intractable. Families often find that they have different issues handled in different courts by different judges with no communication among the courts.<sup>30</sup> Multiple ancillary services may be involved. Child Protective Services, dependency mediation services, and the Court Appointed Special Advocate (CASA) program work with the juvenile dependency courts. Juvenile probation services work with the juvenile delinquency courts. Probate investigators work with the probate courts. Family Court Services and family law facilitators work with the family, child support, and civil domestic violence courts. Law enforcement, pretrial services, prosecutors and defense attorneys, adult probation, and drug court services work with the criminal courts. In conjunction with these government agencies, community-based organizations routinely provide court-ordered social services to litigants. Examples of such services include mental health service; substance abuse treatment; batterers’ intervention; parent education; child custody evaluation; co-parenting counseling; domestic violence shelters; supervised visitation programs; and drug-testing facilities. Lack of court coordination and information sharing, plus an overall inadequate allocation of resources to children and family cases, can lead to a myriad of problems for both the court and the families, including these common situations:

1. Conflicting appearance schedules or requirements to appear too frequently, resulting in unnecessary scheduling of court time and resources;
2. Some aspects of a dispute being adjudicated more than once by more than one court;
3. Inadequate paperwork from pro per litigants and resulting continuances (or dismissals);
4. Duplicative orders or referrals for a variety of social services;

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<sup>26</sup> Judicial Council of California, Administrative Office of the Courts, *2003 Court Statistics Report: Statewide Caseload Trends 1992-1993 through 2001-2002* (2003) p. vii.

<sup>27</sup> American Institutes for Research, *Unified Family Court Evaluation Literature Review* (Prepared for the Center for Families, Children & the Courts, Judicial Council of California, Administrative Office of the Courts, November 4, 2002) p. 2.

<sup>28</sup> Barbara Babb, “Substance Abuse, Families, and Unified Family Courts: The Creation of a Caring Justice System” (1999) 3 *J. Health Care L & Pol’y* 1; Pearson (1999); Jona Goldsmith, “The Pro Se Litigant’s Struggle for Access to Justice” (2002) 40 *Fam. L.Q.* 36; Andrew Schepard, “Editorial Notes” (2002) 40 *Fam. L.Q.* 5.

<sup>29</sup> Babb (1998) p. 31; See also Jeff Kuhn, “What We Have Learned” (1998) 32 *Fam. L.Q.* 67; Catherine Ross, “The Promise of a System of Unified Family Courts” (1998) 32 *Fam. L. Q.* 3.

<sup>30</sup> *Ibid.* See also Hon. Donna M. Petre, “Unified Family Courts: A California Proposal Revisited” (1999) 1 *J. Center for Children & Cts.* 161.

5. Critical information unavailable to judicial officers, thereby potentially interfering with their ability to make comprehensive, fully informed decisions;
6. Lack of information about risk, resulting in family members and court staff safety being compromised;
7. Inability of the court to track compliance with its orders;
8. Long wait times for hearing dates and/or in the courtroom, and lack of responsiveness to parties;
9. Conflicting orders issued by different judges in different departments;
10. Inadequate training of court personnel for dealing with family and child development issues; and
11. Failure to identify underlying issues such as substance abuse and domestic violence.

Most legal scholars agree that without reform, cases involving families and children will become further fragmented. As a result, many are calling for systematic implementation of unified family court systems.

## II. Unified Family Courts

A unified family court is one that operates to coordinate multiple cases involving the same family. It also works to improve the way in which the court manages all cases involving children and families. Unified family courts seek to reduce the burden on the court in terms of courtroom time, paper volume, records maintenance, and information management; and increase the quality of justice for litigants by providing optimal relevant information to judicial officers, reducing the number of court appearances, avoiding conflicting orders, facilitating linkage to appropriate social services, and effectively managing cases involving self-represented litigants. Critical to these goals is the management of information within the court as well as with related government and social service agencies.

### **Existing Unified Family Courts Evaluated**

Several states have implemented unified family courts, and have evaluated their programs. Examples are set out below.

1. **Colorado** (2000)<sup>31</sup> randomly assigned a set of cases to be managed within the unified family court, and then compared them to cases remaining in the traditional nonunified structure.
  - Judges believed that the coordination of all cases relating to one family creates a more informed bench and better opportunities to respond to the needs of the cases.
  - The unified court handled more matters per hearing than the traditional court.
  - Out-of-home placements for children in the unified court were shorter than for children in the traditional juvenile court.

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<sup>31</sup> American Institutes for Research, "Unified Family Court Evaluation Literature Review," p. 12, November 2002, <http://www.courtinfo.ca.gov/programs/cfcc/pdf/ufclitreview.pdf>. (accessed May 5, 2004)



2. **Kentucky** (1993)<sup>32</sup> conducted a user satisfaction survey of its unified family court after its second year of operation.
  - Attorneys reported believing that all issues relating to one family should be heard in a single court.
  - Attorneys believed that linkage to social services and mediation is central to success.
  - Attorneys report that dissolution cases are handled more rapidly.
  - Litigants felt that the court-ordered services helped them solve their legal problems.
  - Litigants felt that the adjudication process had a good effect on their children.
  - Litigants felt that the judge had treated them with respect.
3. **New Hampshire** (1997)<sup>33</sup> conducted an evaluation of its unified family court through surveys of judges, court staff, attorneys, social workers, and law enforcement personnel.
  - Cases are completed more rapidly than they were prior to implementation of the unified family court.
  - Litigants, including pro per litigants, reported that the unified family court made the process easy to understand.
  - Litigants reported being treated well by judges and court staff.
  - Cases were completed to judgment or dismissal 90 percent of the time.
4. **Oregon** (1997)<sup>34</sup> Deschutes County evaluated its unified family court through surveys and interviews with attorneys, school officials, and social workers.
  - Respondents believed that the unified family court benefited families.
  - Respondents reported that the unified family court benefited agencies.

### **Coordination Strategies**

Two basic strategies have emerged for structuring a unified family court: a one-judge-one-family model and a one-team-one-family model.

1. **One-Judge-One-Family:** Often referred to as a comprehensive jurisdiction court, the one-judge-one-family model of a unified family court attempts to bring all court cases involving the same family in front of the same judge. This judge would then make all orders related to that family, regardless of the case type. The comprehensive jurisdiction model requires judicial officers to be familiar with a broad spectrum of applicable laws and procedures. This model tends to mirror existing operational practices of courts in small venues with only two or three judicial officers.
2. **One-Team-One-Family:** This model does not require a single judge for all matters relating to one family. Rather, each family has one case manager or case management team. Often this involves one judge who presides over the entire unified family court system, including the various domestic courts such as dependency and dissolution courts.

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<sup>32</sup> *Id.*, p. 18.

<sup>33</sup> *Id.*, p. 21.

<sup>34</sup> *Id.*, p. 26.

The different courts are then run by separate judges or family court commissioners who maintain communication with each other and benefit from coordination of multiple cases by case management staff. This is basically an information-sharing model. It is a model that has been found particularly useful in courts that are spread out geographically over many locations.

Decisions about structuring depend upon a variety of factors, including available judicial and other court staff resources; the nature of the problems presented to the court; the availability of community resources for legal and social service assistance; the local history of relations between the court, the bar, and the community; levels of information technology; and the caseload volume.

### **Common Case Types for Unified Family Courts**

Different unified family courts have made different decisions about which cases to include in their coordination model. There are seven most common case types:

1. Marital cases (dissolution, legal separation, nullity)
2. Establishment of paternity
3. Domestic violence—sometimes including the criminal DV cases
4. Child support enforcement
5. Probate guardianships
6. Juvenile dependency
7. Juvenile delinquency

Additional case types such as adoption, emancipation, conservatorship, mental health, and family and/or juvenile drug cases may also come under the jurisdiction of the unified family court.

### **Case Management**

Case management in children and family cases has two prominent features:

1. The management of a case as it moves forward from the initial filing through the conclusion of the judicial process.
2. The management of the numerous short cause hearings in family law cases.

A large number of family law hearings in a unified family court are calendared as the result of an order to show cause or a motion filed by one of the parties to a case. These matters are usually heard on short cause calendars where hearings are allotted 20 minutes or less. Orders with respect to child custody, visitation, child support, spousal support, and other pretrial issues can be made at these hearings. Requests to modify existing orders are also usually litigated in this manner. The same is true for requests for restraining orders. Frequently the pretrial law and motion orders are simply incorporated into the judgment. The management of cases on these short cause calendars is critical to a unified family court, because this is how a great deal of the litigation in family cases occurs.

Optimal case management must include coordination and information sharing between the various agencies and community-based organizations with which the family and its members interact or from which they could receive services. Additionally, in a unified family court

involving multiple judicial officers, coordination and communication among judges and commissioners is also necessary.

### **Case Managers**

Regardless of the coordination model chosen or the types of cases included, the role of a case manager is crucial to the operation of a unified family court. A case manager's duties might include the following:

1. Identifying family members with involvement in multiple proceedings;
2. Coordinating calendars and crossover proceedings;
3. Making or assisting with referrals to social service agencies and alternative dispute resolution procedures;
4. Obtaining, compiling, and sharing information from the various agencies and courts involved with the family, including reports on compliance with court-ordered services;
5. Identifying cases involving the family in other jurisdictions; and
6. Generally assisting the family in its movement through the court system.

### **Coordination of Community Services**

A unified family court emphasizes coordination of court-related and court-ordered services to prevent duplication and to increase the availability of effective services for those who need them. Such services include the following:

1. Substance-abuse counseling and treatment;
2. Mental health services, including individual and group counseling and crisis intervention;
3. Batterers' intervention;
4. Parenting classes;
5. Child custody evaluation;
6. Supervised visitation programs;
7. Alternative dispute resolution;
8. Domestic violence shelters; and
9. Domestic violence counseling.

### **Coordination of government agencies**

Coordination and communication are also necessary among the various government agencies that may be involved with the families:

1. Child welfare;
2. Probation;
3. Family court services;
4. Juvenile dependency mediation;
5. Court Appointed Special Advocates (CASA) program;
6. Probate investigators;
7. Victim witness programs;
8. Pretrial services;

9. Law enforcement;
10. Public benefits;
11. Mental health
12. Department of Education and schools
13. Tribal social services

### **Assistance for Self-represented Litigants**

Owing to the large population of pro per litigants in family law cases, a unified family court must attend to the needs of self-represented litigants for legal information and education. The unified family court staff should be knowledgeable about their local family law facilitator and any other court-based or community-based legal assistance for self-represented litigants. Self-represented litigants need help in determining what they need from the court, assistance in completing forms, and answers to a myriad of procedural questions. A unified family court might offer the following common types of assistance:

1. Drop-in assistance;
2. Workshops;
3. Clinics;
4. Telephone help lines;
5. Internet assistance;
6. Courtroom assistance with preparation and explanation of orders; and
7. Financial and family law mediation.

### **Due Process and Fairness of the Unified Family Court Process**

Any unified family court must attend to issues related to due process and the basic fairness of the court procedures being implemented. This is particularly important in a court where judges will be provided with substantially more information about the litigants than has previously been the case and large numbers of litigants will be unrepresented by counsel. The following suggestions are made for ways in which to safeguard the legal integrity of the unified family court:

1. Development of clear standards, consistent with Welfare and Institutions Code section 827, about what information may be shared, and who is entitled to access to the information;
2. Written policies about how the information is to be maintained and how to protect the privacy of the families;
3. Careful attention to the differing legal standards in the various types of cases included in the unified family court;
4. Clarity among all judicial officers and court staff about the different evidentiary privileges applicable to unified family court information;
5. Ongoing attention to the issue of inappropriate ex parte communication between judicial officers and court staff, case managers, or other service providers;
6. Procedures to ensure that the parties, and their attorneys if they have them, are aware of all information that a judicial officer possesses when making a decision—and are provided with the opportunity to respond to it;

7. Attention to the issue of relevance in the definition of the family—whether the relationships may be unreasonably distant or remote in time;
8. Ensuring that the use of alternative dispute resolution, or social service interventions, does not operate to obstruct a litigant’s right to a hearing—with particular concern for self-represented litigants;
9. Seeing that procedures are in place to protect the safety of all family members when there are issues of family violence.

### **Collaborative Partners**

The goals and safeguards set out for a unified family court can only be achieved by a community-focused strategy of collaboration. Involvement of the local family attorneys, juvenile attorneys, probate attorneys, family law facilitators, other self-help attorneys, counsel for children, legal services agencies, district attorneys, public defenders, and county counsel should be included to the greatest possible extent in order that the legal issues for the unified family court be identified and carefully resolved. Collaboration with both government and community social service providers is also central to the unified family court’s ability to identify and attend to the core issue of a dispute, and to reach a just and lasting resolution.

**CHAPTER 1: UNIFIED COURT OPERATIONS OVERVIEW**

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## Overview

Ever since Mary was two years old, her mother and father have been dropping her off at the home of family or friends for weeks at a time when the responsibilities of caring for her and her brothers, combined with severe substance abuse problems, became too overwhelming for them. At the age of fourteen, Mary was left with a paternal aunt. When her parents did not return for more than six months, her aunt filed a petition for guardianship in probate court. Mary's father appeared at the hearing in probate court and contested the guardianship. Notice was sent to her mother at her last known address, and she did not appear. The guardianship was granted to Mary's aunt. Two months later, however, Mary's aunt asked the court to terminate the guardianship, because Mary was skipping school, had gotten caught shoplifting several times, and was on informal probation. Her aunt also suspected Mary was using drugs. Again, Mary's father appeared seeking custody. Mary's mother appeared at the hearing on the termination of the guardianship and explained that she had never received the papers on the original petition because she had been in a drug rehabilitation program. Further, she told the court that she had obtained a restraining order against Mary's father three months prior based on years of domestic violence. She had also filed an action to establish parentage since she and Mary's father had never been married. She stated that she had completed her program, was in the process of finding an apartment and wanted custody of Mary. Mary's father argued that Mary should not be placed with her mother, because six years previously the mother's parental rights regarding an older son with a different father had been terminated.

Mary and her family have been or could be involved in juvenile departments, adult criminal, drug, probate courts, and several family law departments. This situation would likely result in numerous court appearances in front of different judges who are applying different legal standards to the same issues, based on the same set of facts. Judges, court staff, and litigants might be required to straighten out duplicate and potentially conflicting orders. Court operations would have to process a myriad of paperwork to maintain multiple files and calendarings. Courtroom time is used ineffectively when matters must be continued owing to proceedings in other departments that were not identified until the time of the hearing. The ability of litigants to comply with orders for community social services is compromised by multiple and potentially conflicting orders in the various cases, as is the court's ability to monitor and enforce its own orders.

A unified family court attempts to address problems such as these by developing an optimal system of coordination among these cases. Either through combining cases into courts of comprehensive jurisdiction in which all matters involving the family are heard by the same judge, or by creating a teamwork approach for the coordination of information and services within the existing courts, unified family courts go further toward addressing the critical needs of both the courts and the families they serve than a fragmented organizational system such as the one described in Mary's case. In developing an operational plan for unification of juvenile and family courts, three critical decisions must be addressed.



## **1.1 Critical Initial Decisions**

### **1. Major Case Types & Issues**

What are the types of cases and issues that will be routinely included in the unified family court?

- What are the major case types most likely to have other cases with overlapping issues?
- For each of these major case types, what other cases are most likely to be related?
- What issues are most likely to arise in more than one case per family?

### **2. Definition of “Family”**

What individuals will be identified as family members with respect to the unified family court?

### **3. Scope of Information**

When are cases or ancillary information too remote or unrelated to be appropriate for coordination or even consideration within a unified family court case?

## **1.2 Major Case Types and Issues**

In its Policy on Unified Family Courts adopted in 1994, the American Bar Association recommended coordination of the following matters<sup>1</sup>:

- Juvenile dependency;
- Juvenile delinquency;
- Cases involving legal-medical issues, such as the need for emergency medical treatment, abortion, right-to-die, living wills;
- Voluntary and involuntary termination of parental rights proceedings;
- Adoption proceedings;
- Conservatorships;
- Guardianships;
- Proceedings under interstate compacts on juveniles and on the placement of juveniles;
- Domestic violence protective orders;
- Intrafamilial criminal offenses;
- Dissolution proceedings, legal separation, nullity;
- Proceedings to establish parentage;
- Proceedings under Title IV-D Child Support Enforcement, including URESA and UFISA matters;
- Mental health courts, including civil commitments and confinements;
- Emancipations; and
- Name changes.

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<sup>1</sup> ABA Policy on Unified Family Courts, Adopted August 1994, in *ABA Summit on Unified Family Courts: Exploring Solutions for Families, Women and Children in Crisis, May 14-18, 1998*, p. xvi–xvii.

Not all unified family courts include all these case types and issues. Most have started by assessing the areas in which the greatest numbers of multiple cases occur, or where lack of information and coordination are creating the most difficult circumstances for the court and the families. In designing a unified family court, analysis of procedural case flow is necessary in order to decide which cases to include and to begin thinking about what changes in court operations might promote the optimal management of these cases. Issues of overlapping subject matter jurisdiction among cases that are frequently related, differing standards for judicial decision-making on crossover issues, and timelines for the various case types must be identified and evaluated.

### **1.3 Particular Unification Issues**

There are some particular issues that tend to cross case types and create the potential for conflicting orders. The following are examples of such issues.

#### **1.3.1 Parentage**

Identifying the legal parents of children is an issue that arises in several different types of cases. There are cases initiated for the purpose of establishing legal parentage and making orders for the custody and support of children. In other cases, such as juvenile and guardianship cases, the identity of the parents is critical to notice requirements that must be met before the case can proceed. The following are types of cases in which the issue of parentage may arise:

- Uniform Parentage Act;
- Dissolution, legal separation, nullity (children born before marriage);
- Title IV-D Child Support Enforcement;
- Probate guardianship (notice requirements);
- Juvenile dependency (findings);
- Juvenile delinquency (findings);
- Actions to set aside or enforce voluntary declarations of paternity; and
- Adoptions

#### **1.3.2 Child Custody and Visitation**

The issue of child custody and/or visitation arises in many different types of cases and often involves complex jurisdictional questions. There are differing standards upon which decisions are based, and different evidentiary burdens that depend upon the type of case and parties involved. Some custody disputes are between the parents; some are between parents and relatives or other caregivers; some are disputes with the government. The following are examples of matters in which custody and visitation of children may arise:

- Divorce, legal separation, nullity;
- Grandparent or stepparent visitation;
- Uniform Parentage Act paternity;
- Title IV-D Child Support Enforcement;
- Domestic Violence Prevention Act;
- Civil harassment cases involving children as protected persons;

- Criminal cases involving protective orders covering children as protected persons
- Petitions for child custody and support;
- Probate guardianships;
- Juvenile dependency;
- Juvenile delinquency;
- Custody Order – Juvenile Final Judgment;
- Adoption;
- Emancipation;
- Indian Child Welfare Act; and
- Uniform Child Custody Jurisdiction and Enforcement Act.

### **1.3.3 Child Support**

The issue of child support is one that cuts across a variety of case types. Child support is an issue in any family law case that involves children. It is the central issue in cases filed by the local child support agency—Title IV-D Child Support Enforcement cases. In fact, Title IV-D Child Support Enforcement cases overlap with almost all cases involving children that would be included within a unified family court. The following are cases in which child support arises as an issue.

- Dissolution, legal separation, nullity;
- Uniform Parentage Act;
- Title IV-D Child Support Enforcement including URESA and UFISA matters;
- Criminal charges for failure to support (Pen. Code, § 270);
- Domestic Violence Prevention Act;
- Petitions for custody and child support;
- Juvenile dependency;
- Juvenile delinquency;

Unless the parties agree otherwise, child support orders are set according to the California child support guideline, with the court having limited discretion to deviate from the guideline amount.

### **1.3.4 Restraining Orders**

Violence within families and close social groups is an issue that may frequently arise in a number of different case types. The following are examples of cases types that have authority to issue restraining orders to protect various family members.

**Juvenile Dependency:** Child abuse and neglect are central to juvenile dependency cases. The effect of domestic violence between the parents or other household members can also be a serious factor in juvenile dependency cases. The juvenile court may make orders to protect children, parents and others.

**Juvenile Delinquency:** Violent behavior from juveniles toward siblings and/or parents may become an issue in either dependency or delinquency cases. Dating violence and violence

among peers are also issues found in the delinquency courts. Here also, the court may make orders to protect affected individuals.

**Domestic Violence Prevention Act:** Violence against spouses, domestic partners, and other family members within the second degree may be addressed by filing a Domestic Violence Prevention Act case. These are requests for restraining orders and may also contain requests for custody, visitation, and support of children.

**Other Family Law:** Violence between spouses may be handled in dissolution, legal separation, and nullity cases. Violence between unmarried parents may be handled in Uniform Parentage Act cases, or in Title IV-D child support cases. Appropriate restraining orders may be made in each of these case types.

**Elder Abuse:** Violence against elders is raised in elder abuse restraining order and conservatorship matters. Elder abuse restraining orders are available to protect elders from abuse, neglect, and financial exploitation by caregivers.

**Civil Harassment:** Violence among family members who are not related within the second degree (as required under the DVPA) may be handled in civil harassment cases.

**Criminal Cases:** Any of the above may also have a criminal case associated with it. If so, criminal protective orders may be made in the criminal case to protect victims and witnesses.

The following chart (page 9) provides an overview of the restraining orders available in California



**Chart 1A: Restraining Orders Chart**

	TYPE OF ORDER	CODE SECTION(S)	EX PARTE DURATION	DURATION AFTER HEARING	VIOLATION CHARGING SECTION
<b>CIVIL</b>	Emergency Protective Order (EPO)	Family Code § 6240-6257	5 court days, up to 7 calendar days	Not applicable	Penal Code § 273.6
	Domestic Violence Prevention Act (DVPA)	Family Code § 6200 et seq. (see especially § 6218)	TRO 20–25 days until hearing;	Initially 3 years; when renewed can be permanent.	Penal Code § 273.6
	Uniform Parentage Act (paternity)	Family Code § 7710, 7720	Same as DVPA	Same as DVPA	Penal Code § 273.6
	Family Law Act (dissolution, legal separation, nullity)	Family Code § 2047	Same as DVPA	Same as DVPA	Penal Code § 273.6
	Title IV-D Child Support	Family Code § 17404	Same as DVPA	Same as DVPA	Penal Code § 273.6
	Civil Harassment Prevention Act	Code of Civil Procedure § 527.6	15–22 days until hearing	3 years	Penal Code § 273.6
	Workplace Violence Safety Act (Corporate Restraining Order)	Code of Civil Procedure § 527.6	15–22 days until hearing	3 years	Penal Code § 273.6
	Elder Abuse Protective Orders	Welfare & Institutions Code § 15657.03	Same as DVPA	Same as DVPA	Penal Code § 273.6
<b>CRIMINAL</b>	Stalking Emergency Protective Order	Penal Code § 646.91	5 court days, up to 7 calendar days	Not applicable	Penal Code § 166(a)(4)
	Criminal Protective Order	Penal Code § 136.2	Duration of jurisdiction – through probation	Duration of jurisdiction – through probation	Penal Code § 166 (c)(1)
	Post Conviction DV Orders (terms of probation)	Penal Code § 1203.097	Not applicable	Period of probation	Penal Code § 166 (c)(1)
	Post Conviction Stalking Orders	Penal Code § 646.9(j)	Not applicable	Up to 10 years from the date of sentence	Penal Code § 166 (c)(1); § 166(b); § 166(a)(4)
	Parole Stalking Orders	Penal Code § 3053.2	Not applicable	Period of parole	Penal Code § 166 (c)(1); § 166(b); § 166(a)(4)
<b>JUVENILE</b>	Juvenile Dependency Protective Orders	Welfare & Institutions §§ 213.5, 304; 362.4; Family Code § 6218	15–20 days until hearing	3 years; if in exit order, until further order of the court	Penal Code § 273.65
	Juvenile Delinquency Protective Orders	Welfare & Institutions §§ 213.5, 304; 362.4; Family Code § 6218	15–20 days until hearing	3 years; if in exit order, until further order of the court	Penal Code § 273.65



## **1.4 Definition of “Family”**

Almost immediately upon embarking on the project of unification, court staff will realize the need for a definition of family. This becomes particularly important when screening for related cases. Who is a family member? Whose cases should be included in a consolidation? How should the inquiry for related cases be phrased? There are already many definitions of “family” or “relative” within California codes, local rules, and agency policies. The following are some examples.

### **1.4.1 Probate Guardianships (Prob. Code, § 1513(g))**

For purposes of this section, a “relative” means a person who is a spouse, parent, stepparent, brother, sister, stepbrother, stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first cousin, or any person denoted by the prefix “grand” or “great,” or the spouse of any of these persons, even after the marriage has been terminated by death or dissolution.

- Family Code section 6550 (i), a law allowing relative caregivers to consent to medical care for the child, uses the same definition of “relative.”

### **1.4.2 Laws Regarding Protective Orders Against Domestic Violence:**

**Family Code section 6205:** “Affinity,” when applied to the marriage relation, signifies the connection existing in consequence of marriage between each of the married persons and the blood relatives of the other. For the purposes of the Domestic Violence Prevention Act, these relations must all be within the second degree.

**Family Code section 6209:** “Cohabitant” means a person who regularly resides in the household. “Former cohabitant” means a person who formerly regularly resided in the household.

**Family Code section 6210:** “Dating relationship” means frequent, intimate associations primarily characterized by the expectation of affection or sexual involvement independent of financial considerations.

**Family Code section 6211:** “Domestic violence” is abuse perpetrated against any of the following persons:

1. A spouse or former spouse;
2. A cohabitant or former cohabitant, as defined in section 6209;
3. A person with whom the respondent is having or has had a dating or engagement relationship;
4. A person with whom the respondent has had a child, where the presumption applies that the male parent is the father of the child of the female parent under the Uniform Parentage Act (Part 3 (commencing with section 7600) of division 12);
5. A child, or a child of a party, who is the subject of an action under the Uniform Parentage Act, where the presumption applies that the male parent is the father of the child to be protected; and



6. Any other person related by consanguinity (by blood or adoption) or affinity within the second degree.

### 1.4.3 Juvenile Dependency Laws

**Relative:** An adult who is related to the child by blood, adoption, or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words “great,” “great-great,” or “grand,” or the spouse of any of these persons, even if the marriage was terminated by death or dissolution. However, only the following relatives shall be given preferential consideration for placement of the child: an adult who is a grandparent, aunt, uncle, or sibling of the child. (Welf. & Inst. Code, § 319(f); *Manual of Policies and Procedures*, Child Welfare Services, Department of Social Services, Health and Welfare Agency, State of California, May 1997, Chapter 31-002(r)(5)).

**Sibling:** A child related to another person by blood, adoption, or affinity through a common legal or biological parent. (Welf. & Inst. Code, § 16002(f)).

**Parent:** The natural or adoptive father or mother, whether married or unmarried; or other adult fulfilling the parental role. (*Manual of Policies and Procedures*, Child Welfare Services, Department of Social Services, Health and Welfare Agency, State of California, May 1997, Chapter 31-002(p)(1)).

**Family:** Parents, adults fulfilling the parental role, guardians, children, and others related by ancestry or marriage. (*Manual of Policies and Procedures*, Child Welfare Services, Department of Social Services, Health and Welfare Agency, State of California, May 1997, Chapter 31-002(f)(1)).

### 1.4.4 Criminal Prohibitions Against Domestic Violence

**Penal Code section 13700(b):** For the purposes of criminal cases, “domestic violence” means abuse committed against an adult or a child who is a spouse, former spouse, cohabitant, former cohabitant, or person with whom the suspect has had a child or is having or has had a dating or engagement relationship. For purposes of this subdivision, “cohabitant” mean two unrelated adult persons living together for a substantial period of time, resulting in some permanency of relationship. Factors that may determine whether persons are cohabiting include, but are not limited to, (1) sexual relations between the parties while sharing the same living quarters, (2) sharing of income or expenses, (3) joint use or ownership of property, (4) whether the parties hold themselves out as husband and wife, (5) the continuity of the relationship, and (6) the length of the relationship.

### 1.4.5 Unified Family Court Considerations

A unified family court may adopt a specific definition only to discover that it is unworkable or constraining owing to the changing nature of “family.” The definition chosen may not serve the desired outcomes of unification. It may be necessary to have a less strict definition and structure the inquiry about “relatives” or “family members” according to the goals. If the court settles on a definition that is too traditional, court staff are likely to miss related cases and information important to making effective and consistent orders. Thus, a unified family court’s definition of family might include cohabitants who are not married, foster children and parents, stepchildren

and parents, relative caregivers, persons who do not live together but share children and an ongoing sexual relationship, guardians, and wards.<sup>2</sup>

### **1.5 Scope of Information**

Unified courts must also develop working standards regarding what constitutes a related case. Which cases should be consolidated and which should be placed or remain on an independent track? In some smaller jurisdictions, where only one judge hears all juvenile and family cases, it may become obvious after one or more hearings which cases should be related. In jurisdictions where more than one judicial officer hears such cases, the information will not be readily available to court staff without an information-gathering strategy. The following are factors that might be considered:

1. How related are the factual and legal issues of the cases?
2. Are all or most of the parties the same?
3. At what stage of development are the cases? If they are at significantly different stages, will there be any benefit to coordination? How far back in time should the search for related cases go?
4. Is this a one-time event that will be resolved in one or two visits to court?
5. Will coordination prevent conflicting orders and hearings?
6. Will coordination avoid duplication of services?
7. Is there a risk of unfair prejudice to a litigant from the information shared?
8. Should the court include closed cases? Closed cases may provide the court with important information about existing orders.<sup>3</sup>

A potentially useful source of information about related cases is the Declaration Under the Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA), Family Code 3400 et seq. Parties are required to provide specified information to the court in any child custody proceeding, which is defined by the statute as including any “proceeding for dissolution of marriage, legal separation of the parties, neglect, abuse, dependency, guardianship, paternity, termination of parental rights, and protection from domestic violence, in which the issue may appear.”<sup>4</sup> In most family law and guardianship cases, this declaration is submitted on the Judicial Council Form FL-105/GC-120. The UCCJEA declaration provides specific information about where the child has lived for the preceding five years and whether the party has participated in any other custody proceeding involving the child or knows of any other related proceedings. The primary purpose of this document is to alert the court to the existence of other custody litigation involving the child. In addition to facilitating the coordination of related cases within the county and state, the court’s knowledge of other custody litigation triggers certain mandatory procedures under the UCCJEA, such as the court’s statutory obligation to communicate with the court of another state to determine which state has jurisdiction over the matter.

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<sup>2</sup> *Ibid.*

<sup>3</sup> *Ibid.* See also Carol R. Flango, Victor E. Flango and Ted Rubin, *How Are Courts Coordinating Family Cases?* (National Center for State Courts, State Justice Institute, 1999) p. 11; The Steering Committee on Families and Children in the Court, Office of the State Courts Administrator, *Florida’s Family Court: Tool Kit: Volume 1* (September 2003) p. 71.

<sup>4</sup> Fam. Code § 3402(d).

When requests are made for custody on form DV-100, *Request for a Restraining Order*, the UCCJEA information is contained within form DV-105, *Child Custody, Visitation and Support Request*. In juvenile departments, this information is more often derived directly from interviews with parents or guardians.

Active case screening at intake to determine related cases should also involve reviewing data bases, checking with jails, and asking the petitioner whether he has any other family law cases currently active or already closed.<sup>5</sup> An additional, often more successful, method for identifying related cases is through referral from other judicial officers, family law facilitators, other court-based self-help attorneys, custody mediators, private attorneys, court clerks, prosecutors and defense attorneys, the probation department, CASA volunteers, or family members themselves.<sup>6</sup> Bench officers, family law facilitators, custody mediators, and other court staff should be encouraged to ask family members repeatedly and regularly about whether they have other court cases. This includes cases in other counties that may need to be coordinated.

Although flexibility is desirable in determining whether to coordinate or “bundle” cases, particularly because judicial officers and court staff often know from handling a case that it will benefit from coordination, some articulated standards should be developed so that decisions to bundle do not appear arbitrary.

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<sup>5</sup> Flango, p. 11.

<sup>6</sup> American Institutes for Research, *Unified Family Court Evaluation Literature Review* (Prepared for Center for Families, Children & the Courts, Judicial Council of California, Administrative Office of the Courts, November 4, 2002), p. 14; see also Flango, p. 11.

### 1.5.1 Exercise: The Case Tree

Please refer to the diagram on the following page. This exercise is designed to help illustrate some of the issues involved in deciding how to define the “family” and the scope of information that would be available to a judge in the unified family court. In this exercise, the case in front of the unified family court is a dissolution case between Mary and Sam. They have two minor children, John and Joan.

1. **On Level 1** of the diagram, there are two other cases involving Mary and Sam. Previous to the dissolution case, Mary filed for a domestic violence restraining order against Sam. During their period of separation, the Department of Child Support Services began a case against Sam for support of the two children.
2. **On Level 2** of the diagram are additional cases involving either Mary or Sam. Mary has previously filed a request for a restraining order against her former boyfriend, David. They were not married and have one son together, Joe. Mary’s mother Nancy has established guardianship of Joe through the probate court. Mary was recently involved in a freeway pileup. An involved party, Gerry, is suing Mary for injuries she claims she sustained in that accident. Sam has a previous conviction for burglary. He is also involved in a juvenile dependency case involving his ex-wife Andrea and son, Bart. Bart has been in Andrea’s custody.
3. **On Level 3** of the diagram are cases involving at least one of the individuals involved in cases with Mary and Sam; however, Mary and Sam are not parties in any of the Level 3 cases. Mary’s former boyfriend David is involved in a dependency case with his ex-wife, Linda. They have two sons, Joshua and Jason, that are in foster care. David has another child, a daughter named Julia. Julia’s mother, Martha, has a restraining order against David. Mary’s mother, Nancy has a dissolution case still pending against Mary’s father, Joe, Sr. Gerry, the plaintiff in Mary’s car accident case, has a minor daughter that has been arrested on drunk driving charges. Andrea, the mother of Sam’s son Bart, has another minor son named Andrew. Andrea and Andrew’s father, Tom, are involved in a paternity action, and Andrew has been arrested for petty theft. Andrea is also involved in a dispute with her sister over their mother’s estate.
4. **On Level 4** of the diagram are cases that are even further removed from Mary and Sam, but may be related depending on the definition of “family” in the unified court, and the scope of information included.

As an exercise, answer the questions that follow the Case Tree diagram.



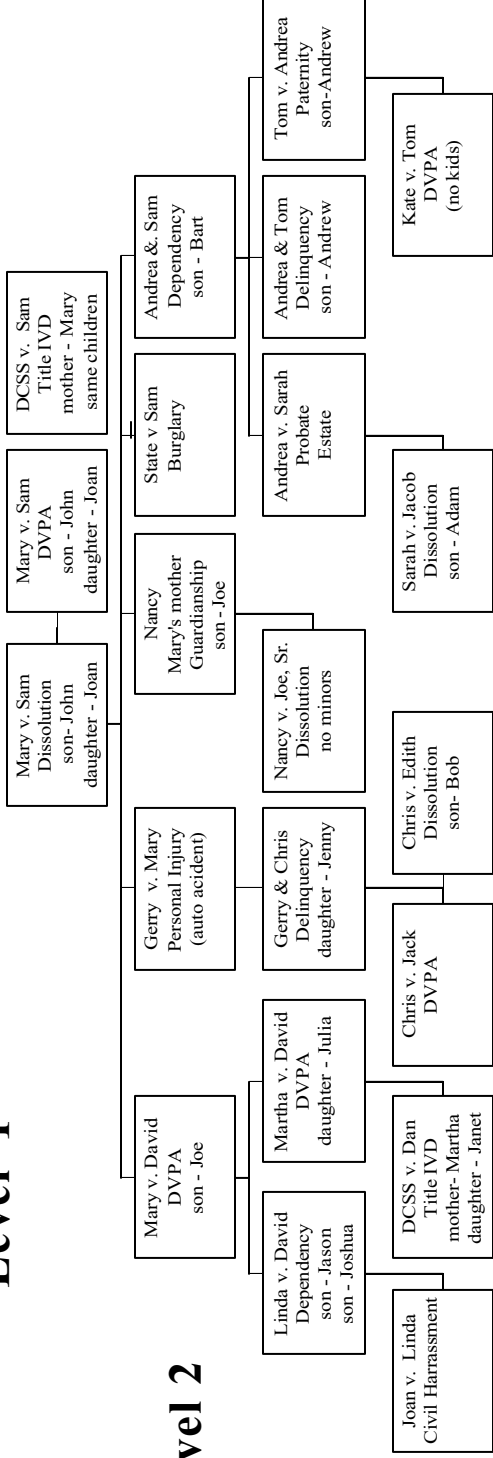
# Chart 1B-Case Tree

- Level 1: Same Parties–Different Cases
- Level 2: One Original Party–One New Party–Different Cases
- Level 3: No Original Party
- Level 4: No Original Party

# CASE TREE



## Level 1



## Level 2

## Level 3

## Level 4



## Exercise Questions – Case Tree Diagram

1. When you access the dissolution case between Mary and Sam (Level 1) on your new electronic case management system, which of the other cases on the Case Tree chart would you want your system to access for you automatically?
  - a. Which cases might be relevant to a child custody dispute? A child support dispute? A property dispute?
  - b. Are there cases in which the relationship of the individuals to Mary and Sam seems too remote to consider at all? Which cases are those?
  - c. Are there cases in which the subject matter would not be relevant to Mary and Sam's dissolution case at all? Which cases are those?
  - d. Which do you think might require coordination in front of the same judge as the dissolution between Mary & Sam?
2. Assume that the first case in front of the unified court is the juvenile dependency case involving the child Bart, son of Andrea and Sam.
  - a. Which of the cases on the chart would you want your new electronic case management system to access for you automatically?
  - b. Are there cases in which the relationship of the individuals to Sam and Andrea seems too remote to consider at all? Which cases are those?
  - c. Are there cases in which the subject matter would not be relevant to the dependency case at all? Which cases are those?
  - d. Which do you think might require coordination in front of the same judge as the dependency case involving Bart, Sam and Andrea?
3. Can you envision how many levels of coordination might be appropriate for your unified court?
4. Who would determine when a potentially related case is too remote for coordination?



**CHAPTER 2: DUE PROCESS**

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## 2.1 Factors Particular to the Unified Family Court

All people are guaranteed due process of law under both the United States and the California constitutions. Among other things, this includes the right to notice of specific charges, the right to see and hear the evidence against oneself, the right to confront and cross-examine witnesses and evidence, the right to present evidence, the right against self-incrimination, and, in certain types of cases, the right to be represented by counsel. These same constitutional safeguards are applicable equally to protect litigants who are represented by counsel and those who are not.

The unified court is characterized by several factors that make it necessary to give special attention to providing constitutional protections for families while at the same time maintaining the ability to deliver justice in a way that is both timely and fair. Our purpose in this section is to raise these questions for consideration in the design process of the unified court.

1. In most unified courts, the majority of litigants will not be represented by attorneys, or will be represented in one case type (juvenile dependency, criminal domestic violence) but not in another (Title IV-D child support, civil domestic violence).
2. Unified court judges will have a great deal more information about the families they see than do judges in systems where multiple cases are heard in different courts with no communication among them.
3. Social service case management creates the potential sharing of information among various service providers whose communications with families are privileged.
4. Families may be involved in multiple case types with different legal standards over a single issue, such as child custody or domestic violence.
5. Litigants frequently use mediation or other alternative dispute resolution services.

## 2.2 Due Process Protections – Notice and the Opportunity to Respond

In designing its operations, there are several steps a unified court might consider to foster protection of constitutional safeguards for families. At a minimum, the unified court must provide prior notice of any documents or other information the court will be reviewing when making a decision. Further, the parties must be provided with the opportunity to subpoena and cross-examine witnesses, and to explain or refute documents. They must also have the opportunity to present evidence to rebut information the judge may have received and is considering in the decision-making process.

### **2.2.1 Extra-Judicial Information or Ex Parte Communications**

There are at least two major concerns with respect to extra-judicial or ex parte communications:

1. The possibility that a judge will acquire and base a decision on information received in a manner that does not clearly inform the litigants or their attorneys of its existence, or its role in the decision-making process, thus depriving them of an opportunity to respond to it; and
2. The possibility that a judge will receive information from cases that are only remotely related in substance or time that could unfairly bias a decision.

### **Ex Parte Communications—Examples**

Ex parte communications can occur inadvertently when judges and other court staff are in close contact and are working hard to process cases efficiently and in the best interests of each family.

1. A family court services mediator speaks with the judge about his or her interaction with the litigants in chambers or another location where the parties and their attorneys are not present and are unable to comment.
2. A unified court case manager verbally briefs the judge on the progress a family is making on their case plan prior to the calling of the calendar.
3. A court-based self-help attorney or paralegal provides a judge with information about the financial issues with respect to child or spousal support outside the presence of the parties.
4. A probation officer in a delinquency case speaks with the judge about his or her report in chambers or another location where the parties and their attorneys are not present and are unable to comment.
5. A unified court case manager who is covering a criminal case involving a unified family court litigant provides the criminal court judge with a record of related cases that includes information from a juvenile dependency case. This information is not made available to the attorneys or litigants because of the confidential nature of the dependency case. There is no chance to object to the information, or to respond to it in any way.
6. A probate investigator speaks with the judge about his or her report in chambers or another location where the parties and their attorneys are not present and are unable to comment.

### **Extra-judicial Information—Examples**

Given the amount of information and planning that characterizes a unified court, it is likely that during hearings a judge will be presented with information not developed by the parties or their attorneys. Even when the parties and their attorneys are aware of the information and can respond to it, some kinds of information can create substantial danger of undue prejudice and confusion of issues, and can potentially mislead the trier of fact—the judge. (Evid. Code, § 352.)

1. Criminal history information (rap sheets) obtained by a unified court case manager.  
**Question:** A Family Code section 6306(a) search of criminal history reveals a respondent in a domestic violence matter is on probation for possession of a controlled substance. Does this make him any more likely to have committed domestic violence in the judge's mind? How will the court give the parties notice that the information has been received and considered by the judges in a manner that provides a reasonable opportunity to respond to it? Who will have access to this information?

**Remember:** The court in making its decision shall not consider any information obtained as a result of the search that does not involve a conviction described in

Family Code section 6306(a). That information shall be destroyed and shall not part of the court file or any civil case file.

2. Information about cases involving people or incidents that are remote in time, relationship, or substance.

*Question:* Mother has a current dissolution with a contested custody issue. The unified court case manager has located a previous paternity case in which this mother had been involved in a custody dispute over two children with another man. In that 5-year-old case, there was a child custody evaluation recommending that the children be in the primary custody of their father. Should a judge see and be influenced by the previous evaluation in the older case? If so, how will the parties be notified that this evaluation is being considered? Who should have access to the evaluation? How will the case be set for hearing in a way that allows time for the parties to respond to this information?

*Question:* Father is involved in a dependency case. The unified court case manager has located a previous dissolution case in which custody of the children was heavily contested. All the children are now over the age of majority. The child custody evaluation in that case recommended that this father have primary custody. Should this evaluation be made available to the dependency judge? Should it influence the judge in the dependency case? Who should be notified that the evaluation is being considered? Who should receive a copy of it?

3. Information in current cases that may prejudice a judge unfairly on a particular issue in a related case.

*Question:* A woman has filed for dissolution and set a hearing asking for spousal support from her husband. The unified family court case manager has identified a current juvenile dependency case in which this same woman's child by another man has been taken into foster care. Should the judge be influenced by this information in making the decision about spousal support in the current dissolution case? How will the due process issues be addressed?

### **2.2.2 Strategies to Enhance Due Process Protection**

#### **Formal Protocols**

Formal written protocols can help set the boundaries for communications among judges and between judges and court staff on matters other than calendaring or other procedural matters. This is particularly important for interactions involving those in frequent and ongoing contact with the unified court judges—family court services, family law facilitators and other self-help staff, probate investigators, juvenile dependency mediators, and unified family court case managers. The following protocols and procedures should be developed:

1. Written policies for communications among judges; between judges and court staff; and between judges and other government workers such as probation officers, social workers, and child support enforcement attorneys and staff, about any substantive matters related to families.

2. A standard procedure whereby all communications to judges about substantive matters related to cases must be in writing and be provided in advance to all parties and their attorneys.
3. A standard procedure whereby litigants and their attorneys are given the opportunity to question a person making a report about its content, to question anyone whose hearsay statements or opinions may be contained in the report, and to offer evidence with respect to it. Reports should contain contact information for those whose input has been considered in the report so that the litigants and/or their attorney may have the opportunity to bring these individuals to court for questioning.

### **Small Court and Comprehensive Jurisdiction Models**

In small courts with few judges, or unified courts using a comprehensive jurisdiction design, judges will potentially receive a wide array of information about families, much of it not coming from the litigants or their attorneys. In these circumstances, judges will be obliged to monitor themselves to make sure they are not basing their decisions on prejudice or bias, or on information that would otherwise be inadmissible as evidence on the issue at hand.

The unified court should therefore provide the following:

1. Training for judicial officers on how judges can handle knowledge of prejudicial or otherwise inadmissible information in a way best suited to minimize its effect on their reasoning;
2. Training that teaches how to recognize personal biases and raises judicial consciousness on this issue; and
3. An open-minded policy toward reasonable requests for recusal.

### **Communications with Litigants/Reports from Other Cases**

There may be forms that litigants are asked to complete for use in the operation of a unified family court, or reports that contain information obtained from interviews with litigants or statements made in related cases. Sometimes these forms or reports contain information relevant to a contested issue such as domestic violence or child custody, and contain statements and other data about allegations damaging to the litigant or the other party.

### ***Notice Must Be Given***

If the court intends to review documents such as intake sheets or other operational forms, notes of case managers, summarized or “bundled” files, docket sheets, or computer printouts about related cases, notice must be given to the parties indicating which specific documents are to be reviewed, and copies of these documents must be available to the parties in a timely fashion so that they have the opportunity to be heard if they object.

### ***Limitations on Confidentiality***

Sometimes forms are marked as “confidential,” thereby creating in the litigants an expectation that the information they provide will be kept private. Litigants must always be informed of the limits to this “confidentiality.” The following are some examples in which clear disclosure about the limits on confidentiality should be clearly made to those family members involved.

1. Family court services intake forms and files are not confidential. They are protected as official information under Evidence Code section 1040, but a judge can order disclosure in the interests of justice
2. Family court services reports and recommendations are also not confidential. Often reports are given orally in court, and recommendations are not privileged in any way.
3. Family law facilitator or other court self-help center intake forms are not legally protected from disclosure.
4. Facilitator or self-help files or records such as Dissomaster printouts are not legally protected from disclosure
5. Unified court case manager intake forms and files are not protected from disclosure.
6. Probate investigator reports and files are not available for public view, but are available to the court and to all persons entitled to notice in the guardianship case.
7. Confidential information in juvenile files is available to those individuals set out in Welfare and Institutions Code section 827.

### ***Approaches to Handling Expectations of Confidentiality***

1. Always provide litigants with written advisement of the limits of confidentiality of any court forms they are asked to fill out, or with respect to communications with court staff.
2. Inform litigants of their legal rights against self-incrimination. Take precautions against eliciting potentially self-incriminating information, or other information against a litigant's legal interest, in cases where there are, or are likely to be, criminal charges. Train all staff who will have contact with litigants in these matters.
3. Any forms provided to a judge should also be provided to the other party and the attorneys.
4. If the forms are to be used by nonjudicial staff only, they should be placed in a separate file or confidential envelope within the court file.
5. Provide training for court staff on the limitations of confidentiality of communications with families.
6. Provide training for court staff on the evidentiary privileges relevant to the types of information common to the unified family court (e.g., public information, medical records, mental health information).

## **2.3 Differing Legal Standards**

In a unified court, common issues are often raised in case types that are critically different from each other. The issue of custody, for example, occurs in both family law and juvenile dependency case types. It is important that the essential differences between these case types, and the legal standards they involve, be made clear.

### **2.3.1 Examples**

An order in a family law case requiring a parent to attend counseling as a condition of custody or visitation for an indefinite period would be improper under Family Code section 3190. Such an

order, however, would be properly available in a juvenile dependency case. The following are other examples of these differing legal standards.

1. Family law cases
  - a. The purpose is to resolve disputes between parents about custody and visitation.
  - b. Parties are presumed to be fit and capable parents who know what is in the best interests of their children.
2. Juvenile dependency cases
  - a. The purpose is to protect children from abuse, abandonment, or neglect.
  - b. There is no presumption of parental fitness.
3. Drug testing
  - a. Testing may be ordered as part of a juvenile dependency reunification plan.
  - b. It may be also ordered under Family Code section 3041.5. This code section sets out specific requirements for such testing.
4. Civil and criminal domestic violence
  - a. In a criminal domestic violence case, probation terms under Penal Code section 1203.097 mandate 52 weeks of batterers' intervention, and follow-up monitoring by the court or probation department.
  - b. When there is domestic violence in a family law case, and a restraining order is issued, there is no requirement for 52 weeks of batterers' intervention, or any other type of social service intervention. If a litigant is ordered to attend such a service, there is no statutory requirement for monitoring compliance. The ability of the court to track and enforce its orders is more limited.
5. Detriment and best interests
  - a. In order to give custody to a nonparent, such as in a guardianship, the petitioner must prove that remaining with the parent would be detrimental to the child. It is not sufficient to show that it would be in the best interests of the child to be with the nonparent.
  - b. A parent must only prove that it would be in the best interests of the child to be in his or her custody.
6. Preponderance of evidence and clear and convincing evidence
  - a. In an action for a civil harassment restraining order, the petitioner must prove by evidence that demonstrates a high probability that the restraining order is necessary. The evidence must be clear and convincing.
  - b. In an action for a domestic violence restraining order under the Domestic Violence Prevention Act, the petitioner must only prove the need for the restraining order by a preponderance of the evidence (51 percent).
  - c. To take custody of a child away from a parent and give it to a nonparent in a guardianship, clear and convincing evidence is required.
  - d. In order to gain custody, a parent only needs to show by a preponderance of the evidence that it is in the best interests of the child to be with him or her.



## 2.4 Use of Mediation and Other Family Dispute Resolution Methods

Mediation is one of several family dispute resolution strategies that can benefit both the court and the families. When they are present in a case, attorneys can frequently resolve family disputes through education of their clients and negotiation with the other family members and their attorneys. In a dissolution case, if there are disputes about how personal property is to be divided, those can often be resolved by counsel or through arbitration. Complete settlement of many cases is also being accomplished through judicial case management and use of status and settlement conferences. Some family disputes are best resolved through hearings and orders made by the judge.

### 2.4.1 Types of mediation

Mediation services are often provided by the court and operated by court employees. These services are an important component of the unified court. The following are some examples of the types of mediation currently employed in many juvenile and family cases:

1. **Victim-offender mediation:** Victim-offender mediation involves trained mediators who facilitate meetings between victims and offenders to discuss the impact of the offense on all parties and tries to work out possible restitution/disposition issues. These mediations often include family members and supporters of both the victim and the offender. During a mediation session, both parties are able to discuss the incident and its emotional impact, ask questions, and negotiate an appropriate form of restitution that each considers fair. Mediation often leads to a real sense of reconciliation between the parties. Victims can express their sense of personal loss, psychological and physical. Offenders can experience the real financial and human costs of their actions and take responsibility for making things right. The community is also benefited through a reduction in legal and court costs, the prevention of future criminal offenses and community victimization, the repair of emotional and material damage to community, the enhancement of public safety, and the restoration of confidence.
2. **Child custody mediation:** In family law, mediation of child custody disputes is mandatory prior to any hearing on that issue. The parents meet with a mediator from family court services to try and work out an agreement about the children in the case. In some courts, if no agreement is reached, the mediator will make a written recommendation to the judge about what he or she believe would be in the best interests of the children. In other courts, mediators do not make recommendations about child custody or visitation.
3. **Dependency mediation:** In juvenile dependency, mediation services are also available to help work out solutions to family problems prior to further litigation. A dependency mediator assists the parties in reaching a resolution that focuses on the child's safety and best interests and the safety of all family members. Dependency mediation is concerned with any and all issues related to child protection.
4. **Financial mediation:** Mediation for financial issues in family law may be available from court-based self-help services such as the family law facilitator (if funding for this purpose is available) or community mediation services. Mediation of financial issues often involves child support, spousal support, and related matters. It can also include the full array of financial issues related to the division of property and debt.

5. **Unified court mediation:** A unified court has the opportunity to coordinate its mediation services in a manner not possible in the fragmented juvenile and family courts. Unified mediation services can potentially address the family disputes in a holistic manner.

#### **2.4.2 Due Process Issues in Mediation**

When mediation services are offered, it is important for the court to make sure that these services are used appropriately and do not appear to impede a litigant's right to a hearing.

#### **Strategies—*Examples***

The following strategies are recommended to ensure appropriate use of mediation services:

1. Set review dates in court if OSC/motions have already been filed.
2. Make sure that litigants get a prompt hearing if agreement is not reached through mediation.
3. Provide training for staff on statutory requirements with respect to mediation in cases where there may be problems with family violence.
4. Provide training for staff on privacy and confidentiality issues with respect to mediation.
5. Make clear information available to litigants about the limits of confidentiality in mediation.
6. Develop written protocols about types of issues, such as domestic violence, that should not be the subject of mediation.
7. Make sure that any nonmandatory referrals for mediation are clearly voluntary.
8. Develop formal written protocols for any information obtained in a mediation that is intended to be given to a judge.

## **CHAPTER 3: CONFIDENTIALITY AND INFORMATION SHARING**

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### 3.1 Balancing the Need for Privacy With the Need for Information

Pursuit of the information-sharing goals of unified courts will undoubtedly raise issues about confidentiality. Such issues will require development of local rules, protocols, and forms, so that confidentiality can be respected while the necessary information is exchanged.

It is difficult to overestimate the importance of protecting the privacy of the families who appear in a unified family court. Concerns about confidentiality involve many substantial interests for families and children. At the same time, the unified court needs to have as much relevant and reliable information as possible in order to maximize the quality of the orders it makes.

While all family and juvenile courts must contend with issues of privacy and confidentiality, there are particular issues that are raised in the context of unified courts. For example, the question of whether all information gathered in one court proceeding can be discovered by the court and the parties in any other court proceeding raises a number of issues. Will a litigant be prejudiced if a judicial officer in one setting learns information from another proceeding that the litigant believes is irrelevant? It is crucial that formal protocols be established in these courts so as to ensure that litigants and their attorneys are aware of what information the judicial officer has access to and where various pieces of information may end up. Written and verbal notices regarding limitations on confidentiality need to be provided to parties, as well as explanations of how various unified court processes may operate. Particular care must be taken with information that is statutorily protected, and staff must be well-trained regarding who may have access, and under what circumstances, to such documents as psychological evaluations or results of drug testing.

#### **3.1.1 Need for Privacy—Examples**

The following are examples of areas in which the unified family court should implement procedures to protect privacy:

1. Avoiding public disclosure of potentially disturbing or harmful information, such as the identity of sexual abuse victims, past criminal history, or medical conditions, especially as such information is moved from a confidential file to a family law file that may be accessed by a broader number of people;
2. Avoiding exposure of potentially inflammatory information, such as allegations of substance abuse, HIV status, immigration status, or mental health problems;
3. Protecting personal safety or family security;
4. Preventing discrimination in employment, education, services such as health care or housing, community relations, and interactions with government agencies;
5. Encouraging individuals to seek services such as counseling and to feel confident that their open communications will not be revealed; and
6. Protecting against identity theft.

### 3.1.2 Need for Information—*Examples*

The following are goals and functions of the unified family court that rely upon the court's being well-informed:

1. Providing comprehensive, effective and non-duplicative services to families and children;
2. Monitoring the provision of services to ensure compliance of participants and to ensure effective and quality delivery;
3. Reducing the number of incidents of conflicting orders;
4. Reducing the number of times a child or party must testify or tell his or her story;
5. Conducting comprehensive child and family assessments and evaluations for services;
6. Promoting public safety;
7. Establishing permanent and safe placements for children as soon as possible; and
8. Reducing court appearances and delays.

### 3.2 Statutory Limits of Disclosure of Information—*Examples*

Much of the information that is likely to be included in a unified court is subject to statutory and constitutional limits on disclosure. The following list illustrates just *some* of the types of information that are subject to these limits.

**Note:** These examples are merely a starting point and are not intended to be an exclusive list. They should not be relied upon by any entity wishing to comply with confidentiality laws. Such laws change frequently, and any entity wishing to preserve the confidentiality of persons it serves must do an independent review of the laws regarding privacy or contact Center for Families Children of the Court (CFCC) of the Administrative Office of the Courts for information. The following are references to applicable federal and state statutes and rules:

1. **Child–custody evaluations** (Fam. Code, §§ 3111, 3118.);
2. **Child custody mediation** (Fam. Code, § 3177.);
3. **Juvenile court and probation files, records, and information** (42 U.S.C. § 5106a(b); 42 U.S.C. §§ 671(a)(8), 675(1), 675(5)(D); 45 C.F.R. §§ 1355.21(a), 1356.20(a), 1355.30, 205.10; Welf. & Inst. Code, §§ 827 et seq.);
4. **Adoption records** (42 U.S.C. § 5106a(b); 42 U.S.C. §§ 671(a)(8), 675(1), 675(5)(D); 45 C.F.R. §§ 1355.21(a), 1356.20(a), 1355.30, 205.10; Welf. & Inst. Code, §§ 827 et seq.);
5. **Juvenile arrest records** (42 U.S.C. § 5106a(b); 42 U.S.C. §§ 671(a)(8), 675(1), 675(5)(D); 45 C.F.R. §§ 1355.21(a), 1356.20(a), 1355.30, 205.10; Welf. & Inst. Code, §§ 827 et seq.);
6. **Juvenile dependency proceedings are not open to the public; court may admit interested persons** (Welf. & Inst. Code, §345)
7. **Juvenile delinquency proceedings are not open to the public except under specified circumstances** (Welf. & Inst. Code, §676)
8. **Probate investigators' reports** – guardianships and conservatorships (Prob. Code, §§ 1513 and 1826; Cal. Rules of Court 7.1001(c) and 7.1050(c).);
9. **Criminal records/“rap sheets”** (28 C.F.R. §§ 20.1–38; Pen. Code, §§11081; 11105; 13201, and 13300.);



10. **Child support enforcement and background information** (Fam. Code, § 17212; Welf. & Inst. Code, § 11478.1; 42 U.S.C. §§ 653, 654, 663; 45 C.F.R. § 307.13.);
11. **Medical records and information** (Civ. Code, §§ 56 et seq.);
12. **Educational records** (20 U.S.C. § 1232g; 34 C.F.R. Part 99; 20 U.S.C. §§ 412, 1417(c); 34 C.F.R. §§ 300.560 et seq. and 303.460.);
13. **Substance abuse treatment records** (42 U.S.C. § 290dd-2; Fam. Code, § 3041.5. Drug treatment records have very strong confidentiality protections, with exceptions only for consent of the participant or a court order upon establishing good cause. The consent form must be specific to the drug treatment records and contain certain elements.);
14. **Social security numbers** (42 U.S.C. § 405(c)(2)(c)(viii)(I));
15. **Uniform Parentage Act case files, records, and information** (Fam. Code, §7643.);
16. **Tax returns and financial information** (Fam. Code, § 3552; Rev. & Tax Code, §§ 19542 and 19548; 26 U.S.C § 6103.);
17. **Termination of parental rights files and records** (Fam. Code, § 7805);
18. **Welfare information and records** (Welf. & Inst. Code, § 10850 et seq.; 45 C.F.R. 202.50.);
19. **Consumer credit information** (15 U.S.C § 1681b.);
20. **Fee Waiver Applications** (Cal. Rules of Court, rule 985)
21. **Unlawful detainer records until 60 days after the case is filed** (Code Civ. Proc., §1161.2);
22. **Identity of persons making mandated reports; and the reports** (Pen. Code, §§1167 - 11167.5);
23. **Identity of victims of sex offenses** (Pen. Code, §293.5);
24. **Police Reports** (Pen. Code, §§841.5, 1054.2);
25. **Victim impact statements** (Pen. Code, §1191.15);
26. **Defendant's statement of assets** (Pen. Code, §1202.4);
27. **Pre-sentencing CDC diagnostic reports** (Pen. Code, §1202.3(c);)
28. **Probation sentencing reports after 60 days from judgment** (Pen. Code, §1203.5); and
29. **Reports evaluating whether defendant is a MDSO** (Pen. Code, §4011.6).

### 3.3 Statutory Information Requirements—*Examples*

By statute, courts and the agencies and professionals that work with them are required to retrieve specific information in certain types of cases.

**Note:** The following is a nonexclusive list of information gathering that is required by statute. It is a starting point and should not be relied upon exclusively.

#### 3.3.1 The Indian Child Welfare Act

The Indian Child Welfare Act (ICWA) (25 U.S.C. 1901 et seq.) applies to child custody proceedings involving American Indian children. The act covers any temporary placement of an Indian child where the parent may not have the child returned upon demand, and includes

placement in a foster home or institution or the home of a guardian. The act covers any proceeding resulting in adoption or in termination of parental rights. This generally includes juvenile dependency, certain juvenile delinquency removals and placements, probate guardianships, and family law custody proceedings with the exception of family law custody disputes between parents in dissolution proceedings.

**Indian Child Welfare Act Notice Requirements (Welf. & Inst. Code, § 291)**

The following excerpt from Welfare and Institutions Code section 291 specifies the special treatment due Indian children:

In juvenile cases, after the initial petition hearing, the clerk of the court shall cause the notice to be served in the following manner:

(a) Notice of the hearing shall be given to the following persons:

[(1)–(7) omitted from excerpt]

(8) If the court knows or has reason to know that an Indian child is involved, then to the Indian custodian and the tribe of that child. If the identity or location of the parent or Indian custodian and the tribe cannot be determined, notice shall be given to the Bureau of Indian Affairs.

(b) No notice is required for a parent whose parental rights have been terminated.

(c) Notice shall be served as follows:

(1) If the child is detained, the notice shall be given to the persons required to be noticed as soon as possible, and at least five days before the hearing, unless the hearing is set in less than five days and then at least 24 hours prior to the hearing.

(2) If the child is not detained, the notice shall be given to those persons required to be noticed at least 10 days prior to the date of the hearing.

(3) In the case of an Indian child, notice is to be given no less than 10 days before the hearing. If notice is given to the Bureau of Indian Affairs, the bureau shall have 15 days after receipt to provide the requisite notice to the parent or Indian custodian and the tribe.

(d) The notice shall include all of the following:

(1) The name and address of the person notified.

(2) The nature of the hearing.

(3) Each section and subdivision under which the proceeding has been initiated.

(4) The date, time, and place of the hearing.

(5) The name of the child upon whose behalf the petition has been brought.

(6) A statement that:

(A) If they fail to appear, the court may proceed without them.

(B) The child, parent, guardian, Indian custodian, or adult relative to whom notice is required to be given is entitled to have an attorney present at the hearing.

(C) If the parent, guardian, Indian custodian, or adult relative is indigent and cannot afford an attorney, and desires to be represented by an attorney, the parent, guardian, Indian custodian, or adult relative shall promptly notify the clerk of the juvenile court.

(D) If an attorney is appointed to represent the parent, guardian, Indian custodian, or adult relative, the represented person shall be liable for all or a portion of the costs to the extent of his or her ability to pay.

(E) The parent, guardian, Indian custodian, or adult relative may be liable for the costs of support of the child in any out-of-home placement.

(7) A copy of the petition.

(8) In the case of an Indian child, the notice shall contain a statement that the parent or Indian custodian and the tribe have a right to intervene at any point in the proceedings. The notice shall also include a statement that the parent or Indian custodian and the tribe shall, upon request, be granted up to 20 additional days to prepare for the proceedings.

### **3.3.2 Juvenile Dependency**

#### **Federal Foster Care/Adoption Criminal Checks**

Criminal record checks must be made for prospective foster and adoptive parents.

#### **California Foster Care/Adoption Criminal Checks (Welf. & Inst. Code, § 361.4)**

1. State and federal criminal records should be checked for prospective foster and adoptive parents, or any relative or guardian with whom a child is placed, any person over 18 years of age living in the home, and any person who may have significant contact with the child, including any person who has a familial or intimate relationship with the person living in the home.
2. The court or county social worker must gather the information.
3. These checks must be performed prior to court approval of placements.
4. If the social worker believes that anyone over 14 years old has a criminal record, he or she may conduct a criminal record check of that person.
5. These checks are to be done through the California Law Enforcement Telecommunications System (CLETS) pursuant to Welfare and Institutions Code section 16504.5, and a fingerprint clearance must be done through the Department of Justice.
6. The county social worker must also conduct a check of all persons over the age of 18 in the Child Abuse Index.

#### **Out-of-Home Placement (Welf. & Inst. Code, § 361.2.)**

If a court orders a dependent child into an out-of-home placement,

1. The court must determine whether there is a parent with whom the child was not residing at the time of the events leading to the dependency petition and with whom the child can live.
2. In making this determination, the court should be assisted by the searches for noncustodial parents that the child welfare agency must perform.

### **3.3.3 Juvenile Delinquency**

#### **Release of Minor (Welf. & Inst. Code, § 628)**

When a minor has been detained and delivered to a probation officer, the minor must be released immediately unless the probation officer finds one or more of the following conditions exist:

1. There is no parent, guardian, or other responsible adult available who can provide care and control of the minor;
2. The minor is destitute or not provided with the necessities of life;
3. The minor's home is unsuitable owing to neglect, cruelty, depravity, or physical abuse by parents, guardians, or caregivers;
4. Continued detention is necessity for the protection of the minor or others;
5. The minor is likely to flee the jurisdiction of the court;
6. The minor has violated an order of the juvenile court; and/or
7. The minor is physically dangerous to the public as the result of a mental or physical deficiency, disorder, or abnormality.

### **3.3.4 Probate**

#### **Guardianships (Prob. Code, § 1513)**

An investigation may be made and a written report furnished on a proposed guardian of the estate or person of a child, unless [the report is] waived by the court. (Prob. Code, § 1513.)

The report must include, among other things,

1. The social history of the guardian,
2. The social history of the ward and his or her needs, and
3. A history of the relationship between the ward and the guardian.

The petitioner must send a request and the court must receive a report from the local child protection services agency screening the proposed guardian for prior referrals of neglect or abuse of the child(ren). (Prob. Code, § 1516(a))

### **3.3.5 Civil Domestic Violence (Fam. Code, § 6306)**

Prior to a hearing on a domestic violence restraining order, the court must conduct a search to determine if the subject of the order

1. Has any prior criminal conviction for
  - a. A violent or serious felony, or
  - b. Any misdemeanors involving domestic violence, weapons, or other violence;
2. Has any outstanding warrant;
3. Is on parole or probation; or
4. Has any prior restraining order or violation thereof.

The search should be of all records "readily available and reasonably accessible to the court," including, but not limited to, the following:

1. The Violent Crime Information Network (VCIN);
2. The Supervised Release File;
3. State summary criminal history information maintained by the Department of Justice pursuant to Section 11105 of the Penal Code;
4. The Federal Bureau of Investigation's nationwide data base; and
5. Locally maintained criminal history records or databases.

### **3.3.6 Family Law: Child Custody**

#### **Default Orders (Fam. Code, § 3140)**

Prior to granting or modifying a custody order in which one or both of the parents have not appeared, the court shall submit a certified copy of the child's birth certificate to a local police or sheriff's department to perform a check with the National Crime Information Center Missing Person System to ensure that the child has not been reported missing or is not a victim of abduction.

#### **Mediation (Cal. Rules of Court, rule 5.215(e) and (f))**

The court must ensure that its program uses a detailed intake process that

1. Screens for, and informs the mediator about any restraining orders or safety-related issues affecting any party or child named in the proceedings, and
2. Complies with relevant law or court rules before mediation begins.

#### **Family Court Services Screenings**

(Cal. Rules of Court, rule 5.210(d)(1)(D).) In all cases, courts must ensure that family court service programs conduct screenings, intake, and other search measures to determine whether there are any of the following:

1. Restraining orders;
2. Dependency petitions;
3. Other reports of domestic violence;
4. Child abuse; or
5. Safety-related issues.

(Cal. Rules of Court, rule 5.215(e) and (f).) Procedures for identifying domestic violence may include, but are not limited to the following:

1. Determination of an existing emergency protective order or domestic violence restraining order concerning the parties or child;
2. Review of court papers and declarations;
3. Telephone interviews;
4. Use of an intake form;
5. Parent orientation;
6. Information from attorneys, shelters, hospital reports, Child Protective Services, police reports, and criminal background checks; and
7. Other collateral sources.

Investigations specific to incidents of domestic violence should request the following information:

1. Date of the parties' separation;
2. Frequency of domestic violence;
3. Most recent as well as past incidents of domestic violence,
4. Concerns about future domestic violence;
5. Identities of children and other individuals present at domestic violence incidents or otherwise exposed to the domestic violence; and
6. Severity of domestic violence.

### **Specific Family Court Services Responsibilities (Cal. Rules of Court, rule 5.210)**

Mediators must follow the laws regarding party confidentiality in regard to the following:

1. Storage and disposal of records and any personal information accumulated during the mediation process;
2. Interagency coordination or cooperation regarding a particular family or case;
3. Management of child-abuse reports and related documents;
4. Provision of a written description to the parties regarding the limitations on the confidentiality of the process;
5. Protecting confidentiality in making contact with collateral sources; and
6. Striving to maintain the confidential relationship between the child who is the subject of an evaluation and his or her treating psychotherapist.

### **3.3.7 Domestic Violence Protocol**

(Cal. Rules of Court, rule 5.500(c)(1)(A).) Courts must have a protocol that ensures that any court issuing orders involving child custody or visitation make reasonable efforts to determine whether there exists a criminal court protective order that involves any party to the action.

(Cal. Rules of Court, rule 5.500(c)(1)(B).) Courts must adopt procedures that ensure that courts issuing criminal court protective orders make reasonable efforts to determine whether there exist any child custody or visitation orders that involve any party to the action.

## **3.4 Information Sharing**

Family and juvenile courts, regardless of whether or not they are unified, often struggle with issues surrounding exchange and sharing of information between social service providers, probation officers, social workers, mediators and evaluators, and the court. In many cases, one or another department or agency may not readily share relevant information with the court. The legal framework for information sharing is complex and can be confusing; however, the code sections delineated below provide guidance. Additionally, some jurisdictions have addressed these issues by establishing court rules or entering into memoranda of understanding with appropriate agencies regarding the exchange of information.

### **3.4.1 Statutory Requirements That Information Be Shared**

State and federal laws and rules require that courts provide certain types of information to other courts and to state and federal agencies, to databases, and to concerned parties. Some, but not all, of these requirements are described below. Please note that the items listed below are only some of the pieces of information that courts are required to share or transmit to other courts, governmental agencies, concerned parties, and entities. Please do not rely on this list as the sole source to determine the courts' information-sharing requirements.

## **Domestic Violence**

### ***Results of Criminal Information Acquired by the Court (Fam. Code, § 6306)***

Following its ruling, the court must do the following:

1. Tell the parties that the above-mentioned information will be relied upon by the court;
2. Release that information to the parties or their attorneys upon request; and

3. Release it to any court-appointed mediator or child custody evaluator.

If there is an outstanding search warrant against the subject of the order, the court must immediately notify law enforcement officials of

1. The issuance and contents of any protective order, and
2. Any other information obtained through the search that the court determines is appropriate.

If the subject of the order is currently on parole or probation, the court must immediately notify the appropriate parole or probation officer of

1. The issuance and contents of any protective order, and
2. Any other information obtained through the search that the court determines is appropriate.

The court in making its decision shall not consider any information obtained as a result of the search that does not involve a conviction described in Family Code section 6306(a). That information shall be destroyed and shall not be part of the court file or any civil case file.

***Communication Between the Criminal and Civil Courts (Cal. Rules of Court, rule 5.500.)***

Courts must develop local rules and protocols for information sharing between courts that issue criminal protective orders and courts that issue orders involving child custody and visitation.

***Communication with CLETS (Fam. Code, § 6380)***

Data regarding protective and restraining orders and injunctions issued, modified, extended, or terminated under the Penal Code, the Family Code, the Welfare and Institutions Code, and the Civil Code must be transmitted to law enforcement personnel or directly into the CLETS system.

The information contained in the Department of Justice's Domestic Violence Restraining Order System should be available to court and law enforcement personnel through computer access.

**Child Custody (Fam. Code, § 3142)**

Upon a proper request from a court or law enforcement official in another state, the court must send a certified copy of those records.

**Child Support Information**

***Child Support Registry (Cal. Rules of Court, rule 5.330)***

Courts must require that a Child Support Case Registry form be filed each time an initial court order for child or family support, or a modification for a court order for child or family support, is filed. These forms are to be mailed once a month to the California Department of Social Services.

***Voluntary Declarations of Paternity (Cal. Rules of Court, rule 5.350)***

If a court sets aside a voluntary declaration of paternity, the court must mail a copy of the order to the Department of Child Support Services in order that the voluntary declaration can be purged from its records.

## **Juvenile Dependency**

### ***Public Benefits (Welf. & Inst. Code, § 363)***

When a parent or guardian receiving public benefits is legally responsible for a child who is declared a dependent by a court, the order removing the child from his or her home shall be given to the appropriate social services official so that the public benefit amount received by the parent or guardian can be accordingly reduced.

### ***Termination of Dependency (Welf. & Inst. Code, § 362.4)***

When a court terminates dependency jurisdiction over a child who has not yet reached 18 years of age and there are simultaneous dissolution, parentage, and/or custody proceedings regarding the child and his or her parents, or when an order regarding custody of the child has already been entered by the superior court, the juvenile court may enter protective orders or orders regarding the parentage, custody, and/or visitation of the child. The juvenile court must provide notice and a copy of the order to the superior court in which the other proceedings are pending.

### ***Order re: Probate Guardianships (Welf. & Inst. Code, § 728)***

A juvenile court may terminate or modify a guardianship of the person of a child previously established under the Probate Code, or appoint a co-guardian or successor guardian, if the child is the subject of a dependency or delinquency petition. If the juvenile court does so, it must send notice of the order to the court in which the guardianship was originally established.

### ***Sexual Abuse Conviction and Visitation Requests (Welf. & Inst. Code, § 362.6)***

If a person convicted of sexual offenses with a child requests a hearing under Penal Code section 1202.05 to consider an exception to the ban on visitation with that child, the sentencing court must forward the hearing request to the child protective services agency in the county in which any related dependency matters have been heard or in the county in which the child lives. This allows CPS or the appropriate entity to initiate a hearing to determine whether visitation would be in the child's best interests. If visitation is determined by the court to be in the child's best interests, CPS or the appropriate entity shall notify the Department of Corrections to arrange contact or visitation.

## **Juvenile Delinquency**

### ***Felonies (Welf. & Inst. Code, § 827)***

When a child has been found to have committed a felony under Welfare and Institutions Code Section 602, the court must provide written notice within 7 days to

1. The sheriff of the county in which the offense was committed, and
2. The sheriff of the county in which the child resides.

This notice shall include only the offense found to have been committed and the disposition of the child's case.

Any modification of the disposition shall also be transmitted to the sheriff.



The sheriff may disseminate the information to other law enforcement personnel upon request if he or she reasonably believes that release of the information is generally relevant to the prevention or control of juvenile crime.

This information shall be kept confidential and shall not be further disseminated other than as described above or if the child was 14 years or older and was found by the court to have committed a felony enumerated in Welfare and Institutions Code section 707(b), unless the court for good cause orders it kept confidential.

***Wardship (Welf. & Inst. Code, § 602.5)***

The juvenile court must transmit to the California Department of Justice the entire criminal history of any child adjudged a ward of the court.

***Mental Health Needs (Welf. & Inst. Code, § 635.1)***

When a court believes that a child who is a ward of the court needs specialized mental health treatment while the child is unable to reside in his or her natural home, the court must notify the director of the county mental health department.

***Custody/Visitation/Parentage/Protective Orders (Welf. & Inst. Code, § 726.5)***

The juvenile court may issue protective orders and/or orders concerning parentage, custody, and/or visitation regarding a delinquent child or a child under the age of 18 years for whom the court is terminating wardship, when there are simultaneous dissolution, parentage, and/or custody proceedings regarding the child and his or her parents or when an order concerning custody of the child has already been entered by the superior court. When the juvenile court enters such orders, it must provide notice of the decision and a copy of the order to the superior court in which the other proceeding is pending.

***Registration of Sex Offenders (Pen. Code, § 290)***

A juvenile who has been adjudicated a ward of the court because of the commission or attempted commission of certain specified sex offenses is subject to registration as a sex offender under Penal Code section 290.

***Deferred Entry of Judgment (Welf. & Inst. Code, § 790)***

The court must release to the prosecuting attorney information necessary to determine a child's eligibility for deferred entry of judgment.

***Determination of Sentence Enhancements (Welf. & Inst. Code, § 602)***

The court must release to the prosecuting attorney information about prior offenses necessary to decide whether sentence enhancements should apply.

### 3.5 Access to Juvenile Court Information

Under existing law, the juvenile court has exclusive authority to determine and limit the disclosure of juvenile court records to persons or agencies without a statutory grant of access to this information. A juvenile case file, any portion of it, or any information relating to the content of it shall not be made an attachment to any other document or file without the prior approval of

the presiding judge of the juvenile court, unless it is used in a criminal investigation or a dependency proceeding. (Welf. & Inst. Code, §§ 827–828.)

### **3.5.1 Statutory Access: Who May Inspect Juvenile Court Records (Welf. & Inst. Code, § 827)**

The following may inspect juvenile court records:

1. Court personnel;
2. The district attorney, city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law;
3. The child;
4. The child’s parents or guardian;
5. The attorneys for the parties, and judicial officers, probation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the child;
6. The superintendent or designee of the school district where the child is enrolled or attending school;
7. Members of the child protective agencies;
8. The State Department of Social Services, in order to carry out duties of monitoring child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements;
9. Authorized legal staff or special investigators employed or authorized by the State Department of Social Services to investigate and monitor community care facilities. Confidential information shall remain confidential, except as described under Welfare & Institutions Code section 827(a)(1)(I).
10. Members of the child’s multidisciplinary team, or persons or agencies providing treatment or supervision of the child;
11. A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody, visitation, or both, involving the child;
12. The following persons, if actively participating in the family law case:
  - a. Family court mediator assigned to the case as described in Family Code section 3160,
  - b. Court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation, or assessment under Family Code section 3118 (Such records must remain confidential and shall be released only under dictates of section 3111. The evaluator or investigator shall review and summarize the child welfare services agency file, but no document contained in that file shall be photocopied. Rather, a summary of the information in the file, with the exception of the reporting party’s identity, must be recorded by the investigator and then stored in a file separate from the evaluator’s file and available to either party only under order of the court. The evaluator or investigator shall not disclose the identity of the reporting party.),
  - c. Counsel appointed for the child in the family law case pursuant to Family Code section 3150, and providing a certified copy of the order appointing him or her as counsel;
13. Juvenile justice commissions, but these shall maintain the confidentiality of identifying information; and
14. Any other person designated by court order of the juvenile court judge.

### **3.5.2 Deceased Dependents (Welf. & Inst. Code, § 827)**

Courts may release juvenile case files to the public, except for those involving a juvenile delinquency, if the case involves a deceased child who was a dependent of the court, following a petition to the court and an opportunity to object by interested parties. Any identifying information regarding a child other than the deceased shall be redacted prior to release, unless otherwise ordered by the court. The court may limit access to the juvenile case file of a deceased child only upon a showing that release of the file or any portion thereof would be detrimental to the safety, protection, or physical or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.

### **3.5.3 Ordering Release of Juvenile Records (Welf. & Inst. Code, § 827; Cal. Rules of Court, rule 1423)**

The juvenile court presiding judge or judicial officer designated by the presiding judge may make an order authorizing any other person to inspect, obtain, or copy juvenile court records.

#### **Factors to Consider**

1. Balance of the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public.
2. The court shall permit disclosure of, discovery of, or access to juvenile court records or proceedings only insofar as is necessary, and only if there is a reasonable likelihood that the records in question will disclose information or evidence of substantial relevance to the pending litigation, investigation, or prosecution.

### **3.5.4 Who Can Copy Juvenile Court Records: Conflicting Opinions**

Courts should note that *access* to information is distinguished from permission to copy information.

#### **Rule of Court 1423**

California Rule of Court 1423 authorizes access and copying of juvenile court records by those persons expressly listed in Welfare and Institutions Code section 827.

#### **Attorney General of California**

In a recent opinion, the Attorney General stated that those listed in Welfare and Institutions Code, section 827(a)(1) have a right to “inspect” such records, but that they must petition the court for authorization to copy those records should they wish. (02 C.D.O.S. 9381.)

## **3.6 Information Sharing With Social Service Providers**

Sharing information between the courts and service providers can be a critical component of a unified court (see Chapter 10, Social Services Coordination and Compliance Monitoring). Much of the information coming into the court from service providers is protected as privileged under California law. The following are a few examples:

1. Physician–patient privilege (Evid. Code, §§ 990–1007);
2. Psychotherapist–patient privilege (Evid. Code, §§ 1010–1027);
3. Clergy–penitent privilege (Evid. Code, §§ 1030–1034);
4. Sexual assault victim–counselor privilege (Evid. Code, § 1035); and

5. Domestic violence victim–counselor privilege (Evid. Code, § 1037).

### 3.6.1 Authorizations to Release Information

Any information obtained as a result of the above relationships would require a litigant to sign a proper authorization to release information. Use of these should be carefully planned and completely voluntary. It is critical that litigants understand clearly exactly what privacy rights they will be giving up by signing an authorization to release confidential information. This is a particularly important issue to consider when parties are without attorneys.

An authorization to release confidential information constitutes a waiver of significant rights to privacy. It should be limited and specific. Broad authorizations to multiple entities are not optimal for this purpose. An authorization for release of confidential information should include at a minimum the following information:

1. Name of the person, program, or entity entitled to make the disclosure;
2. Name of the person, program, or entity entitled to receive the information;
3. Name of the person who is the subject of the information;
4. Purpose of the disclosure—how the information will be used;
5. Signature of the subject of the disclosure—or of a person authorized to give consent for a child or incapacitated adult;
6. Date the authorization is signed;
7. Clear statement that the authorization can be revoked at any time, except to the extent that disclosure has already been made in reliance on the authorization;
8. Date, event, or condition on which the authorization will expire—authorizations must not be open-ended; termination should relate to the purpose of the disclosure; and
9. A statement clearly prohibiting disclosure to persons or entities not authorized by consent, statute, or court order.

**Note:** Certain types of authorizations require specifically designed forms. An example would be a form for release of drug treatment information under 43 USC § 290dd-2. The restriction against release of such information is particularly strict.

### 3.7 Other Relevant Privileges

The following are examples of other relevant privileges important to the unified family law court:

1. Privilege against self-incrimination (Evid. Code, § 940);
2. Official information (Evid. Code, § 1040)
  - Applies to court-connected child custody mediation (Fam. Code, § 3177); and
3. Attorney–client privilege (Evid. Code, §§ 950–962)
  - Applies to minor’s appointed counsel (Fam. Code, § 3151).

## 3.8 Destruction, Sealing, and Copying of Court Records

### 3.8.1 Child Custody Records (Fam. Code, § 3142)

A court must maintain the pleadings, orders, records, evaluations, and other documents of any child custody proceeding until the child reaches the age of 18.

### 3.8.2 Juvenile Records (Welf. & Inst. Code, § 826)

1. Five years or more from the date on which the jurisdiction of the juvenile court over a child is terminated, the probation officer *may* destroy all records and papers in the proceedings concerning the child. The juvenile court record—including all records, papers, minute book entries, dockets, and judgment dockets *shall* be destroyed by order of the court as follows:
  - a. Dependency: Dependant reaches age 28,
  - b. Status Offender: Subject reaches age 21, and
  - c. Delinquent: Subject reaches age 38.

If, however, the juvenile court record is one which cannot be sealed, it cannot be destroyed.

1. If a juvenile court record has been destroyed or released under Welfare and Institutions Code section 826(a) and the subject of the record discovers that another agency still retains a record, that individual may file a petition requesting that those records be destroyed. The court shall order their destruction. It shall also send a copy of the order to each agency, which shall destroy the records and subsequently inform the court of their destruction. The court shall then destroy the petition, the order, and the notice of compliance.
2. Juvenile traffic court records *may* be destroyed
  - a. After five years from the date on which the jurisdiction ended, or
  - b. When the child reaches the age of 21 years, if the child was alleged or adjudged to be a person described in Section 601.

Prior to destruction, the court may make a microfilm or photocopy of the original record, which shall be considered an original.

4. The judge or clerk of the juvenile court or the probation officer may destroy all records *before* the subject of the records reaches the age when destruction is required *if* the records are photocopied or microfilmed before destruction. Copies of the record shall be deemed originals.
5. Any child who is the subject of a dependency or delinquency petition shall, upon disposition of the petition or termination of the court's jurisdiction, be given written notice by the clerk of the following rights and regulations:
  - a. The person's statutory right to petition to have the case records sealed;
  - b. The laws regarding destruction of juvenile court records and those retained by state or local agencies; and/or
  - c. The person's right to have the juvenile court record released to him or her in lieu of destruction.

6. The clerk of the court shall prepare a written form describing the laws regarding the sealing, destruction, and right to have one's record released, and this form shall be available to juvenile court clerks, probation departments, welfare departments, and district attorneys.
7. All records specifically related to a registration of a minor sex offender under Penal Code section 290 must be destroyed when the minor reaches the age of 25, or when the records are sealed, whichever comes first.

### 3.9 Records Management

The maintenance of records and files for a unified family court presents interesting challenges for court operations. Each strategy carries with it concerns with respect to both due process and confidentiality. It is therefore necessary to pay careful attention to statutes and rules of court that specifically outline how particular documents and/or case files must be maintained.

#### **3.9.1 Strategies—Examples**

##### **One Case File**

When deciding to consolidate cases, some courts have chosen to use only one case file for multiple, related cases, in which all documents, pleadings, and orders will be filed. If any of these cases are confidential, such as a juvenile case, the whole file must be kept confidential from the public. It might be possible to keep a confidential part of a file clearly identified, but care would be required to see that reference is not made to this material in the nonconfidential material.

##### **Separate Unified Court File**

In this strategy, a court keeps separate files for each action, but also maintains a separate unified court file that references the other cases. Caution must be taken with respect to references to confidential information. Rule 12.5(g) of the California Rules of Court expressly prohibits references to nonpublic material in public records.

Simply labeling the unified court file “confidential” and keeping it separate may not solve the problem. Such files have no confidentiality protections under the law and may be subject to subpoena.

#### **3.9.2 Electronic Public Access to Court Records (Cal. Rules of Court, rule 2077)**

Many courts have begun to provide electronic public access to court records. Such access provides numerous benefits, including time and money savings for court staff, attorneys, and the public; increased awareness of the parties regarding their cases; and increased sense of service for the public. Rule 2077 of the California Rules of Court specifically delineates the information that can and cannot be included in information that is electronically accessible to the public.

##### **What Must Be Included**

1. The electronic court calendar must include
  - a. Date of court calendar;
  - b. Time of calendared event;

- c. Court department number;
  - d. Case number; and
  - e. Case title (unless made confidential by law).
2. The electronic index must include
  - a. Case title (unless made confidential by law);
  - b. Party names (unless made confidential by law);
  - c. Party type;
  - d. Date on which the case was filed; and
  - e. Case number.
3. The register of actions must be a summary of every proceeding in a case, in compliance with Government Code section 69845, and must include
  - a. Date case commenced;
  - b. Case number;
  - c. Case type;
  - d. Case title (unless made confidential by law);
  - e. Party names (unless made confidential by law);
  - f. Party type;
  - g. Date of each activity; and
  - h. Description of each activity.

#### **What Must Be Excluded**

1. Social security number;
2. Any financial information;
3. Arrest warrant information;
4. Search warrant information;
5. Victim information;
6. Witness information;
7. Ethnicity;
8. Age;
9. Gender;
10. Government-issued identification card numbers (i.e., military);
11. Driver's license number; and
12. Date of birth.





**Chart 3A: Juvenile Records & Case Files**

Juvenile Records & Case Files	
Laws and Rules Governing Confidentiality of Juvenile Records	Welf. & Inst. Code, § 827 et. seq. Rule of Court 1423
Basic Rule	Juvenile records and case files are confidential. Only those persons and agencies enumerated in Welf. & Inst. Code, § 827 may be given access without a court order.
What constitutes the juvenile case records and file?	(1) All documents filed in a juvenile court case; (2) Reports to the court by probation officers, social workers of child welfare services programs, and court-appointed special advocates; (3) Documents made available to probation officers, social workers of child welfare services programs, and court-appointed special advocates in preparation of reports to the court; (4) Documents relating to a child concerning whom a petition has been filed in juvenile court, which are maintained in the office files of probation officers, social workers of child welfare services programs, and court- appointed special advocates; (5) Transcripts, records, or reports relating to matters prepared or released by the court, probation department, or child welfare services program; and (6) Documents, video or audio tapes, photographs, and exhibits admitted into evidence at juvenile court hearings. <sup>1</sup>
Who may inspect the file?	<ol style="list-style-type: none"> <li>1. Court personnel</li> <li>2. The district attorney, city attorney or city prosecutor authorized to prosecute criminal or juvenile cases under state law</li> <li>3. The minor</li> <li>4. The minor’s parents or guardian</li> <li>5. The attorneys for the parties, and judicial officers, probation officers and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor</li> <li>6. The superintendent or designee of the school district where the minor is enrolled or attending school</li> <li>7. Members of the child protective agencies</li> <li>8. The State Department of Social Services, in order to carry out duties of monitoring child welfare agencies, children in foster care or receiving foster care assistance, and out-of-state placements</li> </ol>

<sup>1</sup> Cal. Rules of Court, rule 1423(a).

	<p>9. Authorized legal staff or special investigators employed or authorized by the State Department of Social Services to investigate and monitor community care facilities. Confidential information shall remain confidential, except as described under Welf. &amp; Inst. Code, § 827(a)(1)(I).</p> <p>10. Members of the minor’s multidisciplinary teams, person or agencies providing treatment or supervision of the minor</p> <p>11. A judge, commissioner, or other hearing officer assigned to a family law case with issues concerning custody or visitation, or both, involving the minor, and the following persons, if actively participating in the family law case: a family court mediator assigned to the case as described in the Section 827(a)(1)(K), a court-appointed evaluator or a person conducting a court-connected child custody evaluation, investigation or assessment under Section 3118 of the Family Code, and the counsel appointed for the minor in the family law case pursuant to Section 3150 of the Family Code</p> <p>12. Juvenile justice commissions, but these shall maintain the confidentiality of identifying information.</p> <p>13. Any other person designated by court order of the juvenile court judge.<sup>2</sup></p>
<p>What is the procedure to gain access if not listed in Welf. &amp; Inst. Code, § 827(a)(1)?</p>	<p>The person desiring access shall petition the court. The juvenile court shall release only the information or the files “if disclosure is not detrimental to the safety, protection, or physical or emotional well-being of a child who is directly or indirectly connected to the juvenile case that is the subject of the petition.”<sup>3</sup> Prior to releasing a juvenile file or any portion of it, the court must give due process, including notice of and an opportunity to file an objection to the release of information to all interested parties.<sup>4</sup></p> <p>To inspect, obtain or copy juvenile court records, Rule 1423(b) requires petition on Judicial Council Form JV-570</p>
<p>Limits on use of information once it has been disclosed?</p>	<p>Any person or agency authorized to receive the juvenile case file or information within it shall not disseminate it to any persons or agencies other than those already authorized under Welf. &amp; Inst. Code, § 827. Additionally, a juvenile case file or any part of it or information contained within it shall not be made as an attachment to any other documents without the prior approval of the presiding judge of the juvenile court, unless it is used in connection with and in the course of a criminal investigation or a proceeding brought to declare a person a dependent child or ward of the juvenile court.<sup>5</sup></p>

<sup>2</sup> Welf. & Inst. Code, § 827(a)(1).

<sup>3</sup> Welf. & Inst. Code, § 827(a)(3)(A).

<sup>4</sup> Welf. & Inst. Code, § 827(a)(3)(B).

<sup>5</sup> Welf. & Inst. Code, § 827(a)(4).

Exception in cases involving deceased children	Courts may release juvenile case files to the public, except for those involving a juvenile delinquency, if the case involves a deceased child who was a dependent of the court, following a petition to the court and an opportunity to object by interested parties. <sup>6</sup> Any identifying information regarding a child other than the deceased shall be redacted prior to release, unless otherwise ordered by the court. <sup>7</sup> The court may limit access to the juvenile case file of a deceased child only upon a showing that release of the file or any portion thereof would be “detrimental to the safety, protection, or physical, or emotional well-being of another child who is directly or indirectly connected to the juvenile case that is the subject of the petition.” <sup>8</sup>
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<sup>6</sup> Welf. & Inst. Code, § 827(a)(2).

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*



**Chart 3B: Family Law Records & Case Files**

Type of Case or Record	Legal Authority	What is the Rule?
Family Court Records		
Records of adoption proceedings	Fam. Code, § 9200	Documents relating to adoption proceedings are confidential and may be seen only by the parties, their attorneys and the child welfare agency. The name and identifying information regarding the child's birth parents shall not be disclosed to anyone receiving the documents unless the adoption is by a step-parent or second-parent.
Child Custody Evaluations	Fam. Code, § 3111	Child custody evaluation reports are available only to the court, the parties and their attorneys.
Uniform Parentage Act records	Fam. Code, § 7643	With the exception of the final judgment, records in UPA proceedings are closed to the public.
Proceedings to Terminate Parental Rights	Fam. Code, § 7805	<p>A petition to terminate parental rights or a report of the probation officer or county social services department may be inspected only by the following persons:</p> <ol style="list-style-type: none"> <li>(1) Court personnel.</li> <li>(2) The child who is the subject of the proceeding.</li> <li>(3) The parents or guardian of the child.</li> <li>(4) The attorneys for the parties.</li> <li>(5) Any other person designated by the judge.</li> </ol> <p>On appeal to the court of appeal or the Supreme court, the court record and briefs filed by the parties may be inspected only by the following persons:</p> <ol style="list-style-type: none"> <li>(1) Court personnel.</li> <li>(2) A party to the proceeding.</li> <li>(3) The attorneys for the parties.</li> <li>(4) Any other person designated by the presiding judge of the court before which the matter is pending.</li> </ol> <p>The court and/or probation officer may provide information in a termination of parental rights case, if it is believed that the welfare of the child will be promoted, to any of the following:</p> <ol style="list-style-type: none"> <li>(1) The State Department of Social Services.</li> <li>(2) A county welfare department.</li> <li>(3) A public welfare agency.</li> <li>(4) A private welfare agency licensed by the State Department of Social Services.</li> </ol>
Support Enforcement and Child Abduction Records	Fam. Code, § 17212	All child and spousal support enforcement records are confidential, and shall not be released for any purpose not directly connected with the administration of the child and spousal support enforcement program. Information

		regarding the location of one party or the child shall not be disclosed to another party, or to the attorney of any other party, if a protective order has been issued by a court or administrative agency with respect to the party, a good cause claim under Section 11477.04 of the Welfare and Institutions Code has been approved or is pending, or the public agency responsible for establishing paternity or enforcing support has reason to believe that the release of the information may result in physical or emotional harm to the party or the child. The information shall be omitted from any pleading or document to be submitted to the court. A proof of service filed by the local child support agency shall not disclose the address where service of process was accomplished. Instead, the local child support agency shall keep the address in its own records. Authorized disclosures are described in the statute.
Income tax returns	Fam. Code, § 3552	If a judge finds that an income tax return is relevant to the disposition of a child, family or spousal support case, the tax return must be sealed and maintained as a confidential record.
Family Conciliation Court Records	Fam. Code, § 1818	Records and proceedings in Family Conciliation Courts are confidential.
Probate Court Records		
Probate Court Guardianships and Conservatorships	Prob. Code, §§1513 and 1826 Cal. Rules of Court, rule 7.1001(c) and 7.1050(c)	Confidential Guardian Screening form (GC-212) and Confidential Conservator Screening form (GC 314 and GC-312) are confidential. Investigative reports on proposed conservatorships created under Probate Code §1826 are confidential and available to the parties, their attorneys, the court, persons given notice of the petition who have requested the report or appeared in the proceedings, and any other persons as the court orders. The court investigator may release the report to the public conservator, interested public agencies and the long-term care ombudsman. Investigative reports on proposed guardianships are confidential and available only to the parties served in the action or their attorneys.
Civil Case Records		
Fee Waiver Application	Cal. Rules of Court, rule 985(h)	Records of an application to proceed without paying court fees and costs are confidential.
Unlawful detainer proceedings	Code Civ. Proc. § 1161.2	Court files and records in unlawful detainer proceedings are not publicly available until 60 days after the case is filed, except for persons specified by statute or showing good cause.

Social Security Numbers	Gov. Code, § 68107 42 U.S.C. § 405(c)(2)(c)(viii)(I)	Social security numbers are confidential under state and federal law.
Records of mental health treatment or services	Welf. & Inst. Code, §§ 5328 <i>et seq.</i>	Records of mental health treatment, services or confinement are confidential as described in Cal Welf. & Inst. Code, §§ 5328 <i>et seq.</i>
Subpoenaed business records	Evid. Code, § 1560(d)	Subpoenaed business records of nonparties are confidential until introduced as evidence or entered into the record.
Tax records	Fam. Code, § 3552 R&TC §§ 19542 and 19548 26 U.S.C § 6103	Tax returns are confidential court records.
Welfare information and records	Welf. & Inst. Code, § 10850 <i>et seq.</i> 45 C.F.R. 202.50	All records and information regarding the identity of applicants for or recipients of public social services grants are confidential and not open to examination for any purpose not directly involved with the administration of the grant program or any investigation, prosecution or criminal or civil proceeding conducted regarding the administration of the program. Exceptions and authorizations of disclosure are listed in the codes.
Consumer credit information	15 U.S.C § 1681b	
Education records	20 U.S.C. § 1232g 20 U.S.C. § 1412 and 1417(c) 34 C.F.R. 300.560 <i>et seq.</i> and 303.460	Educational records, with the exception of basic directory information, are confidential and cannot be released without the consent of the student's parents. Information and records pertaining to individuals receiving services under the Individuals with Disabilities in Education Act (IDEA) is also confidential and cannot be released, other than to those providing services, without the student's parent's consent.
Identity of persons receiving substance abuse treatment	42 C.F.R. § 2.12	Information regarding the identity of a person receiving treatment for drug or alcohol abuse under a federally funded program is confidential.
Request for accommodation of disability	Cal. Rules of Court, rule 989.3	Upon request, a court may seal all records regarding the request of a party for an accommodation of his or her disability. These records shall remain confidential.

Criminal Case Records		
Indigent Defendant Request for Funds	Pen. Code, § 987.9	A request for funds to pay for investigators, experts, etc. to prepare defense in certain murder cases is confidential.
Arrest Records	Pen. Code, §§ 851.8, 851.85	Arrest records for defendants found to be factually innocent are confidential.
Psychiatric records or reports	Evid. Code, § 1017	Although most psychiatric reports prepared at the court's request are presumed public, those prepared at the request of defense counsel to determine sanity and emotional condition are confidential.
Probation Reports		
Defendant's Statement of Assets Form	Pen. Code, § 1202.4	Form CR-111 is confidential.
Pre-sentencing diagnostic reports	Pen. Code, § 1203.03(c)	If a court orders diagnostic and treatment services for a defendant under section 1203.03, the report and recommendation filed by the Department of Corrections is confidential and can be released only to the defendant, the defense counsel, the prosecutor, and the probation officer. Anyone else seeking to access the report must have the written consent of the defendant.
Victim Impact Statements	Pen. Code, § 1191.15	Victim impact statements are confidential until imposition of judgment and sentence. The court, the probation officer, and counsel for the parties may review the statements up to two days before the date of imposition of judgment and sentence.
Criminal history information	Pen. Code, §§ 11105 <i>et. seq.</i> (state info) and 13300 <i>et. seq.</i> (local info)	State and local summaries of criminal histories for individuals are confidential. Please see the codes for information on who may be given this information.
Reports on mentally disordered prisoners	Pen. Code, § 4011.6	Reports to evaluate whether prisoners are "mentally disordered" under section 4011.6 are confidential.
Police Reports	Pen. Code, §§ 841.5 and 1054.2	Some information in police reports, such as contact information of victims or witnesses is confidential. Personal information should be redacted prior to filing the report publicly or making it part of the record.
Identity of sex offense victims	Pen. Code, § 293.5	Upon proper showing by the victim, the judge may order that the identity of the victim of a sex offense be either "Jane Doe" or "John Doe".



# CHAPTER 4: JUVENILE DEPENDENCY

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## 4.1 Juvenile Dependency Cases

These are civil child protective cases involving abused, neglected, or abandoned children. The parties to the case are the parent(s), the child, the legal guardian, and the county child welfare services agency. Under certain circumstances a de facto parent may also be a party.

Juvenile dependency cases are generally classified into two tracks. One track is called reunification, where a child or children have been removed from their parent or guardian's home and the parents attempt to reunify by successfully completing a case plan developed by the child welfare agency with the parents, and the child if he or she is old enough, and approved by the court. Failure to comply with the case plan may result in termination of reunification services and termination of parental rights. A parent may also voluntarily relinquish his or her parental rights. The second track is called family maintenance, in which a child or children are declared dependents under the jurisdiction of the juvenile court, but remain residing in the home of their parents or guardian.

### 4.1.1. Frequently Related Cases—*Examples*

- **Juvenile Delinquency/  
Joint Assessment Protocol**

Juvenile delinquency cases are frequently related to dependency cases. Many juvenile dependents “cross over” from the dependency system to the delinquency system.

Welfare and Institutions Code section 241.1 directs the departments of social services and juvenile probation in each county to develop a protocol for making a recommendation to the court on the status of a child who appears to come under the jurisdiction of both systems. The court receives a joint assessment report from those agencies, which includes a recommendation as to which system will better serve the child's needs.

**Example:** A delinquency petition is filed against Greg, a 16-year-old boy, alleging unlawful possession of drugs. Greg has been a dependent in a foster care home since birth. Because Greg is a dependent, his social worker is notified that a delinquency petition has been filed. The social worker meets with the juvenile probation officer assigned to the case. The social worker and probation officer prepare a joint assessment report, reporting their mutual findings that Greg's substance abuse has resulted in truant behavior and failing grades in school. The juvenile probation officer believes Greg's substance abuse problem can be better served by his agency because of the delinquency drug court program and the availability of substance abuse counseling and drug testing. The social worker agrees. The report has a recommendation to adjudicate Greg's status to that of a ward of the delinquency court.

- **Probate Guardianship**

Dependency cases may frequently cross over with probate court (nondependency) guardianship cases. Guardianships are created in both probate and juvenile dependency courts. A child who is the subject of guardianships in probate court may have some of the same risk factors for abuse and neglect as children in the dependency system. In dependency cases, guardianship is one potential permanent placement for a dependent child who is in foster care, and is a preferred placement if neither reunification nor adoption is available. Often the underlying issues that caused the child to be at risk for abuse, neglect, or abandonment may be resolved if an appropriate guardian is identified. In certain situations dependency jurisdiction may be dismissed once the court has placed the child with a guardian.

Children who have a guardian appointed for them by the probate court may become dependents of the juvenile court if the guardianship is terminated, the parents are not able to take custody, and a qualified successor guardian cannot be identified by the probate court.

- **Title IV-D Child Support Enforcement**

Welfare and Institutions Code sections 903 et seq. direct that parents are responsible for paying for the support of those of their children that are taken into foster care. Each parent is fully responsible to the county for reimbursement of the expense of caring for such children.

Nevertheless, the local child support agency should not enforce support orders that will prevent a parent from complying with the plan of the juvenile court to reunify the children with their parents. (Fam. Code § 17442.)

**Example:** Probate court appoints Pat, who is the maternal aunt of 8-year-old Lori, to be her guardian. When Lori is 14, Pat petitions the court to terminate the guardianship. Lori's mother is deceased. Her father has been abusing drugs for the past 10 years and cannot be found. If an appropriate successor guardian cannot be identified, a juvenile dependency case would have to be initiated.

**Example:** Three siblings are removed through dependency proceedings and placed into foster care. As part of the reunification plan, the mother is required to obtain suitable housing for herself and the three children. The local child support agency initiates actions against both parents for child support to reimburse the county for the costs of foster care placement. The father's whereabouts are unknown, so the only parent available to pay the child support is the mother. The amount of child support is so high that after payment has been taken from her paycheck, she cannot afford to pay for the housing necessary to regain custody of her children.

- **Marital Dissolution**

Families involved in acrimonious dissolution cases heard in family law court may frequently cross over into juvenile dependency court. When contested issues involving custody and visitation raise allegations of abuse or neglect an investigation may result in the filing of a petition that places the current family law case on hold, as the juvenile court jurisdiction supercedes and the allegations of the petition are dealt with in a detention hearing.

**Example:** Bernice and Alan are involved in a dissolution case in family court. They are the parents of two children, Roy and Tom. During a contested hearing regarding custody and visitation, Bernice alleges that Alan has sexually abused both boys. Bernice wants sole custody and limited supervised visits for Alan. Alan counters that Bernice is a drug addict and acts inappropriately in front of the children with her new boyfriend. The matter is referred to Child Protective Services for investigation. A Child Protective Services worker investigates and believes she has enough evidence to file a petition against Bernice and Alan, alleging abuse.

- **Domestic Violence**

Juvenile dependency cases may also involve domestic violence. In this example, Tammy can obtain a restraining order against Grant in the dependency case without having to go to the family law court. If Tammy does go to the family law court for a restraining order, court unification can facilitate coordination with the dependency case.

**Example:** The county child welfare agency files a petition against Tammy, the mother of five-year-old Cindy. While Tammy is working with Social Services to regain custody of Cindy, she is assaulted physically, and subjected to continued threats of abuse by Cindy's father, Grant.

#### **4.1.2 Other Related Matters**

##### **Juvenile Delinquency**

Delinquency cases are those in which a child has been charged with committing a criminal act. (Welf. and Inst. Code, § 602.) These children may be removed from the custody of their parents and may become wards of the juvenile court.

Children who are habitually disobedient or truant or who commit status offenses, including traffic violations, may come within the jurisdiction of the juvenile court, but may not be removed from the custody of their parents. (Welf. and Inst. Code, § 601).

### **Criminal Cases**

A parent may be incarcerated or have pending criminal charges related to the allegations of a dependency petition. Provision of adequate notice of juvenile proceedings to incarcerated parents and requests for transport for attendance at hearings are ongoing issues for juvenile courts.

Upon the motion of the petitioner or direct filing under Proposition 21, a ward of the juvenile delinquency court who is 16 years old or older may be subject to a fitness hearing to determine if he or she is a fit and proper person to be under the jurisdiction of the juvenile court as opposed to the criminal court. (Welf. and Inst. Code, § 707.)

### **Mental Health/Conservatorship Cases**

If a party to a juvenile case has a mental health disability that raises the question of whether the person has the requisite cognitive ability to make legal decisions for him- or herself, there could be an overlapping case on a mental health or conservatorship calendar.

Cases in which a party may be a danger to him- or herself or to others may also require a hearing to determine the status of that party's mental health.

### **Emancipation**

Emancipation as a legal adult prior to attaining the age of majority is another related case type that may arise in juvenile cases. Although there are financial incentives to stay within the juvenile system as a child until all of the requirements for dismissal of juvenile court jurisdiction are met, some dependents and delinquents have specific reasons to request legal emancipation status.

### **Miscellaneous Civil Cases Where the Child Is a Party**

Counsel for dependent children are charged in general with representation of the child's interests (Welf. and Inst. Code, § 317(e)) and are required to report to the court, other interests of the child that may need to be protected by the institution of other administrative or judicial proceedings. This general charge has been interpreted to include the responsibility either to represent the child in any civil or administrative matters in which he or she may be or become involved or to request that the court appoint another attorney to represent the child. Children involved in the dependency system may require representation or assistance regarding school related matters, such as Independent Education Plans.

## **4.2 The Unified Court Process: Dependency**

### **4.2.1 The Petition**

The procedures in juvenile cases differ significantly from those in family law and probate guardianship cases. A juvenile dependency case involves the filing of a petition by the child welfare agency for the custody of the child and results in an immediate court hearing.

## **The Indian Child Welfare Act**

The Indian Child Welfare Act (ICWA) (25 U.S.C. §1901 et seq.) was created out of historical concern that custody and placement decisions affecting Indian children were not in the child's best interests because the role of the tribal community in the Indian child's life was not being adequately protected. ICWA applies to child custody proceedings where an Indian child, as defined by ICWA, may be in temporary out-of-home placement, including placement in a foster home, an institution, or the home of a guardian. ICWA also covers any proceeding resulting in adoption or termination of parental rights. ICWA applies to all dependency cases involving an Indian child who has been removed from his or her home. ICWA requires state and local authority to provide notice to the child's tribe so that the tribe may participate in the proceeding to determine custody and placement arrangements in the best interests of the child. If an Indian child resides on the reservation of a tribe that has reassumed exclusive jurisdiction over Indian child custody proceedings, Welfare and Institutions Code section 305.5 requires the state or local authority to provide notice of the removal to the tribe by the next working day. If the tribe confirms the Indian child's status, the state or local authority must transfer the proceeding to the tribe within 24 hours of providing written confirmation of the status determination.

### **4.2.2 Identifying Related Cases**

Identifying related cases involving the same family can be done once the petition is filed; however, the timeline between the filing of the petition and the first hearing may be short (by the expiration of the next judicial day, if the child is detained). Identification of cases at the time the dependency petition is filed makes use of the same methods previously set out in chapter 7, section 7.5.1, for marital and Uniform Parentage Act cases.

Dependency cases frequently involve multiple half- and step-siblings, so defining who is a family member and who is not is an important first step necessary to identifying related cases. (See Chapter 1, section 1.4, Definition of the "Family".)

### **Benefits of Information Sharing**

1. The judicial officer can make a more informed decision regarding the child's status, placement, and contact with parents and siblings if he or she has a full understanding of the legal history of the parties.
2. Court efficiency may be enhanced by coordinating hearings.
3. Court related and/or community based services may be more efficiently and effectively delivered.

### **Case Coordination**

The Welfare and Institutions Code provides that the juvenile court has exclusive jurisdiction over custody and visitation issues regarding the children in the case. (Welf. and Inst. Code, § 304.) Access to inspect juvenile records is also limited, and access to attend juvenile court hearings is restricted to parties to the case, their counsel, and several other types of specified observers.

(Welf. and Inst. Code, § 827) The code also mandates the development and implementation of coordination efforts between juvenile dependency and other related cases.

When there has been a dependency case filed, the juvenile case has exclusive jurisdiction over custody and visitation matters regarding the children. If there is an ongoing family law case at the time a juvenile petition is filed, coordination of that case with the dependency proceeding may result in increased judicial efficiency through coordination of hearings and court related services. (See Chapter 3, Confidentiality and Information Sharing).

### **4.2.3 Initial Hearing**

At the initial detention hearing, if the child remains detained in temporary care, custody and control of the child is vested in the county child welfare agency. If there was an ongoing custody issue under the consideration of the family court, the family court would no longer have the jurisdiction to make custody orders relating to that child.

### **Detention Reports**

When the juvenile dependency petition is filed, the court is provided with a detention report, prepared and submitted by the social worker for the child. The detention report provides narrative, factual information that the judicial officer may rely on as a basis for the findings and orders he or she will make at the detention hearing. The judicial officer also may examine the parents, guardians, or other persons having relevant evidence and hear relevant evidence that parties or counsel desire to present (Welf. and Inst. Code, § 319). The parties may not be prepared to present testimony or other evidence at the initial hearing, so the court may look to the report for basic information relating to the case. The information available in these reports varies widely, depending on how much contact the worker has had with the family and how much of an opportunity the worker had to research the legal background of the parties.

### **Gathering More Information at the Detention Hearing**

A detention hearing is a good place for the bench officer to gather information and inquire about what has already been provided. Examples of information possible to gather at this initial hearing include the following:

1. Identifying all persons who came to court for or with the child and their relationship to the child;
2. Obtaining contact information;
3. Determining whether the child has multiple pending petitions;
4. Determining what evaluations or services are necessary and when they can begin;
5. Confirming the child's mailing address and that of the parents;
6. Determining who has custody of the child, who are the legal parents, and who is the child's caretaker;
7. Determining whether the child is a dependent in this or another county;
8. Inquiring about the child's schooling, including attendance and performance.

Additionally, the court should inquire whether the child receives special education services or should be referred for evaluation for special education eligibility.



### **Other Potential Uses of the Detention Hearing in Unified Family Court Cases**

Additional inquiries could cause longer detention hearings, which may initially appear to have a negative impact on judicial efficiency. However, information obtained at initial or early hearing could provide information necessary to determine if coordination of matters in related cases is feasible. Such coordination could result in increased judicial efficiency.

1. Establish the frequency and scope of visitation. Some courts, such as the Unified Family Court in San Francisco County, have standing orders, that have been commented on by others;
2. Identify any paternity issues (including the existence of orders of paternity or child support in other cases/courts);
3. Ask whether there are other court actions involving the family.

### **Written Court Orders**

At this and all hearings the court should have the capacity to print out and distribute orders to parties before they leave the courtroom. This gives parties something concrete to refer to stating future hearing dates and actions required of them. It thereby ensures better compliance with court orders, while providing the basis for applying consequences to parties who fail to comply.

#### **4.2.4 Jurisdiction/Disposition**

After the detention hearing, if the child was and remains detained, a detention order is generated and filed in the court record. The case is then calendared for a jurisdiction hearing, which in many courts is combined with the disposition hearing. The jurisdiction hearing establishes the first judicial finding of substantiated abuse or neglect. The disposition hearing determines the adjudicated status of the child as a dependent of the juvenile court. The court determines where the child will reside, and what the case plan will be for the parents and child, including the steps the parents will need to take to be reunified with their child.

#### **4.2.5 Postdisposition Hearings**

There are several reasons for postdisposition hearings in juvenile dependency cases. The following are some examples:

1. Status reviews;
2. Permanency planning hearings;
3. Changes in circumstances of the parents;
4. Change in placement of the child;
5. Medication approval for a child;
6. Medical treatment decisions; and
7. Approval for out-of-county/state travel.

The unified family court should be able to track all related cases and keep notes about their progress, relaying information to judges or service providers who do not already have it, provided that such exchanges of information are in accordance with all applicable rules of evidence and other laws governing access to confidential information.

For additional procedural information regarding postdisposition hearings see section 4.3.

#### **4.2.6 Specialized Calendars**

A unified family court may elect to use specialized calendar management to assist parents in juvenile dependency cases. The following are examples:

1. Dependency drug calendars;
2. Domestic violence courts; and/or
3. Mental health calendars.

#### **4.2.7 Coordinating With Child Support (Title IV-D) Courts**

Problems frequently arise when there is lack of coordination between dependency courts and child support courts. Conflicting orders in the following situations are the most common:

1. At the time the child is removed from present home;
2. When parental rights are terminated;
3. When children are returned home; and
4. When paternity determinations are made.

Support orders should be established at the time the child is removed from home.

Another common problem that arises from the lack of coordination between dependency and Title IV-D courts is the delay of information. For example, the IV-D agency does not find out about the Termination of Parental Rights order issued in a dependency case until eight months after it happens, and the parent is being charged for support during that whole time period. The parent then has the burden of correcting this complicated support error.

#### **Possible Approaches**

1. When any of the above events occurs, the department of child support services (DCSS) is notified. The juvenile court can order disclosure of the information, particularly parent location.
2. Paternity information is exchanged among child welfare, DCSS, and dependency court staff on a routine basis.

#### **4.2.8 Other Coordination Issues**

##### **Attorneys for Children**

Attorneys for children in dependency cases are governed by Welfare and Institutions Code section 317, which dictates appointment of counsel for the child *unless* the court finds that the child would not benefit from the appointment and puts its reasons on the record. The code states that the child's counsel is charged in general with the representation of the child's interests.

The role of child's attorney in a dependency case is distinguished from that of a child's attorney in a child custody case. It allows a child's attorney to represent the child's stated interest, rather than determine what the attorney believes is in the child's "best interest." The code requires that

child's counsel determine the child's wishes and advise the court of them if the child is four years old or older. The code places a limitation on representation of the child's stated interest, however, by disallowing the child's counsel to advocate for return of the child if, to the best of her knowledge, return would "conflict with the protection and safety of the child." The code also places with the attorney the responsibility of investigating the interests of the child beyond the scope of the proceedings and reporting those to the judge.

### **Closed Versus Public Hearings**

In general, juvenile dependency and delinquency hearings, proceedings, and records are closed to the public. (Welf. & Inst. Code, § 346). Family law and probate court hearings, proceedings, and records are open to the public. There are some exceptions to these general rules. For example, Family Code section 3041(a) allows a court to exclude the public from child custody hearings on an allegation that a public hearing would be detrimental to the child in parental custody. Also, juvenile court judicial officers may at their discretion allow members of the public to sit in on proceedings.

### **4.2.9 Timelines**

Child protection and juvenile justice cases have very strict timelines for hearings, as well as for completion and distribution of reports. Hearing these cases with other matters must not jeopardize these timelines. (See section 4.4.)

## **4.3 Juvenile Dependency Process Overview and Timeline**

### **Report Made to Child Protective Services**

What can happen:

1. No investigation;
2. 10-day response; or
3. Emergency response.

### **CPS Investigation**

What can happen:

1. Case closed; or
2. Case open: petition filed
  - a. Child remains in home, or
  - b. Child removed from home / taken into custody.

### **The Child Welfare Services (CWS) Agency Determines How the Case Will Proceed**

1. Family preservation: Family is provided with child welfare services to prevent need for dependency petition—services are voluntary but child welfare agency can file a petition if situation does not improve and child is at risk;
2. In-home dependency; petition filed;
3. Child removed from home: petition filed; or

4. Parent voluntarily relinquishes child.

### **Permanency Planning**

When a child has been removed from home the goal becomes to eliminate the reasons the child was removed so that he or she may be safely returned home, or, if return home is not possible, to identify and implement a permanent placement for the child. The prioritized order of placements is the following:

1. Return home;
2. Adoption;
3. Legal guardianship;
4. Placement with a fit and willing relative; or
5. Another planned permanent living arrangement with certain specified goals.

### **Detention Hearing**

1. Within 48 hours of removal, excluding weekends, CWS must file a petition alleging abuse, neglect, or abandonment. (Welf. & Inst. Code, § 300.)
2. Upon the filing of the petition, the clerk of the juvenile court must set the matter for a detention hearing. The hearing must be held before the expiration of the next judicial day after the petition has been filed. (Welf. & Inst. Code, § 315.)

### **Threshold Determinations and Inquiries**

1. Court determines whether the child is an Indian child under the ICWA.
2. Court makes inquiries regarding paternity, if necessary.
3. Court may notify county mental health department of child's need for mental health services.

### **Jurisdictional Hearing**

The jurisdictional hearing is the proceeding wherein the court will either sustain or dismiss the allegations of the petition, either in whole or in part. If the court sustains any of the allegations of the petition, this is considered the first adjudication of abuse and neglect. Therefore this proceeding is often contested. Because jurisdiction hearings are frequently contested, they may not be the most suitable hearing for coordination of matters in related cases.

***Timeline:*** The jurisdictional hearing must be held

1. Within 14 days if child is detained (Welf. & Inst. Code, § 334); or
2. Within 30 days if child remains at home.

### **Dispositional Hearing**

The dispositional hearing is the proceeding wherein the court determines whether the proposed case plan for the parties is appropriate. Often CWS has provided the parties and the court with the proposed case plan and disposition report in advance of the jurisdictional hearing; this enables the court to proceed immediately with the matters to be determined in the disposition hearing. For this reason many counties establish combined jurisdiction and disposition hearings.

**Timeline:** The dispositional hearing must be held

1. Within 10 days of jurisdictional hearing if child is detained (Welf. & Inst. Code, § 348(a)(1)); or
2. Within 30 days of jurisdictional hearing if child is not detained (Welf. & Inst. Code § 348(a)(2)).

### **Six-Month Review Hearing**

At the initial six-month review, which is the only “prepermanency” review, the court reviews how the parents have progressed with their case plan, whether the child’s placement continues to be necessary and appropriate, and whether CWS has made reasonable efforts to provide services to the family to enable the child to return home or has taken the steps required to finalize another permanent plan for the child.

The court may set a selection and implementation hearing terminating parents’ rights and determining a permanent plan. (Welf. & Inst. Code, § 366.26.)

**Timeline:** The six-month review hearing must be held within six months from “date child entered foster care”—which is the earlier of

1. The first judicial finding of abuse or neglect, or
2. 60 days after physical removal.

If the court reunifies the child with his or her parents, it may issue exit orders regarding custody and visitation of the child as between private parties.

### **Child Under 3 years old: Bypass Cases**

If the child is under three years old, court may also

1. Terminate reunification services and adopt a permanent plan; or
2. Order an additional six months of reunification services if there is a substantial probability that the child will be returned to the parents within six months.

### **Twelve-Month Review Hearing (First Permanency Hearing)**

Once a child has been removed from home the goal is to return the child home or implement a plan for another permanent placement. The 12-month review hearing is the first permanency planning hearing. Often this hearing may occur before a selection and implementation hearing regarding a permanent plan. (Welf. & Inst. Code, § 366.26.)

At the 12-month hearing,

1. The court may return the child to his or her parents
2. The court may not order a specific permanent placement plan at this time;
3. The court may make a finding that there is a substantial likelihood that the child will or will not be returned home in the next six months; and/or

4. The selection and implementation hearing for termination of parental rights (Welf. & Inst. Code, § 366.26) may be set.

Because the permanent plan is in motion to be determined, this is frequently a contested hearing and may not be the most suitable occasion to coordinate hearing other matters in related cases.

**Timeline:** The 12-month review hearing must be held on or before 12 months from the “date child entered foster care.”

### **Eighteen-Month Review Hearing**

The 18-month review is the first postpermanency hearing. The court examines how fully the parents have complied with the case plan and whether they are still receiving services, or it monitors the progress of the agencies’ efforts to obtain a permanent placement for the child.

**Timeline:** The 18-month hearing must be held on or before 18 months from the “date child entered foster care.”

### **Selection and Implementation Hearing (Welf. & Inst. Code, § 366.26: Termination of Parental Rights)**

This is the hearing where parental rights may be terminated. This hearing is frequently contested and may not be the most suitable occasion to coordinate the hearing of matters in related cases.

**Timeline:** Within 120 days of the hearing date on which the court terminated reunification services, the court must hold a selection and implementation hearing if the permanent plan is guardianship or adoption. (Welf. & Inst. Code, § 366.26.)

### **Postpermanency Planning Hearing and Status Review**

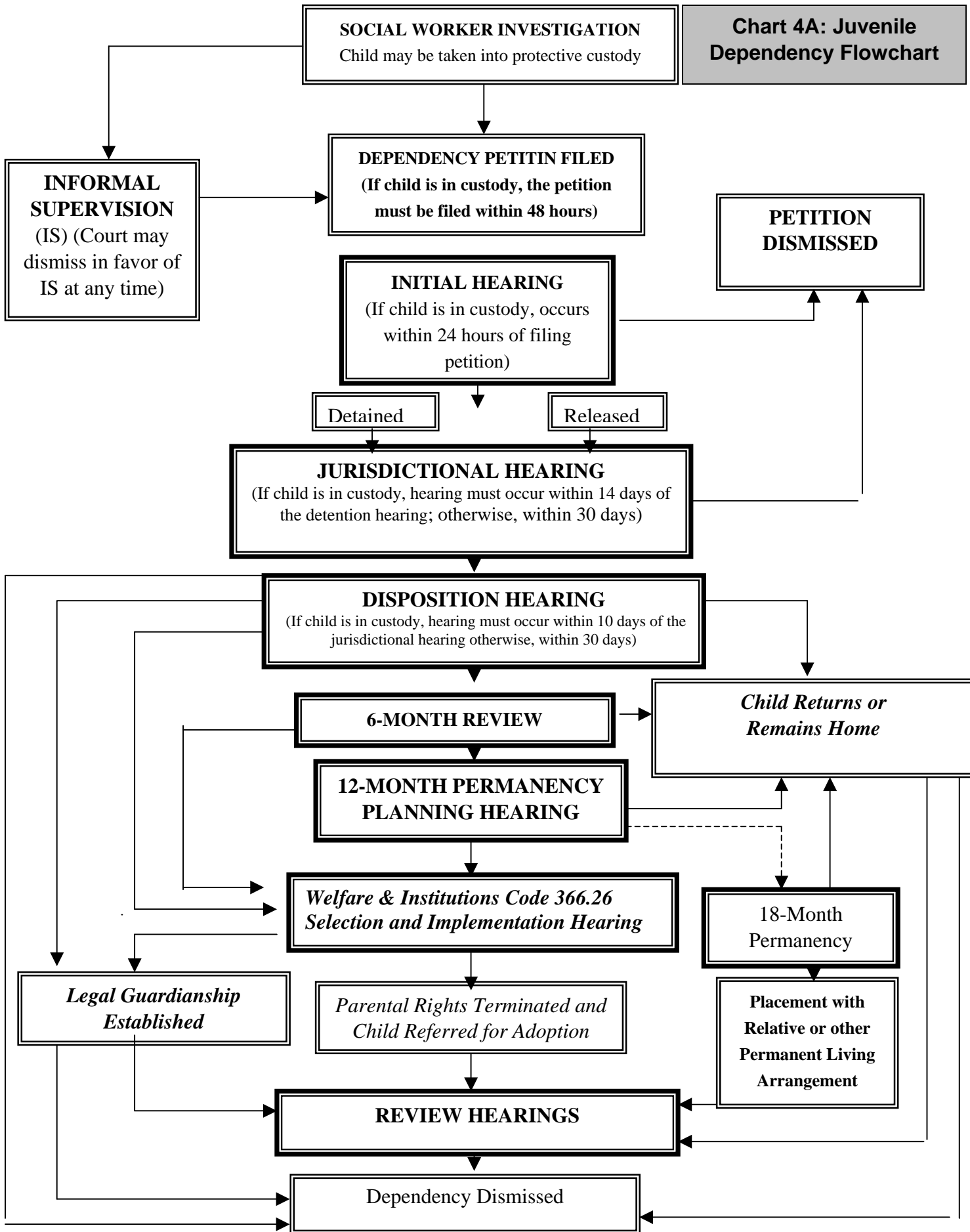
This hearing is to determine whether progress is being made toward returning the child home or finding a permanent placement for the child and/or whether the case can be dismissed.

**Timeline:** A postpermanency planning hearing and status review must be held every six months until case is dismissed.

### **Examples of Other Types of Hearings/Proceedings**

1. Welfare and Institutions Code section 387: Hearing on a supplemental petition;
2. Welfare and Institution Code section 388: Hearing on a motion to change a previous order for the best interests of the child;
3. Immigration hearing; and
4. Motion for restraining order.

**Chart 4A: Juvenile Dependency Flowchart**







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## 5.1 Delinquency Jurisdiction

### 5.1.1 Violation of Law

Welfare and Institutions Code section 602 provides that any child who violates any State of California, federal, city, or county ordinance, other than an ordinance related to age-specific curfews, is within the jurisdiction of the juvenile court and may be adjudged a ward of the juvenile delinquency court.

### 5.1.2 Habitual Disobedience and Truancy

Welfare and Institutions Code section 601 provides that any child who habitually refuses to obey the reasonable and proper orders of his or her parents, guardians, or custodians, or who is beyond the control of that person, or who violates an age-specific curfew ordinance is within the jurisdiction of the juvenile court and may be adjudged a ward of the juvenile delinquency court.

If a child has four or more trancies within one school year or if a school attendance review board or probation officer determines that the services available to correct habitual truancy are insufficient, the child is within the jurisdiction of the juvenile court and may be adjudged a ward of the delinquency court.

## 5.2 Frequently Related Cases—*Examples*

- **Juvenile Dependency**

Children who are wards of the delinquency court may through no fault of their own become at risk for abuse or neglect, and may have their adjudicated status changed to dependent of the juvenile dependency court.

**Example:** Anne, a 16-year-old girl, is arrested for assault and battery. She is detained in juvenile hall. At her jurisdiction hearing she is adjudicated a ward of the delinquency court and is placed in a therapeutic group home. Her permanent plan is identified as return home upon successful completion of her treatment plan. When Anne is nearly finished with the treatment program required by her case plan, her probation officer learns that her parents have been incarcerated and will remain incarcerated for a minimum of 5 more years. The probation officer files a motion requesting a joint assessment report and hearing under Welfare and Institutions Code section 241.1. The joint assessment report notes that Anne has fulfilled all of the requirements of her case plan and has been a model student. Probation intended to recommend dismissal of delinquency jurisdiction. The probation officer and social worker agree that Anne should be adjudicated as a dependent and placed into a suitable, less restrictive, more family-like situation.

- **Domestic Violence**

Domestic violence can appear in many case types. Increasingly, the issue of teen violence can be seen on civil domestic violence and civil harassment restraining order calendars.

**Example:** Sam, age 15, became violent with his ex- girlfriend, Jane (age 16), and hit her in the face giving her two black eyes. A delinquency petition was filed against him for assault and battery. The orders issued by the judge of the delinquency court include the order to stay away from Jane.

At the same time, Jane seeks a restraining order in family court. The two orders could potentially be conflicting, a situation that could be resolved if the two matters are coordinated.

- **Title IV-D Child Support**

Welfare and Institutions Code section 903 directs that parents are responsible for paying for the support of those of their children who are taken into custody as delinquent children. Each parent is fully responsible to the county for reimbursement of the expense of caring for such children.

The exception to the requirement is under Welfare and Institutions Code section 903(e), which provides that parents do not have to provide support for their child while the child is detained out of the home, if the child is found by the court to have committed a crime against a parent.

**Example:** Denise assaults her mother Margaret while they are having an argument. This fight is a violation of a condition of home probation. Paul, Denise’s probation officer, files a motion alleging the violation of probation. The judge sustains the violation and Denise is suitably placed out of her mother’s home in a therapeutic group home facility specializing in anger management.

Because Margaret is the victim in the case she is not liable for Denise’s support during the placement.

- **Dissolution or Paternity**

There may be a child presenting behavioral problems in both juvenile delinquency cases and family court cases such as dissolution and paternity. In family court these issues are most often raised through motions related to custody and visitation.

**Example:** Rita, age 14, has been skipping school on a regular basis. Her truancy has come to the attention of the juvenile court. Rita has been in the custody of her father during the school year pursuant to an order from the family court. Rita’s mother has now filed a motion with the family court claiming that Rita’s father is negligent in supervision and asking for custody during the school year.

- **Probate Guardianship**

Probate guardianship cases may frequently be related to delinquency cases in two ways. First, a child who has a legal guardian pursuant to a guardianship proceeding in a probate court may come under the jurisdiction of the juvenile court if he or she commits a crime or is habitually disobedient or truant, pursuant to Welfare and Institutions Code sections 601 or 602.

Second, these cases may cross over when a probation officer seeks to return a child home and finds that the home never was or is no longer suitable and the child cannot be safely returned. In that situation the probation department can seek either a fit and willing relative or another responsible adult to assume legal guardianship of the child.

**Example 1:** Sixteen-year-old Kevin lives with his uncle Gordon, who is his legal guardian. Kevin is arrested for shoplifting. When the allegations of the petition are sustained, Kevin becomes a ward of the juvenile delinquency court.

Gordon works with the probation department on the development of Kevin’s case plan and at the same time files his annual confidential guardianship status report with the probate court.

**Example 2:** Sheena is a fifteen-year-old who was arrested several times for possession of a controlled substance. Her last arrest led to suitable placement at a residential drug treatment facility. After Sheena completes her prescribed course of treatment her probation officer recommends that she return home. When the officer fails to reach Sheena’s parents at their last address of record, further investigation shows that her parents have moved, leaving no forwarding information and their whereabouts are unknown.

The probation officer does a kin assessment and finds out that Sheena’s aunt and uncle are willing to assume legal guardianship for Sheena. After a pre-appointment home study finds their home to be suitable, the delinquency court judge approves the petition and issues letters of guardianship to Sheena’s aunt and uncle.

## 5.3 Related Jurisdictional Matters

### 5.3.1 Juvenile Dependency

In the article “Understanding Child Maltreatment and Delinquency” by Janet Wiig, Cathy Spatz Widom, and John A. Tuell<sup>1</sup>, the authors state that a solid body of research now exists that confirms the connection between child maltreatment and juvenile delinquency. Having a history of abuse and neglect is associated with an increased risk of crime and violence. The article quotes a specific finding from a research study, that those who were abused or neglected as children are more likely than nonabused or nonneglected people to be arrested as juveniles (27 percent versus 17 percent).

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<sup>1</sup> (Child Welfare League of America Press, 2003).

This research is consistent with the experiences reported by California juvenile judicial officers, social workers, and probation officers. They report that children who enter the juvenile dependency system frequently cross over to the juvenile delinquency system.

### **5.3.2 Joint Assessment Hearing (Welf. & Inst. Code, § 241.1)**

Welfare and Institutions Code section 241.1 requires that when a child appears to be within the jurisdiction of the dependency and the delinquency courts, the child welfare agency and juvenile probation agency must prepare a joint assessment of which adjudicated status will serve the best interests of the child. (See also Chapter 4, section 4.1.1, Frequently Related Cases, Juvenile Delinquency / Joint Assessment Protocol.)

### **5.3.3 Criminal Court Jurisdiction**

Welfare and Institutions Code section 602(b) provides that if a child who is 14 years old or older is alleged to have committed murder or certain specified sex offenses, the child will be prosecuted under the general law in a court of criminal jurisdiction.

### **5.3.4 Fitness Hearing**

Welfare and Institutions Code section 707 provides that if a child sixteen years of age or older commits a crime, the petitioner may file a motion requesting a fitness hearing to determine whether the case should be heard in adult criminal court or in juvenile court.

### **5.3.5 The Indian Child Welfare Act (ICWA)**

Wards of the delinquency court who are either in foster care or at risk for entering foster care may be Indian children as defined by ICWA. If the child is covered by ICWA, notice of the proceedings must be given to the child's tribe or, if the tribe cannot be ascertained, to the Bureau of Indian Affairs. (25 U.S.C. § 1901 et seq.) (See chapter 4, section 4.2.1 for additional information about the ICWA.)

## **5.4 The Unified Court Process: Delinquency**

### **5.4.1 Intake (Cal. Rules of Court, rule 1404 a and b)**

Currently, the presiding judge of the juvenile court is required to work with the juvenile probation department, the prosecuting attorney, and law enforcement and other agencies involved in intake procedures to establish and maintain a fair and efficient intake program. The purpose of the program is to provide assessment of the circumstances surrounding each case in which a child has been detained, and to pursue an appropriate course of action.

In a unified court, it may be advantageous to include information about related cases involving the minor's family in the data collected in the intake process. Information of this nature will not only help the court coordinate cases involving the same family, it may be a source of information critical to the assessment of the delinquency issue and to determinations about settlement, placement, and other issues related to the case.

### **5.4.2 Filing the Petition**

Welfare and Institutions Code section 631(a) provides that a child may be detained in custody for 48 hours unless a juvenile wardship petition (Judicial Council form JV-600) is filed with the juvenile court, or a criminal complaint is filed.

### **5.4.3 Identifying Related Cases**

Identifying related cases involving the same family can be done once the petition is filed; however, the timeline between the filing of the petition and the first hearing may be short (by the expiration of the next judicial day, if the child is detained). Identification of cases at the time the delinquency petition is filed makes use of the same methods set out in chapter 7, section 7.5.1 for marital and Uniform Parentage Act cases and in chapter 4 for juvenile dependency cases.

### **5.4.4 Benefits of Information Sharing**

1. The judicial officer can make a more informed decision regarding the child's status, placement, and contact with parents and siblings if he or she has a full understanding of the legal history of the parties.
2. Court efficiency may be enhanced by coordinating hearings.
3. Court related and/or community based services may be more efficiently and effectively delivered.

Note that the benefits listed above are the same as in chapter 4 for juvenile dependency cases.

### **5.4.5 Case Coordination**

The delinquency court has exclusive jurisdiction over custody and visitation orders involving wards of the delinquency court. If the ward or the ward's family or guardian is involved in related cases it may be more judicially efficient for the delinquency judge to hear related matters. For example, if there are support issues or conflicting restraining orders, those matters could be resolved as part of a delinquency proceeding.

### **5.4.6 Detention Hearing**

A detention hearing must be held before the expiration of the next judicial day after a petition has been filed (Welfare and Institutions Code section 632(b).)

Welfare and Institutions Code section 636 requires the probation department to file a detention report documenting information about a child's situation and the allegations of the petition if the agency is recommending that the child remain detained out of his or her home.

In addition to the information provided in the detention report, the following are examples of additional information that the probation officer may provide to the judge at the detention hearing:

1. Identification all persons who came to court for or with the child and their relationship to the child;
2. Identification of multiple pending petitions for the child;
3. Determination of necessary evaluations or services, and when they can begin;
4. Confirmation of the child's mailing address and that of the parents;

5. Determination of who has custody of the child; identification of legal parents and caregivers;
6. Determination of the child's dependency status in this or another county; and
7. Information about the child's schooling, including attendance and performance. Additionally, the court should inquire whether the child receives special education services or should be referred for evaluation for special education eligibility.

### **Detention/Prima Facie Rehearing**

Another opportunity to collect information is at a detention rehearing or prima facie hearing, if one is held. Welfare and Institutions Code section 637 provides that if a detention hearing is held and no parent or guardian is present and no parent or guardian has had actual notice, a rehearing must be held within one judicial day of the initial detention hearing.

A child or child's attorney may request evidence of the prima facie case in a rehearing to be held within three judicial days from the initial hearing.

### **5.4.7 Jurisdiction/Disposition**

If the child remains detained, a jurisdiction hearing must be calendared within fifteen judicial days from the date of the detention hearing that resulted in a detention order. The time frame for a child who is not detained is 30 days from the date of the detention hearing.

The jurisdiction proceeding is that which determines whether the allegations of the petition will be sustained. This proceeding is frequently contested and may not be the most suitable occasion to coordinate the hearing of other matters in related proceedings.

For a child who remains detained, the disposition hearing must be held within 10 judicial days from the jurisdictional hearing. If the child does not remain detained but is continued as a ward of the court, the disposition hearing must be held within 30 calendar days from the jurisdictional hearing.

### **5.4.8 Case Plan**

The probation department is required to file a case plan within 30 calendar days of the date of the initial removal of the child from the home of the parent or guardian, or by the date of the disposition hearing, whichever occurs first. (Welf. & Inst. Code, §§ 636.1(a) and 706.5(a).)

The case plan is an evolving document that is updated and filed at specified procedural stages. It contains a full description of the reasons surrounding a ward's removal from his or her home.

## **5.5 Other Coordination Matters**

### **5.5.1 Attorneys for Children**

California Rules of Court, rule 1479, effective July 1, 2004, clarifies the role of counsel for a child in a juvenile delinquency proceeding. Under rule 1479, the child's counsel is charged in



general with defending the child against the allegations in all petitions filed in delinquency proceedings and with advocating, within the framework of the delinquency proceedings, that the child receive care, treatment, and guidance consistent with his or her best interests.

The child is entitled to have his or her interests represented by counsel at every stage of the proceedings, including postdispositional hearings. The child's counsel must continue to represent the child unless relieved by the court upon the substitution of other counsel or for cause.

### **5.5.2 Closed Versus Public Hearings**

In general, juvenile dependency and delinquency hearings, proceedings, and records are closed to the public. (Welf. & Inst. Code, § 346.) Family law and probate court hearings, proceedings, and records are open to the public. There are some exceptions to these general rules. For example, Family Code section 3041(a) allows a court to exclude the public from child custody hearings on an allegation of detriment to the child in parental custody. Juvenile court judicial officers may allow members of the public to sit in on proceedings. Additionally, members of the public may be permitted, with limitations, to attend delinquency hearings where the child has been charged with significant offenses such as murder, rape, and kidnapping. (Welf. & Inst. Code, § 676.)

## **5.6 The Delinquency Process**

### **Child Is Arrested.**

1. Within 24 hours the child must be delivered to juvenile probation or released. (Welf. & Inst. Code, §626(d).)
2. Within 48 hours (not counting holidays and weekends) of a child being taken into custody, petition must be filed to declare child a ward. (Welf. & Inst. Code, §631.)
3. Before the expiration of the next judicial day after the filing of a petition, the court must hold a detention hearing. (Welf. & Inst. Code, § 632(a).)

### **Detention Hearing**

1. Timeline: Within 72 hours of arrest (not counting holidays and weekends).
2. Purpose: To decide whether to continue holding the child or to release the child to his or her parents.
3. Court will appoint an attorney for the child if child does not have an attorney and cannot afford one or parents will not pay for one.

### **Fitness or Waiver Hearing (Welf. & Inst. Code, § 707)**

1. Timeline: After detention hearing but prior to jurisdictional hearing.
2. Purpose: To determine whether child is "unfit" for juvenile court and must be tried in adult court.

### **Pretrial hearing**

1. Timeline: Sometime between the detention and jurisdictional hearings.
2. Purpose: To consider settlement, pleas and pretrial motions.

### **Jurisdictional Hearing**

1. Timeline: Within 15 days of detention hearing if child is in custody. Within 30 days if child is not in custody. (Welf. & Inst. Code, § 657(a)(1).)

### **Dispositional Hearing (If Petition Is Sustained)**

1. Timeline: Within 10 days of jurisdictional hearing if child is in custody. Within 30 days of jurisdictional hearing if child is not in custody. (Welf. & Inst. Code, § 702.)
  - a. Determine whether “reasonable efforts” could prevent the out-of-home placement.
  - b. Provide reunification services, with some exceptions.

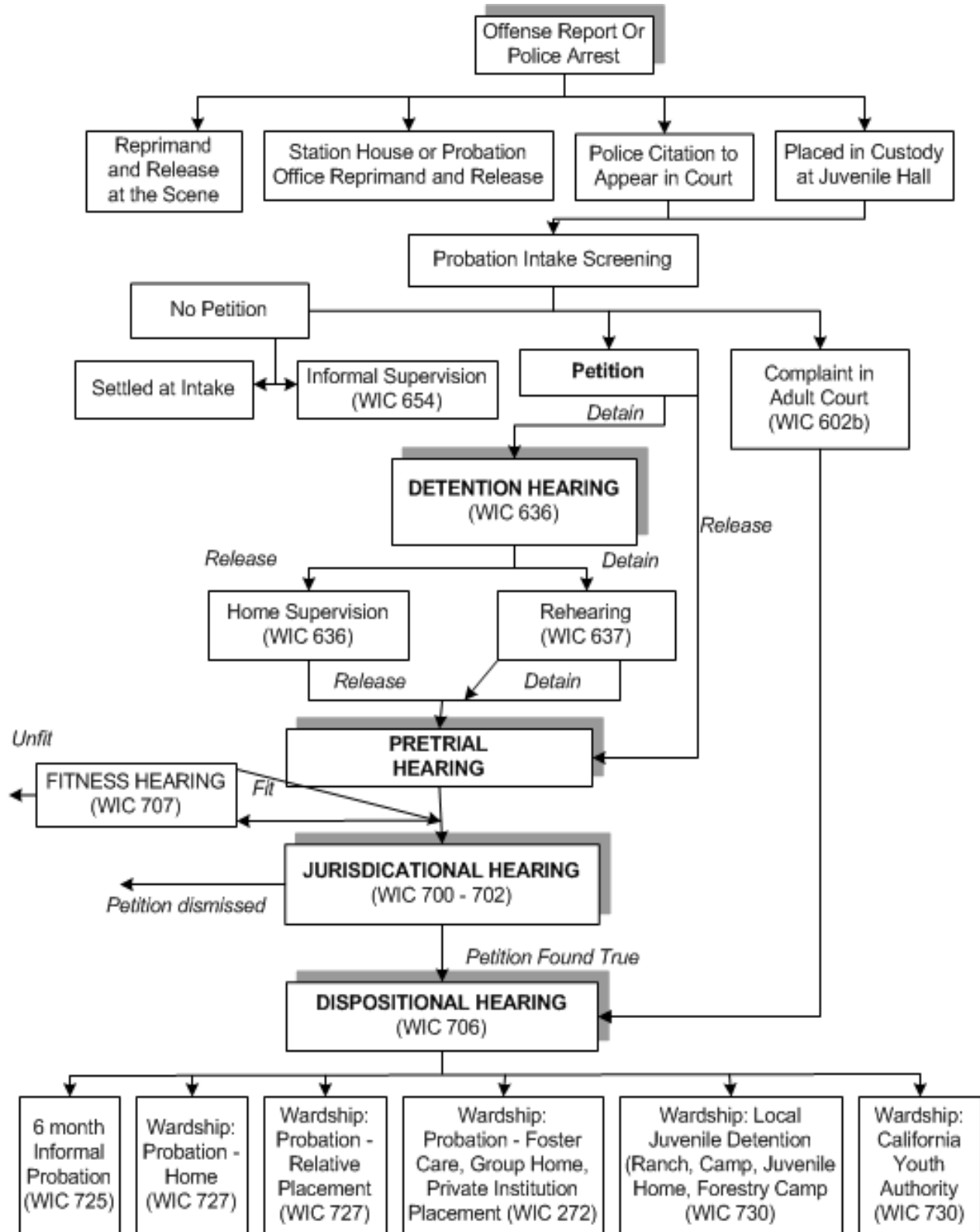
### **15-Day Review Hearings Under Welfare and Institutions Code Section 737(b)**

1. Timeline: If the child has been adjudged a ward and is awaiting placement as ordered at the disposition hearing, the court shall review the case at least every 15 days until placement, commencing from the time the child was initially detained.

## 5.7 Wards of the Delinquency Court in Foster Care

Many counties consider all wards of the delinquency court as “at risk to enter foster care” because any ward in the custody, care, and control of a probation agency may be suitably placed in an individual foster care home or a foster care eligible group home or therapeutic placement. The majority of wards do not enter foster care. For those that do, the delinquency proceedings mirror the proceedings described in chapter 4, section 4.3.

**Chart 5A: Juvenile Delinquency Flowchart**



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## 6.1 Guardianship Cases

The guardianship proceeding is the legal process of appointing a nonparent as the adult who is legally responsible for a child. The area of guardianships is a key one for a unified family court because the issues concern custodial placements of children. California law provides for the appointment of a guardian under the Probate Code, with references to the Family Code in voluntary guardianship cases. California law also provides for the appointment of a guardian under the Welfare and Institutions Code, where the child is either a dependent or a ward of the juvenile court in a related dependency or delinquency matter.

### 6.1.1 Probate Court Guardianships

The majority of California counties hear guardianship matters that are not related to juvenile court matters in probate court. These guardianship matters may be characterized as voluntary because the parent retains the right to request the termination of the guardianship. The standard that the court uses in noncontested appointments is that the guardianship is “necessary and convenient.” In some California counties, family law judicial officers hear non–juvenile court guardianship cases during a guardianship calendar, heard in a family law department.

### 6.1.2 Juvenile Court Guardianships

In addition to the voluntary guardianships created under the Probate Code, guardianships play an important role in juvenile court dependency and delinquency matters. Guardianship with a relative or nonrelative is one potential placement for dependents or wards of the juvenile court who have been removed from the custody, care, and control of their parents. Therefore, guardianships resulting from juvenile proceedings may be characterized as involuntary.

Appointment of the guardian is recommended by the child welfare agency, the probation department, or counsel for one of the parties. If the court agrees with the request for the appointment, the juvenile dependency or delinquency court continues to have jurisdiction over the child and monitors the progress of the guardianship. If the need for a successor guardian arises, the matter is handled by the juvenile court, as are all other matters, including the termination of the guardianship.

## 6.2 Frequently Related Cases—*Examples*

- **Juvenile Dependency**

Juvenile dependency may frequently be related to non–juvenile court guardianships if a child who is the subject of a guardianship becomes at risk for abuse, neglect, or abandonment.

**Example:** Jane is an 8-year-old girl who lives with her guardian, Sally. Several of Sally’s neighbors have called county child protective services to report that they had seen Sally driving her car with Jane in the passenger seat, while Sally appeared extremely inebriated. A social worker investigates and concludes that Sally has a drinking problem that is placing Jane at risk for abuse and neglect. Jane is removed from Sally’s home and becomes a dependent under the jurisdiction of the juvenile court.

## Juvenile Delinquency

Juvenile delinquency may be related to a non–juvenile court guardianship if a child who is the subject of a guardianship commits a crime under the penal code.

**Example:** Stan, a 15-year-old, is arrested for shoplifting a pair of sneakers. His probation officer investigates Stan’s situation at home and determines that Stan’s parents are unable and unwilling to care for him. The probation department’s recommendation at disposition is that Stan serve a specified number of days in juvenile hall with suitable placement in the home of his uncle Bruce, who has informed the probation department that he is willing to become Stan’s guardian.

- **Criminal Court**

Many children become the subject of guardianship because their parents have been incarcerated and are unavailable to care for them. Criminal cases may frequently be related to guardianship cases because the decision to grant appointments may be influenced by the status of the parent’s pending criminal case.

**Example:** Tina is the mother of Jessica, a 4-year-old. Tina is arrested for insider trading. Upon learning that she may be given jail time if she is convicted, she petitions the probate court to appoint her mother as Jessica’s guardian.

- **Family Law Child Custody**

Petitions of guardianship frequently cross over with family law child custody matters because obtaining a guardianship is the legal mechanism for nonparents who are interested parties seeking custody of a child. In contested custody cases, information available to the court may indicate that the best interests of the child require that custody be given to another responsible adult.

In most counties, uncontested guardianship matters are heard in probate court but may be transferred to family court once a contest develops. Because the detriment standard for a contested guardianship is the same as that used in family law custody matters, family law court services are often necessary to resolve the contest.

**Example:** Jean, the mother of five-year-old David, struggles with substance abuse problems. Prior to voluntarily entering a four-month residential rehabilitation program, she petitions, along with her mother Gretta, for Gretta to assume guardianship of David. After leaving rehabilitation Jean moves to another city to begin school and agrees with Gretta that both Jean and David will be better off for the time being if Gretta continues as David’s caregiver. Months later Jean shows up at Gretta’s house having dropped out of school and having obviously lapsed from her substance abuse recovery. Jean asks Gretta to pack up David’s things because she wants him to come live with her. Gretta feels conflicted, and out of concern for David refuses to let him go with Jean. Jean petitions the probate court for termination of the guardianship. The contested matter is transferred to family court. Jean and Gretta attend family court services mediation and agree that Gretta will remain as David’s guardian for the next six months and Jean will have visitation rights. The matter will be calendared for status inquiry in six months to determine whether the guardianship can be terminated.

- **Title IV-D Child Support**

Even when a child has a guardian, the parents are still obligated to financially support the child. The guardian may take action to obtain child support such as Kin-Gap, a funding stream designed specifically for relative guardians. The child may also be eligible for public assistance such as Temporary Aid for Needy Families (TANF), social security benefits, Veterans Administration benefits, Indian child welfare benefits, and other public or private funds. The department of child support services may seek reimbursement from parents for welfare payments made for the child while the child is in a probate guardianship.

**Example:** Gary is the legal guardian of seven-year-old Wanda. Wanda is eligible for TANF assistance, which is paid to Gary, who uses it to provide necessities to Wanda. Frank and Mary are Wanda's parents. Both parents are employed.

### 6.3 The Unified Court Process: Guardianship

#### 6.3.1 Guardianship Coordination Issues

In recent years there has been an ongoing debate regarding procedural and other differences between various types of guardianships. Probate court jurisdiction of guardianship matters arose from common law provisions for probate guardianship of orphans. To this day the Probate Code distinguishes guardianship matters as either “guardianship of the estate” or “guardianship of the person.” Juvenile courts and family courts that hear guardianship cases deal only with custody matters. Current practitioners in probate court guardianships report that they now deal almost entirely with custody matters, and estate matters for orphaned children are heard much less frequently.

Current developments in guardianship law could be indicative of a need for comprehensive court jurisdiction of child custody matters. Families entering the court system requiring resolution of child custody matters are triaged into probate, family, or juvenile court depending on local protocols and the specific situation of the family in question. Court investigators working with probate courts report that relative guardians who are not represented by counsel are told by child welfare agencies to obtain a probate guardianship. In some counties this has led to the accusation that the families being served in probate court are not receiving necessary court related or community based services based on the fact that their case is heard as a probate rather than a dependency matter. The opposing view is that children who are the subject of dependency proceedings are in imminent danger of neglect, abuse, or abandonment, and once they have been removed from the custody of their parents by the state, the parents are in danger of having their parental rights permanently terminated.



The line between probate and juvenile guardianships is becoming increasingly less clear since the court's decision in *Guardianship of Cassandra H.* (1998) 64 Cal.App.4<sup>th</sup> 1228. In *Kassandra H.* the court articulated a new standard, that a contested guardianship could not be terminated if such termination would be contrary to the best interests of the child, which is the detriment standard used in family law courts. Factors such as length of time with the guardian began to be considered in contested cases. Newly enacted Probate Code section 1516.5 goes even further, providing specifically that under certain circumstances a family law motion to have a child declared free from the custody and control of his or her parents may be brought in a probate court guardianship proceeding.

### **6.3.2 Case Coordination and Uniform Standards of Investigation**

Probate Code section 1513 includes a specific instruction to transfer the case to juvenile court if juvenile dependency issues are identified. The current discretionary investigation procedures in probate guardianship cases completely differ from the strict licensing requirements for caregivers in dependency cases. A recommended better practice in this area would be to have uniform investigation standards for probate court guardianships to identify at the outset whether dependency issues exist that indicate the case should be transferred to juvenile court. Additionally, the Probate Code notes numerous exceptions wherein the procedures described are not applicable to guardianships resulting from a juvenile dependency permanent plan. These exceptions and the different procedures required for the different types of guardianship make determination of existing related cases critical to the threshold determination of which court is the most appropriate to hear the case.

### **Indian Child Welfare Act**

The Indian Child Welfare Act (ICWA) (25 U.S.C. 1901 et seq.) applies to guardianship proceedings for an Indian child wherein a parent cannot have the child returned on demand. Probate Code section 2112 provides that if ICWA applies to a guardianship proceeding, the provisions of ICWA apply, and if there are inconsistencies between ICWA and Probate Code, ICWA supercedes the Probate Code. For additional information regarding ICWA see chapter 4, section 4.3.1.

### **Status Reviews**

Probate Code section 1513.2, enacted in 2002, added a requirement that guardians file an annual status report advising the court of the following information:

1. The guardian's present address;
2. The name and birth date of the child under guardianship;
3. The name of the child's school;
4. If the child is not residing in the guardian's home, the name, relationship, address, and telephone number of the person or persons with whom the child resides; and
5. If the child is not in the guardian's home, the reason that the child was moved.

The information is provided on Judicial Council form GC-251, *Confidential Guardianship Status Report*.

### **Identification of Related Cases**

Currently the process for identification of related cases for probate guardianships varies widely and depends on the preappointment investigation protocol used in each county. Identification of related cases is important for several reasons. If a related dependency case for the child in question is identified, the juvenile court will have exclusive jurisdiction over the custody issues for that child. If there is a preexisting family law custody case for the child or for siblings who are not part of the petition for guardianship, coordination of hearings could enhance judicial efficiency. There may be child support or restraining orders in related cases that will be affected if the child's custody is given to a different individual through the appointment of a legal guardian.

### **Differences in Investigation**

Probate Code section 1513(a) provides that the court, court investigator, probation officer, or domestic relations investigator may make an investigation and file with the court a report and recommendation concerning each proposed guardianship. The language of the statute is unusual in that it makes the investigation and report discretionary. Almost all county courts do provide some type of preappointment investigation to establish the fitness of the proposed guardian. The statute itself is very specific concerning what information should be provided in the report and includes instruction for the case to be referred to the county agency designated to investigate dependency if the investigation finds that any party to the proposed guardianship alleges that the child's parent is unfit, as defined by section 300 of the Welfare and Institutions Code.

### **Calendar Issues**

Currently the court rules and procedures on the way hearings are calendared vary from county to county. Many proposed guardians and parents petitioning for guardianships are not represented by counsel. There is general acknowledgement that the number of forms required and the strict notice requirements involved in obtaining a probate guardianship make this area of the law complex for unrepresented litigants. Because of the number of forms that may be required initially and during the proceedings, some counties do provide guardianship clinics or have an attorney or paralegal available to assist unrepresented litigants in ascertaining which forms may be required and in completing and filing the forms. Other complex guardianship issues include determining who must receive notice and how to serve the notice or due diligence to serve notice on a party whose whereabouts are unknown.

Some counties will file the initial petition (along with any attachments) and calendar a hearing date. A clerk or judicial officer may review the petition and attachments and wait until the hearing to inform the petitioner of any deficiencies in the forms or provision of notice. A new hearing date will be set allowing enough time for the petitioner to correct the deficiencies. Courts and litigants using this system report that it is inefficient and leads to numerous delays, unnecessary hearings, increased court expenses, and lost wages for parents or proposed guardians.

To address this problem some courts have probate examiners or clerks closely scrutinize each new petition and work with the petitioners until their file is complete and ready for hearing. Guardianship clinics also provide a court related service that assists proposed guardians and parents with their petitions and required attachments.

## 6.4 Probate Guardianship Process Overview

### 6.4.1 Petition for Appointment of a Guardian

A petitioner initiates the probate guardianship proceeding by filing Judicial Council form GC-210, *Petition for Appointment of a Guardian*. Often there are other required forms that must be filed. Judicial Council form FL105/ GC-120, *Declaration Under Uniform Child Custody and Jurisdiction Act (UCCJEA)* is required, and notices and proofs of service must also be filed. Judicial Council form 982(a)(17), *Application for Waiver of Court Fees and Costs*, and form 928(a)(18), *Order on the Application for Fee Waiver of Court Fees and Costs*, are often part of the initial filing.

### Temporary Guardianship

In addition to the petition for appointment of a guardian, there is also Judicial Council form GC-110, *Petition for Appointment of a Temporary Guardian*. Prospective guardians often wish to obtain a temporary order of guardianship if circumstances require that the prospective guardian have immediate evidence that he or she is legally responsible for the child.

Below are possible examples of circumstances wherein a prospective guardian may need a temporary guardianship:

1. The child requires nonemergency medical treatment;
2. The prospective guardian needs proof of guardianship to qualify for public assistance;
3. The prospective guardian wishes to enroll the child in school; or
4. The child's parent is deployed in the armed services.

**Note:** It is possible that some of the situations above could be handled through the use of a Caregiver Authorization Affidavit (Fam. Code, §§6550-6552). This can allow the proposed guardian to sign up the child for school and get medical treatment for the child. A non-relative who fills out a caregiver's authorization affidavit can sign up a child for school and agree to school-related medical care.

Temporary guardians do not have the same scope of authority or responsibility that regular guardians have. Probate Code section 2252 provides that temporary guardians have only the duty and responsibility to provide for the temporary care, maintenance, and support of the child. The court has authority to grant additional powers to the temporary guardian.

Requests for temporary guardianships are generally on an expedited calendar track and many counties are able to process the request and issue a temporary order within one court week.

Because of the delays encountered by many self-represented proposed guardians, some courts routinely grant temporary guardianships in the course of the proceedings for regular guardianship status. Some probate courts have a local court protocol requiring that every petitioner for appointment of guardian include a petition for temporary guardianship.

### **Attachments to the Petition**

The following information must be included with the petition:

1. Declaration from the proposed guardians stating the reason the guardianship is necessary;
2. Knowledge of any other legal proceeding affecting the child;
3. If there are two or more children, information about additional children;
4. Information about the requirement or waiver of a bond;
5. Any information on special orders for guardianship of a child's person if requested;
6. Any request for additional orders waiving service of order appointing guardian of minor and waiving accountings;
7. Copy of nomination of proposed guardian;
8. Indian Child Welfare Act information;
9. Information on child's public assistance benefits status;
10. Copy of nomination of a person other than the proposed guardian (if any). This is frequently in the form of a parental will.
11. Any information on additional powers for guardianship of a child's estate;
12. Declaration of due diligence for people who could not be located;
13. Statement by proposed non-relative guardian other than petitioner regarding willingness to furnish information to agencies;
14. Any information on a petition for adoption of child;
15. Additional names and addresses of child's relatives; and
16. If there is a claim that the father of the child is unknown, a copy of the child's birth certificate showing that the child's father is unknown.

### **The Uniform Child Custody Jurisdiction and Enforcement Act**

Judicial Council form FL-105/GC-120, *Declaration under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)*, is required to be submitted with the petition for guardianship. This form provides information to the court regarding the child's current custody situation. The form specifically requires the declarant to state under penalty of perjury if he or she either has participated in or possesses information about any litigation or custody proceedings involving the child in California or elsewhere. Because the UCCJEA declaration is used in family law custody matters, related cases may be identified through cross-referencing of the UCCJEA forms. Related juvenile and family court matters may be identified if the declarant participated in or has knowledge of them.

### **Guardianship Hearing**

Obtaining the date for the guardianship hearing will vary by county depending on local rules. When the clerk files the petition the hearing date will be scheduled. Some counties specifically require petitioners to attend workshops or watch instructional videos prior to the hearing date.

The petition includes a declarative statement by the petitioner stating the factual basis for the necessity of the proposed guardianship. Counties that have specific protocols for investigations and receipt of reports and recommendations will calendar the hearing date to allow for the required investigation to be completed and the report to be received and distributed.

## Preappointment Procedure and Forms

**1. Confidential guardian screening form:** Probate Code section 1516 requires each prospective guardian to file Judicial Council Form GC-212, *Confidential Guardian Screening Form*. California Rules of Court, rule 7.1001 provides that the information contained on the form is confidential and the clerk's office must maintain the forms in a manner that will protect and preserve their confidentiality.

**2. Evidence of appointment:** Probate Code section 2310 provides that the appointment, the taking of an oath to perform the duties of the office according to law (with the oath contained in the letters of guardianship), and the filing of a bond if a bond is required are evidenced by the issuance of Judicial Council form GC-250, *Letters of Guardianship*. There is also a separate form, Judicial Council form GC-240, *Order Appointing Guardian of Minor*. In accordance with Probate Code section 2310, this order states on its face a warning that the appointment is not effective until the letters have been issued. Judicial Council form GC-150, *Letters of Temporary Guardianship or Conservatorship*, is an authorization of guardianship with an expiration date included

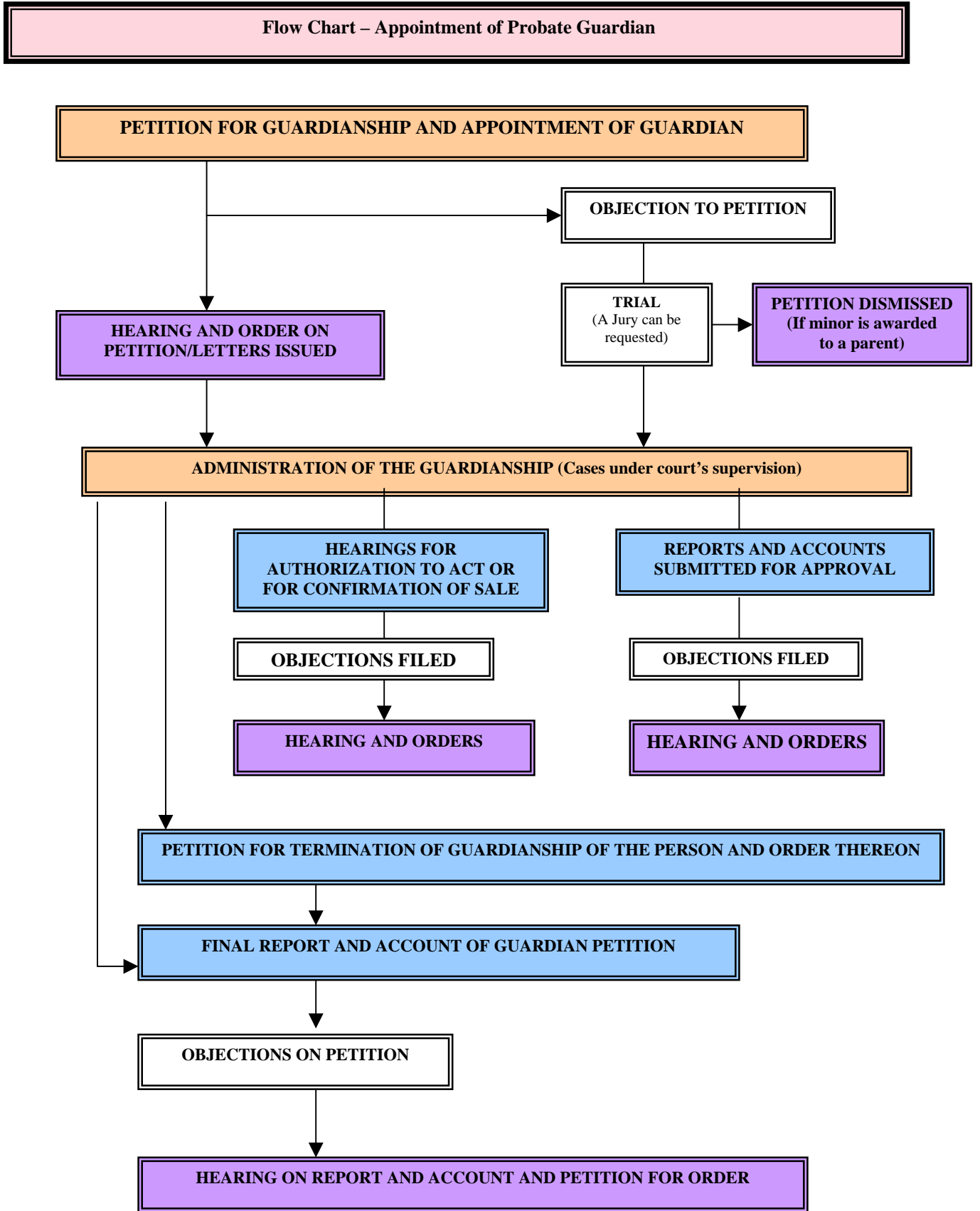
**3. Letters of temporary guardianship or conservatorship:** Judicial Council form GC-150, *Letters of Temporary Guardianship or Conservatorship*, serves as the documentation of the guardianship. The temporary letters indicate the date of the termination of the temporary appointment.

## Postappointment Procedure and Forms

- 1. Confidential guardianship status report:** Probate Code section 1513.2 requires that Judicial Council form GC-251, *Confidential Guardianship Status Report*, be filed no later than one month after the anniversary of the date of the order appointing the guardian. (Cal. Rules of Court, rule 7.1003.) California Rules of Court, rule 7.1003 provides that the court clerk's duties include determining the annual due date for the report to be filed and mailing a blank copy of the report to each guardian no later than one month prior to the due date.
- 2. Status report hearings:** Probate Code section 1513.2 provides that if the guardian does not provide the required information within 30 days after the report's due date the court shall order the guardian to make himself or herself available to the probate court investigator or to show cause why the he or she should not be removed as guardian.
- 3. Petition for terminating guardianship:** Under Probate Code section 1600, a guardianship terminates by operation of the law and the guardian does not need to file a petition to terminate the guardianship when the ward attains the age of majority, dies, is adopted, or is emancipated.

If the guardianship is not terminated by operation of the law it may be terminated by court order when the court believes it would be in the child's best interests to terminate the guardianship. (Cal. Rules of Court, rule 7.1004(a).) If the guardian seeks to terminate the guardianship by court order, the guardian must file Judicial Council form GC-255, *Petition for Termination of Guardianship*.

**Chart 6A: Probate-Guardianships**



**CHAPTER 7: MARITAL AND UNIFORM PARENTAGE ACT CASES**

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## 7.1 Dissolution

These are cases in which married parties seek to dissolve the marital relationship (Fam. Code, §§ 2000–2660). There are other cases dealing with the marital relationship. For example, legal separation handles the same issues as dissolution with the exception that the marriage is not terminated by the judgment. Nullity seeks to establish that the marriage never existed in the first place. Dissolution cases often involve issues of child custody, child and spousal support, and division of property and debt.

### 7.1.1 Frequently Related Cases—*Examples*

- **Domestic Violence**

Domestic violence is an issue frequently raised in dissolution cases. The Domestic Violence Prevention Act allows a person to file for a restraining order, and accompanying orders related to children, without the necessity of first initiating a dissolution or other case to terminate the marriage. It is important for a unified court to be able to make orders for custody and visitation as well as for child support in a DVPA action. This is particularly true if neither party is prepared to file for dissolution at the time the restraining order case is initiated. If there is a criminal protective order, it takes precedence. In the example, the court can consolidate the previous DVPA case and the dissolution with the dissolution as the lead case.

**Example:** During an argument, James became violent and pushed and slapped his wife, Ann. The neighbors heard the fighting and Ann crying, and they called the police. The police arrested James and instructed Ann to get a restraining order and to seek custody and child support. Following these instructions, she went to the court the next day and filed a request for a restraining order. The order was granted. After several months of separation, Ann decided to file for a divorce.

- **Title IV-D Child Support**

The child support agency frequently files a case before either parent files for dissolution. This happens most frequently when the custodial parent is receiving public assistance. When the dissolution is filed, there are then two cases, and there can already be an order for child support in effect.

In the example, the husband filed for the dissolution first, but because Janet had not been served with the papers, she did not know to inform the Department of Child Support Services (DCSS) of this fact. They therefore filed a separate action. The court can consolidate these cases once there is a judgment in the dissolution case.

**Example:** Janet's husband had moved out of the family home and filed for dissolution, but had not served Janet. Without her husband's income, she could not support herself and the two minor children. She was forced to ask for assistance from the welfare department. The case was then referred to the local child support agency, which initiated another case to seek reimbursement for the welfare paid out to Janet and collect future support for the children.

- **Juvenile Dependency**

Often issues critical to the safety and welfare of children arise within dissolution cases. This can result in a child being required to tell his or her story to a variety of investigators and social service providers. Coordination of such cases can help spare a child this unnecessary stress.

In the example, the juvenile court would have exclusive jurisdiction over the custody and visitation of the 8-year old daughter. Unless a dependency is filed on the son as well, the custody and visitation for him will remain in the family court. Coordination of these cases would enhance the court's ability to make orders that ensure the safety of the children and parents.

**Example:** The parties to dissolution have two children. During family court services mediation, the mother accused the father of sexually abusing their 8-year-old daughter. The mediator made a report to child protective services and a juvenile dependency case was filed about that child. Meanwhile, the father denied the allegation and requested that the family court give custody to him. He also requested custody of his 14-year-old son. The current family court order is for visitation of both children to the father the first three weekends of each month.

- **Probate Guardianship**

When nonparents request custody of children through a probate guardianship, and a parent objects, some courts transfer the case to the family law department. This is particularly helpful if there is a family law case open in which custody of the child is an issue.

In this example, the probate guardianship and dissolution should be coordinated so that all issues related to the custody of this child can be handled together.

**Example:** Six-year-old Sandra had been living with her grandmother for the last year. Both of her parents were struggling with substance abuse. During her parents' divorce, Sandra had been placed in the custody of her mother, Janice. A year ago, Janice entered a residential treatment program in another state, and was still living away. When the guardianship action was filed, the father filed for a change of custody in the dissolution case, and Janice filed an objection to the guardianship.

## 7.2 Other Marital Cases

### 7.2.1 Summary Dissolution (Fam. Code, §§ 2400–2406)

Summary dissolution is a simplified divorce procedure available if certain criteria are met. It is initiated by filing a joint petition (form FL-800). Because of the limited number of issues allowed in a summary dissolution, crossover cases are rare. A couple seeking a summary dissolution must

1. Have been married less than 5 years on the date they file their Joint Petition for Summary Dissolution of Marriage;
2. Have no children together that were adopted or born before or during the marriage (and the wife not be pregnant now);

3. Not own or have an interest in any real estate (house, condominium, rental property, land, or a one-year lease or option to buy);
4. Not owe more than \$4,000 for debts acquired since the date of marriage (not counting auto loans);
5. Have less than \$32,000 worth of property acquired during the marriage (not counting money owed on the property or auto loans);
6. Not have separate property worth more than \$32,000 (not counting money owed on the property or auto loans);
7. Agree that neither spouse will ever get spousal support;
8. Sign the Joint Petition and pay the court filing fees or get a fee waiver;
9. Sign an agreement that divides property and debts before filing the Joint Petition for Summary Dissolution of Marriage; and
10. Sign a declaration that at least one spouse has lived in California for the last six months and in the county where couple plan to file for the last three months.

### **7.2.2 Legal Separation (Fam. Code, § 2330; Cal. Rules of Court, rule 5.108)**

A legal separation basically covers all the same issues as dissolution, except it does not terminate the marital status of the parties. It is initiated by filing a petition for legal separation (form FL-100). There is no six-month waiting period to get a judgment of legal separation. In some cases it may later be amended to a dissolution proceeding if judgment of legal separation has not yet been entered. The types of frequently related cases mirror those for dissolution cases.

If a party seeking dissolution cannot meet the residency requirements for a dissolution (six months in California, three months in the county where filed), a legal separation can be filed and amended later when residency has been sufficiently established.

Except for the six-month waiting period to obtain a judgment, the procedure in legal separation cases mirrors that in dissolution cases.

### **7.2.3 Nullity (Fam. Code, §2330; Cal. Rules of Court, rule 5.108)**

A judgment of nullity eliminates the marital relationship as if it had never existed in the first place. It is initiated by filing a petition for nullity (form FL-100). Marriages are legally void if they are bigamous or incestuous. Marriages are voidable if one of the following conditions existed at the time of the marriage:

1. Petitioner lacked capacity to consent;
2. Either spouse had a prior existing marriage;
3. Either party was of unsound mind;
4. Consent of either party to marriage was obtained by fraud;
5. Consent of either party to marriage was obtained by force; or
6. Either party has a physical incapacity to enter into the marital state that appears to be incurable.

There is no six-month waiting period. Nullity is different from dissolution or legal separation in that a hearing is required to obtain a judgment, even though one party defaults or the parties are in agreement.

### 7.3 Establishment of Parentage

These are cases filed under the Uniform Parentage Act (Fam. Code, §§ 7500–7952) in which an unmarried parent seeks to establish legal parentage of a child. Paternity cases usually involve issues of parentage, child custody, visitation, and child support, and often involve domestic violence restraining orders as well.

#### 7.3.1 Frequently Related Cases—*Examples*

- **Title IV-D Child Support**

Prior to 1997, issues of custody/visitation and restraining orders were not available to parents within Title IV-D Child Support cases. To get an order for custody/visitation, or to obtain a restraining order, a parent was required to file a totally separate case.

In recognition of the fact that noncustodial parents are most likely to comply with child support orders if they are involved in the child's life, the subject-matter jurisdiction of Title IV-D cases has been expanded to include such orders. Pursuant to Family Code section 7573, a signed voluntary declaration of paternity will also support a request for custody or visitation.

In the example, the Uniform Parentage Act case and the Title IV-D case can be consolidated.

- **Juvenile Dependency**

Since adequate notice is required to be given to parents in juvenile dependency cases, the issue of paternity often arises. The juvenile court may make a finding of paternity for Jose. At the same time, the family court may adjudicate Roberto as the legal father. Coordination of these cases can avoid conflicting orders of paternity.

**Example:** Ben and Sylvia never married, and separated from each other after about two years. They have a one-year-old child. Sylvia sought welfare assistance for herself and the child. As a result the local child support agency filed a case against Ben to reimburse the government and collect ongoing child support. In the meantime, Ben had filed an action to establish his parentage of the child, and made a motion to the court for shared custody, but had not been able to serve Sylvia. The local child support agency may be able to help Ben serve Sylvia.

**Example:** In a juvenile dependency case, the court found that Jose was the father of the children. While the dependency case was proceeding, another man, Roberto, filed a paternity case claiming that he was the father and requesting custody of the children.

- **Domestic Violence**

The issue of paternity also arises in cases under the Domestic Violence Prevention Act. In a civil restraining order case, absent a stipulation between the parties, custody or visitation can only be awarded to someone who is presumed to be a parent, or has previously been legally established as a parent. The restraining order case does not have the jurisdiction to make orders establishing parentage.

**Example:** Ellen and Allan have lived together for five years. Ellen files for a restraining order against Allan. Allan files a response denying any violence and asking for custody of the minor child. Ellen and Allan have never been married. No cases of any kind have been initiated previously. Allan has never signed a voluntary declaration of paternity. Ellen denies that Allan is the father and he asks the court to order genetic testing. He finds out at the hearing that he will have to file a separate paternity case, and proceeds to do so.

## 7.4 Other Case Types

### 7.4.1 Petition for Custody and/or Support (Fam. Code, § 3120)

Parents may file a petition (form FL-260) with the court for an order for custody, visitation, and/or child support if they meet one of the following criteria:

1. They are married;
2. They have signed a voluntary declaration of paternity and no other paternity action is pending;
3. They are unmarried but have legally adopted the child(ren) involved; or
4. Parentage has been established in a juvenile or Title IV-D case.

### 7.4.2 Custody Order – Juvenile Final Judgment (Welf. & Inst. Code, § 302)

When the juvenile court dismisses jurisdiction in a juvenile dependency case, it issues a judgment for the custody and visitation of the children involved (form JV-200). A case is then opened in the family law court in which the juvenile exit order is filed. The parents may then ask the court to modify this order as circumstances change. If there is already a family law case open, such as a dissolution or paternity case, the juvenile exit order would be filed into that case. Otherwise a new case file is opened.

### 7.4.3 Domestic Partnership Dissolution

As of January 1, 2005, domestic partners will be required to follow the same procedures for the dissolution, legal separation, or annulment of their domestic partnerships as married persons do now.

## 7.5 Unified Court Process

### **7.5.1 Dissolution, Legal Separation, Nullity, Uniform Parentage Act**

Cases of dissolution, legal separation, nullity, and Uniform Parentage Act paternity are similar in court procedure.

#### **Filing of the Petition (Fam. Code, § 2330; Cal. Rules of Court, rule 5.108)**

Each of the cases above is initiated by the filing of a petition. Judicial Council Form FL-100 is used for the marital cases and Form FL-200 for the Uniform Parentage Act cases.

#### ***Identification of Other Cases Involving the Same Parties***

At the time of the filing of the petition in a unified family court, it is critical to identify any other cases in which the same parties are involved. If this function is not performed at the time of filing, a necessity for it will likely arise in the courtroom during hearings, and the research of multiple cases will fall to a courtroom clerk who is trying to manage a busy docket. Time spent in the courtroom trying to identify and straighten out multiple cases with overlapping issues and hearings is expensive and wastes time that should be available for actual adjudication.

At the time of filing, it is not necessary to identify all relevant family members or other related cases, but it is imperative to locate other cases in which the same parties are litigating with respect to each other. As the case develops, the definition of the family may expand, and the number of related cases included in the unified family court file may increase depending on the scope of information considered. The multiple-case assessment at the point of filing can avoid the unnecessary paperwork of opening new cases for issues that are already before the court in an existing case.

Further, since orders to show cause accompany many dissolution petitions, identification of other cases involving the same parties can avoid duplicate or conflicting calendar settings. It can also facilitate early application of a differential calendar management strategy. This type of calendar management clusters cases together on the basis of a differential assessment with the goal of expediting the hearing process for the families and accomplishing optimal results. For example, such calendaring strategies could provide separate calendars for pro per cases, family drug courts, and cases involving domestic violence, high-conflict custody issues, mental health issues, or single-issue motions for child support or custody. (See calendaring below.)

**Methods of Initial Identification of Other Cases Involving the Same Parties.** There are a number of methods by which identification of other cases involving the same parties can be accomplished. This process will be greatly enhanced if the staff has access to family, probate, juvenile, and criminal databases.

1. Clerk asks verbally at the time of filing of the petition. (It should be noted, however, that the literature on unified family courts suggests that litigants tend to report fewer related cases than are actually found by case registry reviews.)
2. If there are children, the UCCJEA Declaration (form FL-105/GC-120) should contain information about other cases related to the children.
3. Clerk has the litigant use a public computer to research the case registry. The public computer will not allow search of databases that are confidential, such as that for juvenile court systems (see Chapter 3, Confidentiality and Information

Sharing). For this step to be feasible, the litigant must have the motivation, literacy, and ability to use the available technology at the court.

4. A local form is created and used to gather information about other cases; must be filed with the petition.
5. Clerk searches the local case-management systems at time of filing.
6. Clerk refers litigant to local facilitator, family law information center, or other self-help service for forms assistance and identification of overlapping cases.
7. Case is referred to a case manager for identification of overlapping cases prior to filing of the petition.

### ***Avoiding Opening Unnecessary Files***

Initiating cases to resolve issues over which the court already has jurisdiction creates more paperwork for operations, data input, and records management. It also confuses litigants without attorneys, leads to fragmentation of related issues among different departments within the court, results in forcing courtroom staff to take time to identify and coordinate overlapping issues when they inevitably arise at hearings, and can ultimately produce conflicting and unenforceable court orders. The following are examples of unnecessary file openings.

1. A litigant seeks to open a DVPA case when there is a dissolution, legal separation, nullity, or Title IV-D case currently open into which the restraining order request can be filed.
2. A party in dissolution tries to file a Uniform Parentage Act case to establish parentage for a child born before the date of the marriage rather than raising that issue on the petition for dissolution.
3. A dissolution litigant tries to file for a name change so that she can cease using her married name, when that could be accomplished easily in the dissolution.
4. A litigant who had not pursued her case after the court made temporary orders for custody and child support several years ago now tries to file a new petition in order to finally terminate the marriage, not understanding that the open case can still be completed.
5. A litigant tries to file a petition for dissolution when there is a legal separation action on file that can be amended.
6. A self-represented litigant files a nullity without asking for dissolution as the alternative. If the nullity is denied, an entirely new dissolution case must be opened.

### ***When There Are Multiple Cases***

Once it has been determined that the same parties do indeed have multiple cases within the court, those cases should be identified so that decisions can be made about consolidation. Many cases can be consolidated under certain circumstances. Case consolidation is an optimal strategy for calendar coordination.

**Case consolidation.** The following are examples of other cases that might be consolidated under a single lead case number. Subsequent to consolidation, all pleadings in the consolidated cases will be filed under the lead case number and maintained in the lead case file.

1. A Title IV-D case has established parentage and child support. Subsequently, dissolution is filed by one of the parents. The Title IV-D case can be consolidated with the dissolution as the lead case. (Fam. Code, §17408; Cal. Rules of Court, rule 5.365.) It should be noted that consolidation should not occur until there is a judgment in the dissolution case. The cases could be coordinated, however. (See below.)
2. A Uniform Parentage Act case was filed establishing the parentage of the father. The parents subsequently marry and now file for dissolution of the marriage. These cases can be consolidated with the dissolution as the lead case. (Code Civ. Proc., § 1048(a))
3. Husband and wife file competing DVPA restraining order requests. Subsequently, husband files a petition for dissolution. These three cases can be consolidated with the dissolution as the lead case. (Code Civ. Proc., §1048(a))

**Case coordination.** When an order to show cause (OSC) for temporary orders accompanies the filing of the petition, other cases with potentially overlapping issues should be identified. Not all such cases can be consolidated under a single lead case number because of jurisdictional or other legal barriers. Even if cases cannot be consolidated, they should be identified for calendar coordination and potential information sharing. Coordination of hearings in such cases must take into careful consideration the timeline requirements of each case type. The following are examples of related cases that cannot be consolidated under a single lead case number.

1. **Juvenile Dependency:** Father submits an OSC for temporary custody and visitation orders along with the Uniform Parentage Act petition. There is currently a jurisdictional hearing set in a juvenile dependency case related to these children. The juvenile case has exclusive jurisdiction over the custody issue. Although the UPA and dependency cases would not be consolidated under the same case number, they can be coordinated to avoid multiple court appearances and any chance of conflicting orders.
2. **Title IV-D:** Wife submits a petition for dissolution and with it an OSC asking for child support. There is currently a motion for judgment set in a Title IV-D case. The cases cannot be consolidated until there is a judgment in the dissolution case, but they can be coordinated for purposes of hearings and orders.
3. **Probate Guardianship:** Mother submits a petition for legal separation and with it an OSC asking for orders for child custody and child support. There is currently a probate guardianship of the children in place. The mother has also filed a request to terminate the guardianship. The subject matter and parties to the actions are different in guardianships and dissolutions, which makes consolidation under a single case number difficult; however, the cases can be coordinated so that the issues related to the children are not being litigated in two separate departments.



4. **Criminal:** Wife submits a dissolution petition and with it an OSC asking for restraining orders against her husband. He has been arrested and charged with spousal abuse (Pen. Code, § 273.5) and driving under the influence (Veh. Code, § 23152). Arraignment on both charges is set. The criminal and civil cases are never consolidated, but the information can be shared so that the unified family court is better informed about how to avoid making conflicting restraining orders.

### **Filing the Response (Fam. Code, § 2020; Cal. Rules of Court, rule 5.120)**

If identification of multiple cases involving the same parties has not been completed prior to the time a response (form FL-120) is filed, it is important that it be done as soon as possible.

Methods of identification and sources of information will be the same as if the review had been done at the time the petition was filed.

### **Filing OSC/Motions**

Many family law cases will have been initiated prior to the implementation of the unified family court. Such cases will come to the attention of the court only when subsequent pleadings are filed. When an order to show cause (form FL-300) or notice of motion (form FL-301) is filed for the first time since implementation of the unified family court, the same steps should be taken to identify multiple cases related to the same parties as were taken with the filing of an initial petition. (See above, “Methods of Initial Identification of Other Cases Involving the Same Parties”)

If a responsive declaration (form FL-394) is filed and a check for related cases has not already been completed, it could be done at this time.

**Note:** It will be important to develop a mechanism for updating coordination information without duplicating the entire identification process each time a new case is initiated or OSC/motion filed.

### ***Document Review: Self-represented Litigants***

In most courts, a large percentage of dissolution litigants will be self-represented. Filing clerks will be presented with many questions and inaccurate or incomplete forms. The availability of a court-based self-help center that can provide assistance to self-represented litigants is critical to the functioning of a unified court.

**Common Pro Per Pitfalls.** The pitfalls that self-represented litigants face are numerous. The following are some examples:

1. Figuring out the correct forms to file;
2. Filling out the forms: language and literacy problems;
3. Finding a place in the courthouse to work on their forms;
4. Having to take care of children while working on forms;
5. Gaining access to a copy machine;
6. Filing fee issues;
7. Difficulties with service of process;
8. Difficulties with proof of service form;
9. Problems understanding legal issues; and

## 10. Difficulties understanding procedural steps.

Initial referral of litigants to the self-help center to receive assistance with these issues and get basic procedural information about their case(s) will result in more accurate and complete pleadings being presented for filing. This will relieve the clerk of many of the factors that tend to create long lines of frustrated individuals at the filing windows.

### **Making Referrals Available**

In some cases, litigants may need referrals to services within the community early in the process. It is an optimal strategy for every unified court to have information and materials about currently available legal and social services that can be given to a litigant at the outset of the case.

#### ***Possible Early Referrals to Social Services:***

1. Domestic violence shelters;
2. Victim-witness services;
3. Local health care facilities;
4. Child care;
5. Parenting support;
6. Community mental health services;
7. Housing assistance;
8. Public assistance programs; and
9. Immigrant services.

### **Calendaring**

Coordination of hearings is an important strategy for the unified court. The goal is to save valuable courtroom time and reduce the number of court appearances required of a family. If a case is being set in the unified court for the first time, it will be calendared according to what type of differentiated case management system the court has decided to implement. Differentiated case management may classify cases more specifically as they proceed forward from the initial filings.

#### ***Calendaring First Hearings***

A decision about the ultimate unification of related cases is difficult to make at the point when a case is first set for hearing. There is just not much information yet available about the matter. The are examples of calendar strategies in a unified court:

1. Comprehensive jurisdiction: *one-judge-one-family*
  - a. In a unified court that employs comprehensive jurisdiction, a newly filed case will be set in front of whichever judge has been previously assigned to that family in other existing cases.
  - b. If there are no other cases for the family, a newly filed case will be assigned according to whatever system the unified court uses to allocate judicial workload.
2. Information sharing: *one-team-one-family*
  - a. Courts may also be using a one-team-one-family design in which cases would be set for hearing in whatever department has been established for that case type.

- b. If there are no other cases for the family, a newly filed case will be assigned according to whatever system the unified court uses to allocate judicial workload.
3. Early use of differentiated calendar management: The unified court may employ a differentiated calendar management system that is broad enough to apply even with initial calendar settings. This calendar strategy is designed to assist the courtroom to manage heavy dockets by clustering cases with similar or limited issues for hearings. Some possible broad types of differential criteria are set out below:
  - a. OSC/Motions with custody issues only
  - b. OSC/Motions with child support issues only
  - c. OSC/Motions with custody and child support issues together
  - d. Domestic violence hearings with child-related issues
  - e. Domestic violence hearings without children involved
  - f. Pro per calendars

### ***Calendarizing Subsequent Hearings***

Calendarizing of subsequent hearings will be made according to the coordination strategy employed by the unified court. Courtroom staff often calendar subsequent hearing by setting continuances for various types of reviews. Information previously made available to the parties, their attorneys, and the judge allows for more detailed types of calendar management systems as cases progress and the court learns more about them. Examples of more detailed differential calendar management criteria are set out below:

1. Family drug court calendar;
2. Pro per calendar;
3. Domestic violence calendar;
4. Juvenile dependency drug court calendars;
5. Mental health calendars;
6. High-conflict custody calendars; and
7. Employment assistance calendars.

In cases that involve the issues set out above, review strategies can be used effectively to facilitate compliance with court orders and reduce repeated filings for relief in the future based on unaddressed issues and noncompliance with court orders. Such calendars can also provide the ability to use appropriate social service case management services in court or through written reports.

### **Hearings**

A unified court is characterized by the amount of information available to a judicial officer on which to base decisions related to the welfare of a family. Whether cases are heard in comprehensive jurisdiction departments, where one judge hears all matters related to the family, or in separate departments that share information, judges in unified family courts are provided access to a wide variety of data. The amount of information available to a unified family court judge, combined with the fact that many litigants will be unrepresented by attorneys in their family law matters, mandates that the unified family court pay particular attention to the protection of the legal safeguards afforded to the families.

### ***Protecting Legal Safeguards for Families***

1. Protect the privacy rights of the parties;
2. Ensure that all litigants are aware of the limits of confidentiality in any interactions with unified family court personnel, including concerns about possible self-incriminating statements when there is a pending criminal case;
3. Inform litigants of the possible consequences of signing authorizations to release information among social service providers, or waivers of privacy privileges potentially available to them;
4. Develop clear written standards about what information may be shared, and who is entitled to have access to the information;
5. Develop written policies about how the information is to be maintained and how to protect the privacy of the families;
6. Implement procedures that protect against inappropriate ex parte communication between judicial officers and court staff, case managers, or other service providers;
7. Implement procedures to ensure that the parties, and their attorneys if they have them, are aware of all information that is given to the judicial officer on their case(s), and are given an opportunity to respond to it; and
8. Ensure that the use of alternative dispute resolution or of social service interventions never operates to obstruct a litigant's right to a hearing.

Make sure that all legal advisements are provided to litigants. Examples would be advisements of custody presumptions in domestic violence cases; legal rights under the Uniform Parentage Act; rights to counsel when contempt is an issue; rights against self-incrimination when there is a criminal domestic violence or other criminal case pending.

### ***Available Information for Judges***

Unified courts are characterized by the amount of information available to judicial officers upon which to base decisions related to families.

1. Mandated information. Courts are required by statute to collect certain types of information, including the following:
  - a. Custody and visitation (Fam. Code, §3140)
  - b. Child sexual abuse allegations (Fam. Code, §3118)
  - c. History of criminal domestic violence (Fam. Code, §6306)
  - d. Domestic violence restraining orders, criminal protective orders, and child custody arrangements. (Cal. Rules of Court, rule 5.500)
2. Ongoing tracking of related cases. The following information needs to be tracked for all cases:
  - a. Any future hearing dates set in these cases and the purpose of the hearings;
  - b. All current orders for custody, visitation, or child support, and any restraining orders; and
  - c. All existing orders for social services such as batterers' intervention, substance abuse treatment, drug testing, parenting classes, and supervised visitation.
3. Changes in personal data: address, phone.
4. Any issues related to the safety of family members.
5. Any evaluations made related to the welfare of the children.
6. History of compliance with all court orders.

7. Progress of case toward judgment.

### ***Sources of Information***

Information in the unified court can come from various staff depending on the design of the unified court operations and the nature of the information.

There are a number of common sources of information:

1. Court files;
2. California Law Enforcement Telecommunications System (CLETS)
3. The parties;
4. Counsel for the parties;
5. Clerk's office;
6. Family court services recommendations;
7. Child custody evaluators;
8. Schools;
9. Law enforcement agencies;
10. Treatment providers;
11. Supervised visitation providers; and
12. Other community-based service providers.

### ***Providing Litigants With Written Orders***

Once the court has made orders, they should be provided to the litigants in written form. Clear, written orders, signed by the judge, are critical to law enforcement agents who may be called upon to address problems in the community. This is particularly true in cases of domestic violence or disputes about custody and visitation arrangements. There may be several ways to provide written orders to litigants on a routine basis.

#### **Methods of providing written orders**

1. Courtroom clerk creates them through an automated case-management system;
2. An additional clerk is provided to manually write the orders for pro per litigants;
3. Family law facilitators may be able to help prepare orders if additional funding is provided for this purpose;
4. Unified court case managers may be able to help prepare orders if they are properly qualified;
5. Qualified volunteers from the community are present in court to write the orders for pro per litigants;
6. Litigants are referred to a court-based self-represented litigant assistance program to prepare the order; and/or
7. Litigants are assisted to prepare proposed orders to bring with them to the courtroom.

### **Judgments**

Completing judgments can be challenging for attorneys and for self-represented litigants. Negotiating settlements on all issues, completing uncontested paperwork, and conducting discovery and trials when necessary are all potential tasks required to complete judgments in dissolutions, legal separations, nullities, and Uniform Parentage Act cases. The management of

the paperwork necessary to complete judgments is a large part of any unified court operational design.

### ***Self-Represented Litigants***

The challenges of completing judgments can be particularly overwhelming to self-represented litigants. Repeated attempts to file incomplete judgment paperwork can seriously burden court staff that are responsible for processing judgments. A unified court will need assistance for self-represented litigants to complete the paperwork for default or stipulated judgments, or to set a case for a trial. If the local family law facilitator has supplemental funding other than AB 1058 funding, assistance with the completion of judgments is a valuable use of resources. The following are some possible sources of assistance for self-represented litigants:

1. Family law facilitator (if additional funding is provided);
2. Family law information centers;
3. Local court-based self-help centers;
4. Legal services; and
5. Lawyer referral services.

### ***Systematic Case Management***

Pursuant to Family Code section 2450, stipulation of the parties is required for case management in dissolution and legal separation cases. In such cases, however, the court may conduct status conferences to determine the possible necessity of a case management plan. Nullity and establishment of parentage are not included in Family Code section 2450.

### ***Status Conferences***

For those cases involving self-represented litigants, a status conference may be all that is needed to move the case along. Often such individuals are not aware that there is anything further they must do in order to obtain a final judgment. A status conference system could help to reduce the backlog of uncompleted cases that cannot be dismissed because they contain orders related to children. It can also assist in moving a litigant's work through the complex procedures for completing judgments.

A status conference might concern itself with the following:

1. Completing uncontested paperwork;
2. Assisting in settlements;
3. Assisting litigants to prepare settlement conference statements; and
4. Explaining trial procedures and the presentation of evidence.

## **7.6 Social Service Coordination and Compliance Monitoring**

There are a number of types of orders for social service interventions possible in marital and Uniform Parentage Act cases. When issues of custody and visitation are disputed, other important concerns arise: child custody mediation and possible evaluation, counseling for parents and children, supervised visitation, and batterers' intervention (if there has been violence). If there is a juvenile dependency case, the parties will be subject to a plan for reunification. If there has been a criminal case, one or both parties may be subject to the terms of probation. The ability of the parties to comply with these terms and complete the services varies; and different agencies

may be charged with making and keeping track of referrals and compliance in different circumstances. When families are involved in more than one case in an uncoordinated court, the possibility of duplicate or conflicting orders for services arises. Please refer to Chapter 10 for a more detailed discussion of these issues.

## 7.7 Procedural Overview: Marital and Uniform Parentage Act Cases

Marital and Uniform Parentage Act cases are procedurally similar. Both proceed on a “trial track” and a “motion track.” In fact, the majority of disputes in family law cases are handled by way of show cause orders or motions, and are heard on short cause law and motion calendars—the motion track. Many cases first enter the court accompanied by a motion for temporary relief. Examples include child custody, child support, spousal support, temporary use of property such as the family house, temporary orders about who will pay what debts, and domestic violence restraining orders.

### 7.7.1 Judgment Track

1. Petition is filed (marital form FL-100; paternity form FL-200); Summons issued; UCCJEA declaration (form FL-105) is filed (if children involved).
2. Service on respondent—respondent has 30 days to answer.
3. Service of the preliminary declaration of disclosure (forms FL-140 and FL-141)—with or after service of the summons and petition (*required for dissolution and legal separation*).
4. File proof of service (form FL-115).
5. If no response after 30 days—file request to enter default (form FL-165); and, if required) a property declaration (form FL-160), income and expense declaration (form FL-150), and judgment with support papers as below:
6. Marital cases (forms FL-170; FL-180; FL-190)
7. Paternity cases (forms FL-230, FL-240)
8. If response (marital form FL-120; paternity form FL-220) filed
  - a. Parties agree—File MSA/stipulated judgment.
    - i. Default/Uncontested hearing—some courts set default or uncontested cases for hearing, others proceed on paperwork alone. (*A hearing is required in nullity cases.*)
  - b. No agreement—set for trial.
    - i. 45 days prior to trial, serve final declaration of disclosure (required for dissolution and legal separation).
    - ii. Prepare settlement conference statement.
    - iii. Attend family court services mediation.
    - iv. Attend settlement conference.
9. Trial—judgment: In dissolution cases, termination of the marriage must be at least 6 months from the date of service on the respondent, date response was filed, or date appearance, stipulation and waivers was filed. The 6-month waiting period is not required for judgments of legal separation or nullity.

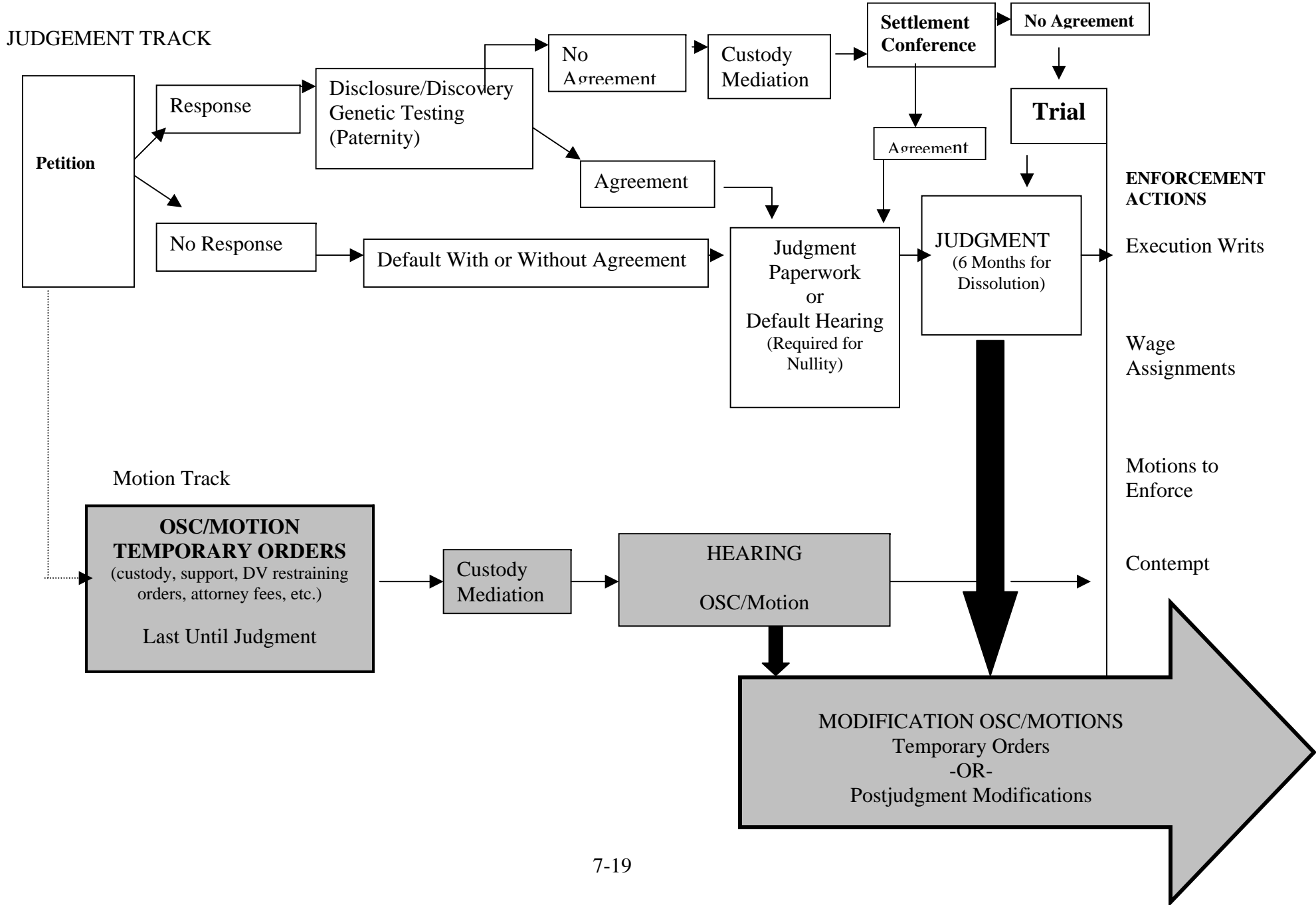
### 7.7.2 Motion Track

Often parties need a temporary order before a judgment can be finalized, or need to modify orders already made. Issues such as child custody and child support remain under the jurisdiction of the court postjudgment until the children reach majority.

1. Order to show cause (form FL-300) / notice of motion (form FL-301) is filed with the court.
  - a. Notice of motion only if other party has appeared in the case.
  - b. OSC/Motions are usually initiated to obtain or modify domestic violence restraining orders or orders for child custody, visitation, child support, spousal support (*marital cases only*), temporary use of property, payment of debt, or attorney fees.
  - c. Paternity cases: requests for genetic testing.
  - d. Enforcement issues: contempt (form FL-410).
2. Service.
  - a. Personal service required on most orders to show cause (form FL-330).
3. If parties agree—file stipulation for order.
4. If no agreement
  - a. Responsive declaration filed (form FL-320).
  - b. Child custody mediation required if contested custody/visitation.
5. Hearing—order (form FL-340)



Chart 7A: FAMILY LAW – Basic Litigation Flowchart



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## 8.1 Definition of Title IV-D Cases

Title IV-D cases are those filed by the local department of child support services for the purpose of establishing the parentage of children and obtaining and collecting child support and health insurance when public assistance has been expended or upon the request of a parent who is not receiving public assistance. These cases seek to promote financial self-sufficiency for families on public assistance through the establishment and collection of child support, to reimburse the government for monies paid out for public assistance expended on behalf of children, and to establish and collect child support for any parent who desires this service. These cases are called Title IV-D cases because Title IV-D of the Social Security Act (42 USC section 651 et seq) requires that each state create a program to locate absent parents, establish parentage, establish and enforce child support-obligations, and collect and distribute support. Parents involved in a Title IV-D case are frequently involved in other types of cases such as dissolution, Uniform Parentage Act, domestic violence, juvenile dependency or delinquency, and guardianship cases.

### 8.1.1 Frequently Related Cases—*Examples*

- **Juvenile Dependency**

Conflicting orders or findings related to the paternity of children can pose a serious problem for a child in crossover cases between Title IV-D child support and juvenile dependency. The issues of paternity and child support often arise in separate cases. Situations that involve multiple orders establishing parentage are among those in which a conflict will have the most serious ramifications for all parties. The issue of parentage in a dependency case is related to the right to notice and to reunification services. In Title IV-D cases, the parentage issue is related to the obligation to pay child support and to the rights surrounding custody and visitation.

Communication between the family and juvenile courts would be critical to sorting out the parentage issue between Charles and David. Had a search for other related cases been completed early in the dependency case, David's name might have come to the attention of the court, and the matter been addressed while the juvenile court still had exclusive jurisdiction.

**Example:** In 1998, in a juvenile dependency case, the court found that Charles was the father of 11-year-old Jennifer. Charles and Jennifer's mother, Jane, successfully completed the reunification plan and Jennifer returned home to live with them in 1999. In 2001, Jane was killed in a car accident. David, an old boyfriend of Jane's, heard about her death. It turned out that he had been paying the local child support agency for reimbursement of welfare paid out in 1993 through 1995. There was a judgment establishing his paternity in a IV-D case. Although he has not had contact with Jennifer previously, David claims custody as the father.

- **Juvenile Delinquency**

Domestic violence can be intergenerational. Cases involve not only abuse and neglect of children, but violence against parents as well. In recognition of this fact, parents who are found by the court to be victims of violence from their children are not required to pay for the children's support during the time that they are in out-of-home placement. (Welf. & Inst. Code, §§ 903 et seq.)

In this example, Daniel's mother may not be required to pay for his support if he is placed out of home. His father, however, may be required to pay. The juvenile court should be aware of the domestic violence situation, particularly in case Daniel's father asks that Daniel be placed with him. If the juvenile court should place Daniel with his father, the family court may be faced with a request for child support to be paid by the mother to the father.

- **Establishment of Parentage**  
(Uniform Parentage Act)

Child support is another issue that tends to cross over several case types within family law. Again, systematic coordination of matters relating to the same family members can help avoid conflicting orders. Parentage is at issue in both Title IV-D and Uniform Parentage Act cases, and both types of cases also make child support orders.

Parentage may also be established when a Voluntary Declaration of Paternity is signed and filed with the department of child support services (DCSS). It can be the basis for child custody and child support orders. (Fam. Code, §§ 7570 et seq.)

In this example, DCSS would not necessarily know that Maria had filed an additional action for child support. A search for related cases made at the time that Maria filed her own motion may have revealed the DCSS case against Hector, and the judge would be alerted to the potential for conflicting orders.

**Example:** Daniel is 15 years old. His parents are now divorced and he lives with his mother and younger sister. While his parents were married, his father had beaten his mother on numerous occasions. There is currently a civil restraining order in the dissolution case that sets out a number of incidents in which Daniel was present during these beatings. Currently, Daniel has been missing school regularly. In an effort to control the situation, his mother grounded him. Daniel was angry and refused to accept the grounding. When he tried to leave the house to meet friends, she tried to stop him. He pushed her and hit her several times. A neighbor called the police and Daniel was arrested.

**Example:** Maria has recently split up with Hector, the father of her young son. This is the second time they have separated. During the first separation two years previously, Maria filed a case to establish paternity, but that case was not pursued. This time, she is receiving Temporary Assistance for Needy Families (TANF) to help support her and the child, and as a result the local child support agency has initiated a case against Hector. On her own, Maria files a motion in the original paternity case asking for custody and child support. She gets an order for \$350 per month in child support. Hector never responds to the papers he is served by the local child support agency because he believes the issue has been taken care of by the \$350 order. The local child support agency then obtains a default judgment against him for \$500 per month Hector's employer is given two wage assignments—one for each child support order.

- **Domestic Violence**

Since domestic violence issues tend to cross case types, there are several case types in which parties can seek relief. Systematic coordination of matters relating to the same family can help prevent the possibility of conflicting orders based on truthful pleadings properly filed. For example, Domestic Violence Prevention Act (DVPA) and Title IV-D cases all make child support orders.

In this example, the conflicting orders might well have been prevented by a search for related cases made at the time the father filed his restraining order request. His action could then have been filed within the same case, and hearings on these requests for restraining orders and custody could have been calendared together.

**Example:** A young mother has asked the local child support agency to help her get support for her two young children. The agency files a Title IV-D case against the father and he is served with the papers. The father is furious that support is being sought by the government, claiming that he doesn't need any official order to be responsible for his children. He goes over to the mother's house, an argument ensues, and he threatens to take the children from her so she will never see them again—and she slaps him. The next day, the mother files an application in the Title IV-D case for an ex parte restraining order and custody; her order is granted. That same day, in another branch of the same court, the father files for an ex parte restraining order and custody, claiming that the mother has been violent with him. His order is filed separately as a DVPA action, and his request for ex parte orders is granted.

## 8.2 Unified Court Process

### 8.2.1 Title IV-D Child Support Enforcement

The purpose of a Title IV-D case is to establish parentage and to obtain an order for child support and/or medical insurance and to enforce spousal support in cases in which a child support order is in effect. The local department of child support services (DCSS) files the initial complaint and also provides collection services for child support orders made in other types of cases such as dissolution, legal separation, nullity, Uniform Parentage Act and DVPA cases, and petitions for child custody and child support—including cases established out of state. The initial parties to a Title IV-D case are the county in which the action is filed and the parent or alleged parent against whom a support order is sought. The other parent is not made a party to a Title IV-D case until after a support order, including a temporary support order, is entered.

#### *Filing a Complaint (Fam. Code, §§ 2330.1; 17000 et seq.)*

The local Department of Child Support Services (DCSS) files the initial complaint (form FL-600) in Title IV-D cases in the name of the county in which the support order is filed and on behalf of the child or children for whom support is sought.

#### *Identifying Related Cases at the Time of the Filing of the Complaint*

It can be burdensome for the unified family court to conduct the initial check for multiple cases involving the same parents at the time DCSS files the complaint. Furthermore, Title IV-D cases are unique in the manner by which they proceed by default. If no answer is filed, the proposed judgment, which is submitted with the complaint, automatically becomes the judgment of the court 30 days after the date of service. No further action is required of the petitioner (DCSS).

Frequently, there is no further court action that would trigger the necessity to check for related cases.

**Challenges to initial search for related cases.** The following three circumstances may make an initial search for related cases more difficult:

1. Batches of complaints may be filed together at certain times rather than gradually spread out over the regular court workweek. Often there are extremely large numbers of complaints filed at the same time.
2. The filing process may differ in IV-D cases. For example, DCSS may have a particular employee in their office deputized to file the complaints.
3. Identification is more time consuming at this point in the case. The custodial parent is not yet a party to the action; pleadings must be reviewed to identify the “other parent.”

**Possible Solutions.** DCSS may conduct a search for other cases involving the parents prior to filing a new case. If there is an existing case, such as a dissolution or Uniform Parentage Act case, the child support agency may file a motion for child support within that case. Furthermore, if there is a previously filed case with a child--support order in it, DCSS will be in a position to enforce that already existing order. The unified family court should consider asking DCSS to share this information at the time of filing. DCSS and the court can work together to create a protocol and format for communication of this information.

If DCSS has a particular employee in their office who is deputized as a clerk of the court and actually files the documents, the unified court should pursue having the check for related cases done by this person and communicated clearly to the court.

If an automated system is available, a IV-D clerk at the court might be able to check the records for related cases quickly at the time of filing.

***Filing the Answer (Fam. Code, §§ 2330.1 and 17400)***

If an answer to a Title IV-D complaint (form FL610) is filed, there will be some ongoing action in the case. For example, DCSS will have to file a motion for judgment. If the issue of paternity is contested, genetic testing will be required.

Sometimes, as in cases involving dissolution, legal separation, or nullity, there is no way to avoid multiple filings with Title IV-D cases. In those instances, calendar coordination becomes the focus of the unified family court. In particular, if the function of checking for multiple cases is assigned to a filing clerk, waiting for the motion for judgment, when calendaring actually takes place, seems to make the most sense.

At the same time, the filing of the answer in a Title IV-D case can provide an opportunity to obtain information about multiple cases if the information has not already been provided either by DCSS or through an initial search of an automated case-management system.

***Identifying Related Cases at the Time of the Filing of the Answer***

When an answer is filed in a Title IV-D case, methods for identifying related cases involving the same parents mirror those used in marital and Uniform Parentage Act cases. (See Chapter 7, section 7.5.1)

One of the methods listed at section 7.5.1. is the use of the family law facilitator. The family law facilitator is specifically funded under Assembly Bill 1058 to assist litigants in filing answers to Title IV-D complaints. Working in collaboration with facilitators to help litigants identify related cases can help expedite the process at this stage of the proceeding.

***Time Requirement: Important Reminder!***

The filing of an answer in a Title IV-D case is extremely time-sensitive. No procedure for identification of existing overlapping cases should delay the filing of the answer. The importance of the time element in Title IV-D cases exceeds that in other family law cases because the plaintiff is not required to file any request to enter default or to prove up any elements of the case. If no answer has been filed, the proposed judgment becomes the judgment automatically after the passage of 30 days from the date of service. (Fam. Code, § 17430)

***Filing a Motion for Judgment (Fam. Code, § 17404)***

When DCSS files a motion for judgment (form FL-680), a court date is set. If a search for related cases has not already been completed, the filing of a motion for judgment can be a useful time to conduct this search, so that calendar coordination can begin.

At the time DCSS files a motion for judgment, it is not necessary to identify all relevant family members or other related cases. As the case develops, the definition of the family may expand, and the number of related cases included in the unified family court file may increase depending on the scope of information considered.

Early identification of cases involving the same parties may help facilitate early application of whatever differential case management a court may choose to adopt, particularly with respect to avoiding conflicting child custody, visitation, and domestic violence restraining orders. (See Chapter 3 – Confidentiality and Information Sharing)

***Identification of Related Cases at Filing of Motion for Judgment***

Again, DCSS might be the optimal place for this search to occur if it has not already been performed.

**Note:** Calendaring of motions for judgment in Title IV-D cases is unique. Courts are required to refer these motions to the child support commissioner unless there are specified exceptional circumstances. Federal Title IV-D funding regulations limit court reimbursement to work done by commissioners. Reimbursement for any work done by judges or their staff is specifically excluded. Calendar coordination of Title IV-D cases in a unified family court presents interesting but not insurmountable challenges. (See “Calendaring” below)

***Filing Order to Show Cause/Motion (Fam. Code, §17404)***

If a search for related cases involving the same parties has not already been performed, it should be completed when an order to show cause (OSC) / motion is filed by any of the parties. As with dissolution and other case types, a mechanism needs to be implemented that allows for updating when a new case and OSC/motion are filed, while avoiding duplication of previous record checks.

***Parties to the IV-D Case***

In most cases, the plaintiff in a Title IV-D case is the county in which the case is filed; the local DCSS represents the state’s interest in the case. The defendant is the individual from whom support is sought, usually a noncustodial parent. Beginning January 1, 1997, the other parent



becomes a party after entry of a support order. In cases filed prior to 1997, the other parent becomes a party only when the court grants a motion for joinder of that person. To summarize,

1. Plaintiff: County of \_\_\_\_\_
2. Defendant: Noncustodial parent
3. Other Parent: After entry of support order  
(Before 1997 – motion for joinder required)

**Note:** Sometimes DCSS is merely collecting child support that has been previously ordered in another family law case. If so, the parents would be parties as designated in those cases. The party identification may also be different when the local child support agency is enforcing an order made in another state.

### ***Types of Issues Raised by an OSC/Motion***

Beginning January 1, 1997, the potential issues covered in a Title IV-D case expanded to include matters of child custody, child visitation, and domestic violence restraining orders. The following issues are included:

1. Challenges to paternity;
2. Modification of child support;
3. Enforcement of spousal support in cases where child support is also being collected;
4. Child custody;
5. Child visitation; and
6. Domestic violence restraining orders.

**Note:** The calendaring of orders to show cause / motions for parents involved in Title IV-D cases must take into account federal funding restrictions. For orders to show cause / motions related to paternity, child support and health insurance, AB 1058 funding is allowed for reimbursement of the child support commissioners' time, as well as associated operational expenses. Although parents are now able to raise the issues of custody, visitation, and restraining orders within Title IV-D cases, time spent making these orders is specifically excluded from reimbursement, with a few narrow exceptions. The child support commissioner may refer parents to mediation on disputed custody/visitation issues; accept stipulated agreements concerning custody, visitation, and protective orders; and refer contested matters not related to child support to a judge or another commissioner. The unified family court must consider the special requirements of Title IV-D funding, as well as the requirements of any other grant-funded programs, in developing solutions to coordination issues.

### ***Identifying Related Cases at the Time of the Filing an OSC/Motions***

Orders to show cause or motions may be filed by any of the parties involved in the IV-D case. If it has not already been done, identification of other cases involving the same parents should be done when OSC/motions are filed. The funding restrictions for reimbursement of commissioners' time make this critical to a unified family court. Furthermore, identification of related cases may allow the bench officer to take judicial notice of additional relevant information and avoid the duplication of orders or the entry of inconsistent orders .

If the OSC/motion is asking for orders that are not reimbursable (custody, visitation, restraining orders), and the parties have another case in which these issues can be litigated (dissolution, legal

separation, nullity, UPA, DVPA, petition for custody and support), it may be most efficient to file the OSC/motion in one of those other cases. (See “Calendaring” below) The first step is to identify any other cases involving the same parents. If the DCSS files the OSC/motion, that department should be asked to provide the court with information about related cases involving the same parties.

If the OSC/motion is filed by one of the parents, the methods for identification of related cases remain the same as above.

Again, if the OSC/motion involves paternity, child support, or health insurance issues, and the litigant is referred to the family law facilitator, the facilitator can make inquiries regarding related cases. It would be appropriate to integrate such a protocol into the facilitator’s operations, as that office is specifically funded to help litigants and to assist the court in providing cost-effective and efficient processing of family law cases,

***Case Consolidation (Fam. Code, § 17408; Code Civ.Proc. 1048(a))***

Rule of Court 5.365 outlines the method a court should use to consolidate cases that overlap with Title IV-D child support cases. While this rule addresses only Title IV-D child support case consolidation (Fam. Code, § 17400 et seq.), the reasoning is applicable to other case types as well.

**Consolidation of Title IV-D and Related Cases (Cal. Rules of Court, rule 5.365)**

When cases can be consolidated under the same case number, a lead case must be designated. In general, a lead case will have the broadest subject-matter jurisdiction. Case-consolidation protocols are as follows:

1. The cases to be consolidated are identified as subordinate.
2. All court orders must be consolidated into the lead case file.
3. Determination of the lead case should go according to the following order:
  - a. Dissolution, legal separation, or nullity
  - b. Uniform Parentage Act
  - c. Petition for Custody and Support of Minor Children
  - d. If none of the cases or child support orders to be consolidated is in an action for nullity, dissolution, or legal separation, or is a Uniform Parentage Act case, the lead case will be the one with the lowest case number.
- e. A domestic violence case can be consolidated with a Title IV-D case, but it shall not be the lead case file.
4. A notice of consolidation (form FL-920) must be placed in each subordinate case file, indicating that the support orders in those cases can be found in the lead case file.
5. Subsequent filings, whether dealing with child support or not, must occur in the lead court action and be filed under that case caption and number only.
6. All further orders, enforcement, and modification of support orders must occur in the primary court action.

### ***Case Coordination; Information Sharing***

When there are multiple related cases that cannot be consolidated under the same case number, they should be identified for calendar coordination and/or information sharing.

When an OSC/motion is filed in a Title IV-D case, other cases with potentially overlapping issues should be identified. Not all such cases can be consolidated, but all should be identified for calendar coordination and potential information sharing. Those coordinating the hearings in such cases must attend carefully to the timeline requirements of each case type and to the federal reimbursement issues related to Title IV-D matters.

**Juvenile dependency.** Mother and father have two children. The youngest has been taken into foster care based on allegations that the older one has abused her. The older child remains at home. DCSS has filed cases against both parents for support of the child in foster care. The impact of a Title IV-D order may be a serious factor in the parents' ability to comply with the reunification plan.

**Guardianship.** Pursuant to an order in a Title IV-D case, a father has been paying child support to the mother through DCSS. Subsequently, the maternal grandmother is appointed guardian of the child by the probate department owing to the mother's inability to care for the child. Information about the change in custody of the child is necessary in order that child support can be properly directed.

**Criminal.** The local district attorney has filed a criminal case against a Title IV-D defendant for failure to support. (Pen. Code, § 270.) Information from any existing case in which there is an order for child support is critical to both prosecution and defense.

**Other criminal.** DCSS has filed and served a complaint against a father. One week after service of the complaint, the father is arrested and has been in custody continuously since that time. The possibility of a lengthy incarceration is impending. If, as is likely, the father fails to respond and the case proceeds by default, the possibility of accumulating large uncollectable arrears becomes a factor.

**Family Law Cases.** A Title IV-D case cannot be consolidated with a dissolution, legal separation, nullity, or Uniform Parentage Act case until there is a judgment in the family law case. In fact, the better practice is never to consolidate two different case types until both cases have gone to judgment.

### ***Document Review: Family Law Facilitators (Fam. Code, § 10000 et seq.)***

In Title IV-D cases, most of the parents will be appearing without the benefit of attorney representation. Most of the answers to complaints will be filed by self-represented litigants, as will OSC/motions filed by either parent on any issue. The time spent by the clerk staff in document review and rejection of pleadings can be relieved in large part by appropriate referrals to the local family law facilitator. While the facilitator is prohibited from giving legal advice, he or she can provide proper forms to the litigants and give them information regarding the completion of forms consistent with court requirements.

California's family law facilitators are funded specifically to assist self-represented litigants in Title IV-D cases. Some of the facilitator programs are limited to providing assistance only with issues of child support, enforcement or modifications of spousal support in cases with child support, and health insurance. If the family law facilitator provides assistance for other issues, such as custody, visitation, or restraining orders, the local courts must provide sufficient additional non-AB 1058 funding to cover staff time and other associated expenses. In addition, the facilitators and their staff will be required to keep time records regarding their reimbursable

vs. nonreimbursable activities consistent with federal, state, and AOC requirements. Many local courts have provided such additional funding so that services can be provided for the complete array of family law issues.

### ***Common Issues for Family Law Facilitators***

The following are services commonly provided by family law facilitators:

1. Assisting with the timely filing of answers;
2. Explaining genetic testing;
3. Explaining the California Child Support Guideline;
4. Assisting with forms preparation;
5. Working with fee waivers;
6. Explaining service of process;
7. Identifying multiple cases in different jurisdictions;
8. Identifying conflicting child support orders;
9. Identifying conflicting paternity findings;
10. Explaining the procedure for setting aside default judgments;
11. Establishing an accurate record of payments and arrears balance;
12. Assisting litigants to respond to loss of driver's licenses, passports, business licenses, and so forth;
13. Working with DCSS and parents in cases involving foster care placement;
14. Arranging for telephonic hearings if permitted by local rule;
15. Providing case status information to parents;
16. Providing procedural information about Title IV-D cases;
17. Making referrals for additional services; and
18. Providing information regarding DCSS support compromise programs.

**Note:** In some counties, additional services for self-represented litigants, such as family law information centers, court-based self-help programs and community-based self-help services, can supplement the services offered by the family law facilitators.

### ***Calendaring***

#### ***Reimbursable and Nonreimbursable Matters***

Coordination of Title IV-D hearings with other related hearings is made particularly challenging by the funding requirements of AB 1058, which define costs associated with certain issues as reimbursable or nonreimbursable. One way that the unified family court can (a) maximize eligible non-trial court funding available through IV-D and (b) avoid excessive fragmentation of such issues as custody, visitation, and restraining orders is through developing successful calendaring strategies.

#### ***Calendaring Goals for Title IV-D Cases***

The unified family court should try to develop calendaring strategies that meet the following six goals:

1. Minimize paperwork for the court operations staff;
2. Make the most efficient use of valuable court time;
3. Reduce the number of times the families must come to court;
4. Utilize federal funding to its fullest extent; and
5. Meet federal and state case processing time standards for Title IV-D cases.

### *Calendaring Challenges in IV-D Cases— Examples*

1. OSC/motions filed in the IV-D cases that raise issues of child support along with nonreimbursable issues such as custody, visitation or restraining orders.
2. OSC/motions filed in dissolution, legal separation or other family law cases in which the issue is child support, and DCSS is currently involved in the collection of that order.
3. Comprehensive jurisdiction unified family court design (one-judge-one-family). Calendaring of Title IV-D cases and all related cases would have to be in front of a IV-D commissioner in order to effectively utilize the available federal funding. Some of the matters would be reimbursable and some would not. A time-keeping system that meets all federal, state, and AOC requirements would be necessary. In addition, the court would need to allocate sufficient non-AB 1058 funding proportionate to the time spent on non-AB 1058 issues.
4. Juvenile dependency cases. DCSS files child support cases against both parents because the children are in foster care (Welf. & Inst. Code, § 900 et seq.). Compromise of that support by DCSS is often necessary to facilitate reunification of the family. Although compromise plans are not officially under the jurisdiction of the unified family court, there should be coordination between the DCSS, the department of social services, and the family law facilitator's office to promote effective programs in this area. Coordinating compromise sessions with court dates in dependency cases can facilitate this process.

### *Strategies for Basic Title IV-D Calendar Coordination*

Prior to consideration of issues related to differential case management, a unified family court must develop a basic calendar coordination strategy designed to address the challenges presented by the Title IV-D cases. The calendaring system should include these principles and procedures:

1. **Avoid multiple pleadings.** Avoid requiring litigants in Title IV-D cases to file separate OSC/motions when they have issues of both child support (reimbursable) *and* custody/visitation (not reimbursable). The creation of double paperwork and calendaring for operations staff should be avoided whenever possible.
2. **Institute time-keeping systems.** Implement a time-keeping system for commissioners and staff to track when they are working on reimbursable issues and when on nonreimbursable issues. This can maximize the funding potential of reimbursement for commissioners doing AB 1058 work, while allowing them to also hear the other issues related to the family and avoid multiple court appearances for litigants and related additional work for court staff.
3. **Synchronize hearings.** Synchronize hearings between judges and commissioners. If family law judges are hearing all the issues related to a family except Title IV-D child support issues, hearings for OSC/motions containing a mix of issues can be synchronized. For example, the issues of custody/visitation might be set in the family law judge's

department at 8:30 a.m. and the Title IV-D matter set in the child support commissioner's department at 10:30 a.m. The child support commissioner would hear OSC/motions in which child support was the only issue at 8:30 a.m. While this method does require double calendaring, minute orders, and more complex data entry, it eliminates the need for the court to process two entirely separate OSC/motions and require the litigants to come to court twice.

### ***Differential Calendar Management***

The basic calendar coordination strategies set out above for Title IV-D cases actually constitute a type of differential calendar management. Once a basic coordination plan has been worked out, then integration of these cases into a more detailed calendar management system can be addressed.

A differentiated calendar management system can assist the courtroom to manage heavy dockets by clustering cases with similar issues for hearings. Some possible broad types of differential criteria are set out below:

1. Relief from Enforcement: license return, etc.;
2. Set Aside motions: arrears calculation;
3. Criminal Contempt (Pen. Code, § 270);
4. Civil Contempt (Code Civ. Proc., §1209);
5. Order to Seek Work;
6. Foster care reimbursement;
7. Welfare/Nonwelfare;
8. Cases with custody at issue; and
9. Other unified family court types of differential case management:
  - a. Family drug court,
  - b. Domestic violence,
  - c. Mental health, and
  - d. High-conflict custody.

### ***Hearings***

A successful unified family court is dependent on the quality and amount of relevant information available to a judicial officer on which to base decisions related to the welfare of a family. When Title IV-D issues are involved, the court will often be faced with a hearing in which a DCSS attorney appears on behalf of the state's interest, and one or both parents are without counsel.

Because of the large amount of sensitive information available to a unified family court judge or commissioner, and the fact that many litigants are unrepresented, the unified family court must pay particular attention to protecting the legal safeguards afforded to the families.

### ***Protecting of Legal Safeguards for Families—Examples***

1. Protect the privacy rights of the parties with particular attention to social security number and other identification information.

2. Ensure that pro per litigants are advised of their rights against self-incrimination when there are any potential criminal charges or civil contempt charges.
3. Ensure that pro per litigants understand that they have the right to an attorney with respect to the issue of paternity.
4. Ensure that pro per litigants understand the right to genetic testing in paternity cases and the consequences of not asserting that right.
5. Guard against ex parte communication of any kind.
6. Follow all other safeguards relevant to all unified family court cases

### ***Available Information***

Judges and commissioners should have all the information they need to make orders that are the most effective. This includes the following:

1. Mandated information (see chapter 3, Confidentiality and Information Sharing);
2. Ongoing tracking of related cases:
  - a. Any future hearing dates set in these cases and the purpose of the hearings,
  - b. All cases in which there are findings or orders related to establishment of parentage and access to the Paternity Opportunity Program database; and
3. Other types of information:
  - a. Results of genetic testing'
  - b. All current child support orders'
  - c. Order to seek work'
  - d. All current orders for custody or visitation, or restraining orders,
  - e. All existing orders for social services such as job counseling, substance abuse treatment, drug testing,
  - f. Changes in personal data: address, phone, and so forth,
  - g. Any issues related to the safety of family members,
  - h. Any evaluations made related to the welfare of the children, and
  - i. History of compliance with all court orders.

### ***Providing Litigants with Written Orders***

Once a judge or commissioner has made an order, that order must be written into the proper form and signed by the judicial officer. The attorney representing DCSS often performs the task of preparing written orders in Title IV-D cases. This attorney's responsibility, however, is usually limited to preparation of orders about child support. Restraining orders and written orders regarding custody or visitation are usually left to the court or to the parties to prepare.

Once the court has made orders, they should be provided to the litigants in written form. Clear written orders, signed by the judge, are critical to law enforcement agents who may be called upon to address problems in the community. This is particularly true in cases of domestic violence or disputes about custody and visitation arrangements. The methods of providing

written orders to litigants in Title IV-D cases are the same as those set out in chapter 7, section 7.5.1, with the exception of judgments, as described in the next section.

***Judgments (Fam. Code, § 17404; 17430)***

Judgments (form FL-630) are prepared and filed by attorneys for the local DCSS. Obtaining a judgment in Title IV-D cases does not present the problems for the unified family court that exist in other cases in which all of the parties are frequently unrepresented by counsel. The majority of judgments in Title IV-D cases are entered by way of default.

***Motions to Set Aside Judgments (Fam. Code, §17432; Code Civ. Proc., §§ 473, 473.5)***

It is not infrequent that defendants in Title IV-D cases have had a judgment entered against them by default and later want to have that judgment set aside. Sometimes respondents have never received notice of the proceedings. Furthermore, pro per litigants often do not understand how to respond in a timely fashion to the service of process. Both of these factors play a role in the need for motions to set aside judgment.

***Other Postjudgment OSC/Motions***

Most OSC/motions made by parents in Title IV-D cases are made postjudgment, and relate to requests to modify the child support orders. For those who want to request orders for custody and visitation, such OSC/motions must be calendared postjudgment in order for the court to have jurisdiction over the custodial parent.

***Assistance for Self-Represented Litigants: The Family Law Facilitator***

The family law facilitator can assist self-represented litigants to prepare paperwork asking the court to set aside the judgment or motions to modify child support. This task is within their funding limitations. Additional non-AB 1058 funding is required if the facilitator assists with issues such as custody, visitation, or domestic violence. Assistance may also be provided by other sources:

1. Family law information centers;
2. Other court-based self-help centers;
3. Unified family court case managers if properly qualified;
4. Qualified legal services; and
5. Certified lawyer referral services.

### 8.3 Social Service Coordination and Compliance Monitoring

There are a number of types of orders for social service interventions possible in a Title IV-D case. It is possible that orders to seek work might be accompanied with referrals for educational assistance, substance abuse treatment and counseling, and/or job counseling. When issues of custody and visitation are included, other important concerns arise: child custody mediation and possible evaluation, counseling for parents and children, supervised visitation, and batterers' intervention (if there has been violence). If there is a juvenile dependency case, the parties will be subject to a plan for reunification. If there has been a criminal case, one or both parties may be subject to the terms of probation. The ability of the parties to comply with these terms and complete the services varies; and different agencies may be charged with making and keeping track of referrals and compliance in different circumstance. When families are involved in more than one case in an uncoordinated court, the possibility of duplicate or conflicting orders for services arises. Please refer to chapter 10 for a more detailed discussion of these issues.



## 8.4 Procedural Overview: Title IV-D Child Support

### 8.4.1 Judgment Track

1. Complaint is filed by the local child support agency (DCSS); Summons is issued.
2. Complaint, summons, and proposed judgment are served on the respondent.
3. Respondent has 30 days to file answer.
4. If there is an answer and the parties (DCSS and respondent) agree: Stipulated judgment is entered.
5. If there is an answer and the parties do not agree:
  - a. DCSS makes a motion for judgment; gets a hearing date.
  - b. Hearing: genetic testing is ordered and a review set to receive test results.
  - c. If, after receipt of the test results, the parties are in agreement about paternity and the amount of child support owed: Stipulated judgment is entered.
  - d. If the parties are not in agreement: Trial.
6. If a child support order is made at trial: DCSS will begin enforcement of the judgment.
7. If there is no answer within 30 days: Proposed judgment is automatically entered, and collection efforts are initiated.

### 8.4.2 Motion Track

In Title IV-D cases, most litigation actually occurs on the motion track. Most of the pretrial orders available in marital and Uniform Parentage Act cases are not available prior to judgment in Title IV-D cases. In most cases, the only prejudgment motions are filed by DCSS when the respondent files an answer as set out above. An exception would be when there is a preexisting order for child support, spousal support, and/or health insurance in a related case such as a dissolution, DVPA case, or paternity case. Often those orders are made pending judgment. Most motions in a IV-D case are filed postjudgment.

Issues such as child custody and child support remain under the jurisdiction of the court postjudgment until the children reach majority.

1. Order to show cause / Notice of motion is filed with the court.
  - a. Notice of motion only if other party has appeared in the case; DCSS can be served by mail.
  - b. If the judgment in the case was made prior to January 1997, and the motion involves the custodial parent (e.g., nonwelfare child support, custody/visitation, domestic violence restraining orders) a motion to join that person as a party must accompany the OSC/motion.
  - c. OSC/motions are usually to set aside judgments, modify orders for child support, get or modify orders for child custody or visitation, get domestic violence restraining orders, or seek relief from a variety of child support enforcement procedures.
  - d. Enforcement issues: Contempt, seek work orders.
2. Service: Most orders to show cause must be personally served on respondent.
3. If parties agree: File stipulation for order.

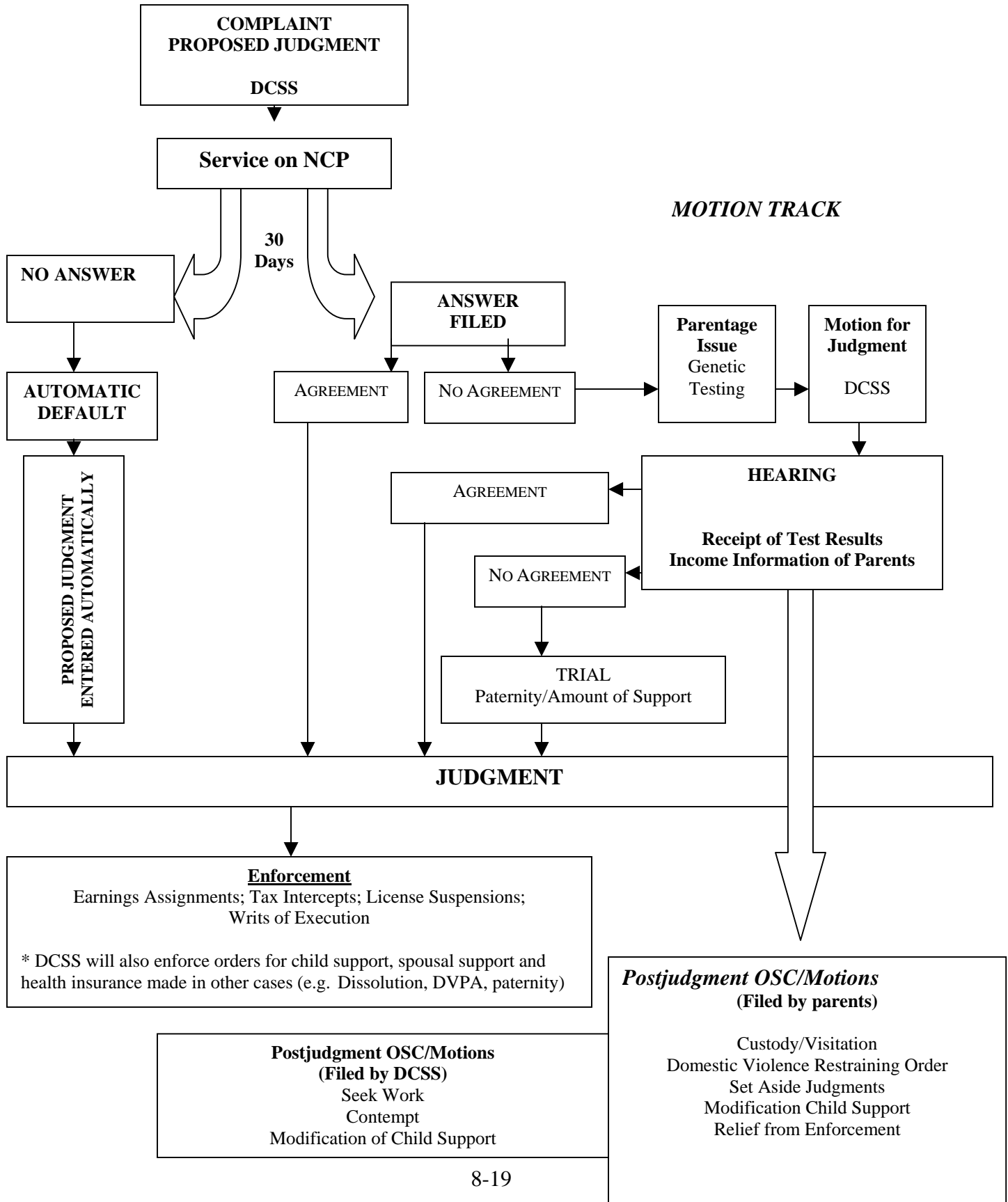
4. If no agreement:
  - a. Responsive declaration filed.
  - b. Child custody mediation required if custody/visitation is contested.
5. Hearing; Order.



**Chart 8A: TITLE IV-D Child Support Enforcement Basic Litigation Flowchart**

**JUDGMENT TRACK**

**MOTION TRACK**



## CHAPTER 9: DOMESTIC VIOLENCE PREVENTION ACT (DVPA)

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## 9.1 Domestic Violence Prevention Act (DVPA) Cases

Domestic Violence Prevention Act (DVPA) cases are those in which a party requests a civil domestic violence restraining order. (Fam. Code, §§ 6200 et seq.) The DVPA gives the court jurisdiction to make child custody, visitation, and child support orders in restraining order actions. The petitioner may request these additional orders without filing any additional underlying action such as a dissolution or Uniform Parentage Act case. Requests for domestic violence restraining orders are permissible in dissolution, legal separation or nullity, Uniform Parentage Act, Title IV-D Child Support Enforcement Act, and juvenile cases. (See Restraining Order chart, chapter 1.)

Orders for custody or visitation (Fam. Code, § 6323) and child support orders (Fam. Code, § 6341) can be made only if the legal parentage has been previously established. If there is a juvenile dependency case pending, the issues of custody and visitation must be addressed in that case. (Welf. & Inst. Code, § 304.)

### 9.1.1 Frequently Related Cases—*Examples*

- **Criminal Domestic Violence**

The coordination of criminal and civil cases involving domestic violence can help reduce the potential for conflicting restraining orders. When there is a conflict, the criminal protective order trumps the civil order.

Conflicting restraining orders can cause problems for the parties and their extended families as well as for law enforcement officers, prosecutors, and defense attorneys.

In this example, had the civil judge been aware of the terms of the criminal order, coordination of those orders might have been achieved by modification of the criminal order.

**Example:** Jason was arrested and charged with Penal Code section 273.5 (domestic violence) after an altercation with his girlfriend, Frances. They have two children together. At the arraignment, the court made an order that Jason stay away from Frances. Frances went to the civil court and asked for an order that Jason stay away from her and from her mother and sister (with whom she was staying). The civil restraining order was granted. Soon thereafter, Frances' mother was at the grocery store. Jason saw her enter the store and followed her around, demanding information about Frances and accusing her of stealing his children. Frances is now claiming that Jason violated the civil restraining order.

- **Civil Harassment**

The Domestic Violence Prevention Act allows only those people with certain defined relationships to file for restraining orders. If two parties do not fit into the DVPA definition of a domestic relationship, either one wishing to request a restraining order against the other must do so through an action for civil harassment.

In this example, the relationship between Noreen and Sheila does not fall within a category entitled to a restraining order under the DVPA. Therefore, even though the altercations between them center on a dating relationship, either would have to file a civil harassment request in order to get a restraining order against the other.

**Example:** Jorge, age 18, has been steadily dating Sheila, age 17. Previously, Jorge had been involved with another woman, Noreen, age 20. All these individuals live in the same neighborhood and attend the same church. Sheila and Noreen have frequent altercations over Jorge. Noreen claims that Sheila interfered with her relationship with Jorge. Sheila claims that Noreen is obsessed with Jorge and has been harassing her with threatening phone calls. She also believes that Noreen is responsible for slashing two of her car tires. She is asking for a restraining order against Noreen.

- **Juvenile Dependency**

Victims of domestic violence often have to try several times to pursue a restraining order before they are able to follow through. If there are children who are present during the violence, there is the possibility that the victim will be perceived as failing to protect the children in a dangerous situation.

As in the example, when a victim is hospitalized and the other parent incarcerated, if there are no family members to care for the children, they can end up in foster care. It is helpful to the dependency court to know whether or not the victim in such a situation has ever appealed to the civil court for assistance.

**Example:** Joanne is the mother of two children, ages 3 and 5. She has been the victim of serious physical abuse from the children's father for a number of years. A year previously she filed a request for a restraining order, but was afraid to pursue it and never served the papers or showed up for the hearing. Recently, there was an incident that was so violent that Joanne ended up in the hospital. The father of the children is in custody pending trial. The children have been taken into foster care and a juvenile dependency case initiated. The department of social services is alleging that Joanne has failed to protect the children.



## 9.2 Criminal Protective Orders (Pen. Code, § 136.2)

The criminal court may issue protective orders in cases that are based on underlying facts that involve domestic violence. Criminal protective orders include those made pursuant to Penal Code section 136.2 to protect potential witnesses, Penal Code section 1203.097 to protect victims and their families, and Penal Code sections 646.91 and 3053.2 to protect against stalking.

Criminal protective orders may be issued at any stage of the criminal case—from the defendant’s first appearance to the final disposition. As the case proceeds through the criminal process, the court may modify the order in response to requests made by the parties. If the case moves to different judges for different stages of the proceedings, as cases do in master calendaring systems, modifications are more likely to occur. If there is a conviction in the criminal case and the defendant is put on probation, the court may issue protective orders as a term of probation. If the case is dismissed, the defendant acquitted, or probation completed, no jurisdiction remains for a criminal protective order.

The criminal protective order may protect the alleged victim(s) and any potential witnesses to the crime, such as the children.

### **9.2.1 Criminal Protective Order Takes Precedence**

Penal Code section 136.2 states that a criminal protective order has “precedence in enforcement.” Therefore, when both a civil or juvenile restraining order and a criminal protective order are issued to restrain and protect the same individual(s), the terms of the criminal order will be enforced.

### **9.2.2 Access to Criminal Protective Orders**

Because criminal protective orders take precedence in enforcement over any civil or juvenile restraining orders, and criminal orders may be modified several times during the criminal case, unified family court judges must be able to readily determine the existence, and identify the current terms, of any criminal protective order. Therefore, civil and juvenile courts should have the ability to access the following forms in the criminal court file or in a bundled file:

1. Judicial Council Form CR-160 – mandatory since 1/1/00
2. Local forms for Penal Code section 136.2 orders – prior to 1/1/00
3. Local forms for conditions of probation – prior to 1/1/00

For the above reasons, it is also vital to include the terms of a criminal protective order in any automated case management system so that unified family court judges can readily access its terms online.

### 9.2.3 Common Domestic Violence Criminal Cases

#### Penal Code sections:

- 207 Kidnapping (domestic)
- 210.5 Hostages (domestic)
- 236 False Imprisonment (domestic)
- 240 Assault (domestic)
- 242 Battery (domestic)
- 243(e)(1) Battery (spousal)
- 243.4 Sexual Battery (domestic)
- 261 Rape (domestic)
- 262 Spousal Rape
- 286 Sodomy (domestic)
- 288a Oral Copulation (domestic)
- 270 Child Neglect
- 273a Child Abuse
- 273.5 Corporal Injury to Spouse
- 273.6 Violation of Protective Order
- 422 Terrorist Threats (domestic)
- 594 Vandalism (domestic)
- 646.9 Stalking (domestic)
- 653m Harassing by Telephone (domestic)

### 9.3 Restraining Orders in Juvenile Cases (Welf. & Inst. Code, § 213.5; Cal. Rules of Court, rule 1429.5)

Pursuant to Welfare and Institutions Code section 213.5, once a petition has been filed to declare a minor a juvenile dependent or a delinquent, the juvenile court may issue restraining orders to protect the child and any other child in the household. The types of restraining orders that are permitted under this section are more limited than those that are available under the DVPA. Specifically, the court may enjoin a person from abusing the child and may exclude any person from the household of the person who has care, custody, and control of the child. The same section gives the juvenile court jurisdiction to enjoin a person from abusing or contacting a parent, legal guardian, or current caretaker if such relief is applied for in manner provided for under Code of Civil Procedure, section 527. As a corollary, Welfare and Institutions Code section 304 gives the juvenile court authority to, on its own motion, issue restraining orders as described in the DVPA. The forms used to document these orders are not considered part of the confidential juvenile court file and are enforceable in the same manner as orders granted under the DVPA.

#### 9.3.1 Who Can Request a Juvenile Restraining Order

Juvenile restraining orders (form JV-245) can be requested by anyone who has standing in the juvenile case, such as parents, child, guardian, social worker, probation officer, caregiver, CASA, tribal representative, or anyone else with an interest in or relationship to the child.

#### 9.3.2 Juvenile Court Has Jurisdiction

Pursuant to Welfare and Institutions Code section 304, “[w]hile the child is under the jurisdiction of the juvenile court all issues regarding his or her custody shall be heard by the juvenile court.” Under that section, if a DVPA action includes a request for custody and/or visitation order and there is a concurrent juvenile dependency action, the family court is required to suspend its custody proceedings. Furthermore, the juvenile court may issue a restraining order within the dependency case to protect the victim of the domestic violence.

### **9.3.3 Access to Juvenile Restraining Orders**

In most cases, access to juvenile court orders is governed by Welfare and Institutions Code section 827. Juvenile restraining orders are an exception. They are recorded on a Judicial Council form (JV-250) for entry into the CLETS system, and are not confidential.

## 9.4 Elder Abuse Restraining Orders (Welf. & Inst. Code, § 15657.03)

Welfare and Institutions Code section 15657.03 provides for orders protecting elders from physical and financial abuse and from neglect and abandonment. An elder or a dependent is entitled to request an order of protection (form EA-100) under this statute.

There is potential for conflicting orders because an elder seeking an elder abuse restraining order may also request a DVPA restraining order and/or civil harassment order. For example, because family members within the second degree are eligible for DVPA restraining orders, an elder might seek protection through an elder abuse restraining order as well as from a DVPA restraining order if the abuse is being perpetrated by a family member in the second degree (including, among others, a sibling, child, spouse, or grandchild). The potential for multiple and conflicting orders is increased again if there is a probate conservatorship case.

### **9.4.1 Access to Elder Abuse Restraining Orders**

An elder abuse restraining order will usually proceed as an independent action, either in the family or probate courts. Therefore, an elder abuse restraining order may appear in a probate or family law file.

## 9.5 Civil Harassment Restraining Orders (Code Civ. Proc., § 527.6)

Code of Civil Procedure section 527.6 (form CH-100) provides for orders of protection against individuals who are not within a domestic violence relationship as defined in Family Code section 6211. Family disputes between members such as cousins, who are not related within the second degree, might be brought to the court through use of an action for civil harassment.

## 9.6 The Unified Court Process: Civil Domestic Violence Restraining Orders

### **9.6.1 Request for Order Under the DVPA**

By filing form DV-100, *Request for Order (Domestic Violence Prevention)*, a petitioner can request both temporary restraining orders pending the hearing and longer-term orders after the hearing. The temporary orders may be ordered on an ex parte basis, without notice to the respondent in the case.

### **Ex Parte Orders (Fam. Code, §§ 6320–6327)**

Because of the emergency nature of ex parte restraining order requests under the DVPA, Family Code section 246 requires that they be either granted or denied the same day they are presented to the court, or if presented late in the business day, the next day.

### ***Information for Judicial Officers***

Since decisions on ex parte orders must be made without the benefit of input from both parties, judicial officers need as much information as possible at the time they are presented the paperwork.

### ***Information Helpful in Making Ex Parte Decisions—Examples***

As many as possible of the following items should be provided to the judicial officers to help their decision-making process:

1. Copies of emergency protective orders;
2. Criminal status of respondent;
3. Copies of any existing criminal protective orders;
4. Information (for example, a case summary or a bundled file) about any cases involving the parties that potentially contain conflicting restraining orders or orders for custody/visitation, and copies of those orders;
5. Litigation history of the parties;
6. Criminal histories as set out in Family Code section 6306(a); and
7. Dependency status of the children.

### ***Challenges in Providing Information Quickly***

Certain circumstances and requirements may make it difficult to provide the above information quickly:

1. The short time frame within which the temporary restraining order must be processed;
2. Lack of access to the California Law Enforcement Telecommunications System; and
3. Lack of automated systems that can produce the desired information quickly.

## **9.6.2 Filing the Request for Order**

### **Identify Other Cases Involving the Same Parties**

Identification of related cases involving the same parties is critical in domestic violence cases because of the potential for conflicting orders and serious consequences for families and the courts. The methods for identifying cases are the same as those set out in chapter 7, section 7.5.1.

**Note:** Particular care must be taken to protect the safety of those seeking protection from the court. For example, Family Code section 6225 allows for orders to stay away from the protected person's residence, place of employment, and children's school or day care, without setting out specific addresses.

### **Safety Concerns**

When there are issues of family violence, court staff *must* ensure that the following procedures are in place to protect the safety of all family members:

1. Separate child custody mediations;

2. Safety procedures for any ex parte notice requirements  
Note: The usual requirement of 24 hours notice for ex parte orders is not mandated under the DVPA (Fam. Code, § 6300);
3. Safety procedures for entering and exiting the courthouse; and
4. Sufficient security in courtrooms and for court staff as well as litigants.

### **Coordinating Domestic Violence Files—*Examples***

Conflicting orders are likely in family violence cases owing to the numerous ways in which requests for restraining orders can enter the court. Moreover, conflicting orders may have serious safety consequences for families and children. To avoid these problems, unified family courts should coordinate cases in which protective orders may exist.

1. Requests for restraining orders should be filed in existing family law cases such as dissolution, legal separation, nullity, Uniform Parentage Act, or Title IV-D cases.

**Note:** No filing fee is required for the filing of a request for a restraining order, regardless of the types of case in which it is filed. (Fam. Code, § 6222.)

2. If a petition for dependency or delinquency has been filed in the juvenile court, the request for restraining order can be filed in the juvenile case record.
3. If a family law case is initiated subsequent to the filing of a DVPA request for order, the two cases should be consolidated as soon as possible, with the family law case as lead.

### **Referrals for Legal Assistance**

The courthouse staff should be prepared to make any or all of the following referrals to individuals filing for domestic violence protection:

1. Family law facilitator (if the court has provided non-AB 1058 funds sufficient to cover the time and associated operational costs of this activity);
2. Family Law Information Centers;
3. Other court-based self-help centers;
4. Legal services; and/or
5. Certified lawyer referral services.

### **Referrals for Social Service Assistance**

The courthouse staff should also be prepared to make referrals for help with nonlegal issues.

1. Domestic violence counseling and shelters;
2. Domestic violence advocacy agencies
3. Victim-witness services;
4. District Attorney victim advocates;
5. Local health care facilities;
6. Community mental health services;

7. Housing assistance; and/or
8. Public assistance programs.

### **9.6.3 Answer to Temporary Restraining Order**

Form DV-120, *Answer to Temporary Restraining Order (Domestic Violence Prevention)* is the written answer to a request for order under the DVPA. Because service of the request for order is valid up to 5 days before the hearing (if the temporary order was issued ex parte without notice), many respondents do not file an answer. When a respondent does file an answer, court staff should be prepared to make appropriate referrals for legal and other kinds of assistance.

#### **Referrals for Legal Assistance**

1. Public defender (if litigants are involved in a criminal case)
2. Family law facilitator (if the court has provided non-AB 1058 funds sufficient to cover the time and associated operational costs of this activity);
3. Family Law Information Centers;
4. Other court-based self-help centers; and
5. Legal services and/or certified lawyer referral services.

#### **Social Service Referrals**

1. Local health care facilities;
2. Community mental health services;
3. Housing assistance; and/or
4. Public assistance programs.

**Note:** It may be that an individual responding to a restraining order is also the victim of domestic violence. If so, appropriate referrals should be made.

### **9.6.4 Calendaring**

Family Code section 242 requires that restraining order hearings be calendared within 20 days (or 25 days if good cause appears to the court). In a unified family court, restraining order hearings would be scheduled according to the model the unified family court has adopted—comprehensive jurisdiction or information sharing. Or a unified family court might have a differential case management system that has specialized calendars—such as a domestic violence calendar—for cases in which family violence is a central issue.

#### **Calendaring Strategies—Examples**

1. Comprehensive jurisdiction: *one-judge-one-family*
  - a. In a unified family court that employs comprehensive jurisdiction, the hearing on a request for a restraining order will be set in front of whichever judge has been previously assigned to that family in other existing cases.

- b. If there are no other cases for the family, the hearing on a DVPA case will be assigned according to whatever workload system the unified court uses to allocate judicial workload.
2. Information sharing model: *one-team-one-family*
    - a. Courts that use a one-team-one-family design would set the DVPA case for hearing in whatever department has been established to hear that case type.
    - b. A restraining order request may be filed within a number of different case types such as dissolution, legal separation, nullity, juvenile dependency, juvenile delinquency, paternity and Title IV-D child support cases. If there is an open case in which the restraining order request can be filed, hearings would be set in whatever department has been established for that case type.
    - c. Information about other existing cases and potentially conflicting orders would be made available to all judges working with that family.
  3. Specialized domestic violence courts.  
Some courts have established specialized domestic violence calendars to handle family violence matters. There are a number of ways that different courts have gone about this.

#### **Domestic Violence Court Calendars—*Examples***

The specialized arrangements include the following:

1. Specialized calendars or courts dedicated to hearing all requests for civil restraining orders, regardless of the type of case in which they arise. The types of cases often include:
  - a. Family law (marital, Uniform Parentage Act),
  - b. Title IV-D,
  - c. DVPA,
  - d. Elder abuse, and/or
  - e. Civil harassment;
2. Specialized calendars or courts that hear only those civil cases filed under the DVPA;
3. Criminal domestic violence courts that employ vertical prosecution of domestic violence crimes, and use the drug court model of frequent compliance reviews; and
4. Integrated civil and criminal domestic violence courts that handle any domestic violence matter involving the same family.

#### **Differentiated Calendar Management in a Civil Domestic Violence Court—*Examples***

The existence of a request for a restraining order in a unified family court is likely to be a trigger for consolidation or coordination with a related case if one exists. When courts implement a specialized domestic violence court or calendar, differential calendar management can increase efficiency by organizing like cases together. For example, cases with children might be

scheduled at 8:30 a.m. and family court services scheduled to be available at that time for mediation, or the family law facilitator scheduled to be available for child support matters. Cases without children might be set at 9:00 a.m. and heard while the earlier cases work with court staff. Examples of simple possible differentiated calendar categories are set out below:

1. DVPA cases:
  - a. With children,
  - b. Without children;
2. Civil harassment cases; and
3. Elder abuse cases.

### **9.6.5 Hearings**

A unified family court is characterized by the quality and amount of information that is available to judicial officers at hearings upon which they can base decisions related to the welfare of a family. This is particularly important in cases involving family violence.

### **Available Information**

#### ***Mandated Information***

In these cases, certain information is mandated either by the Family Code or by the California Rules of Court.

**Family Code section 6306(a).** Prior to a hearing on a domestic violence restraining order, the court must conduct a search to gather certain information about the subject of the order:

1. Prior criminal conviction for a violent or serious felony;
2. Any misdemeanor conviction involving weapons, domestic violence, or other violence;
3. Any outstanding warrants;
4. Whether any litigant is on parole or probation;
5. Any prior restraining order or violation thereof.

The search should be of all records readily available and reasonably accessible to the court, including, but not limited to, the following:

1. The Violent Crime Information Network (VCIN);
2. The Supervised Release file;
3. State summary criminal history information maintained by the Department of Justice pursuant to section 11105 of the Penal Code;
4. The Federal Bureau of Investigation's nationwide database; and
5. Locally maintained criminal history records or databases.



**Other types of mandated information (See “Information Sharing”).** Other types of mandated information include the following:

1. Custody and visitation arrangements (Fam. Code, § 3140);
2. Child sexual abuse allegations (Fam. Code, § 3118);
3. History of criminal domestic violence (Fam. Code, § 6306(a)); and
4. Domestic violence restraining orders; coordination of criminal protective orders and child custody arrangements. (Cal. Rules of Court, rule 5.500.)

### ***Nonmandated Information***

The following types of information are not mandated but should be obtained whenever possible:

1. Ongoing tracking of related cases:
  - a. Any future hearing dates set in these cases and the purpose of the hearings,
  - b. All current restraining orders or orders for custody, visitation, or child support,
  - c. All existing orders for social services such as batterers’ intervention, substance abuse treatment, drug testing, parenting classes, or supervised visitation;
2. Recommendations of Family Court Services or other child custody evaluators;
3. Any issues related to the safety of family members; and
4. History of compliance with court orders.

### **Particular Legal Concerns**

1. **Ensure 5<sup>th</sup> Amendment protection.** Civil domestic violence calendars may find that the respondent is before the court prior to disposition in a pending criminal case. Protection of 5<sup>th</sup> amendment privileges is important
  - During hearings;
  - In family court services mediations; and
  - When working with a self-help center.
2. **Inform litigants about confidentiality.** All litigants should be clearly informed of the limits of confidentiality in any interactions with unified family court personnel, including staff that is assisting them. Safety must be the first concern. As it pertains to family court services, see California Rules of Court, rule 5.210.
3. **Provide legal information.** Information should be provided to both petitioners and respondents about their potential rights and obligations regarding the proposed restraining order. With respect to the issue of custody, see Family Code section 3044.
4. **Foster due process.** Implement procedures to ensure that the parties, and their attorneys if they have them, are aware of all information that is given to the judicial officer on their case(s), and have an opportunity to respond to it. In that regard, the unified court should work to avoid any ex parte communications between bench officers and other court staff with respect to the substance of the case.

5. **Set up separate child custody mediations.** Pursuant to Family Code section 3181, the individual seeking the restraining order has the right to request and receive separate mediation sessions. See also California Rules of Court, rule 5.215.
6. **Develop formal protocols.** Develop clear written standards about what information may be shared, how it should be maintained, and who is entitled to access to the information.

### **Providing Litigants With Written Orders**

Before they leave the court, petitioners and respondents should be provided with written copies of any restraining order made (form DV-130). Clear written orders, on proper Judicial Council forms, facilitate entry into the CLETS system and provide a basis for the police to enforce the orders in the community.

It is important that respondents as well as petitioners be provided with copies of the orders. Whenever possible, having court staff available to help explain the terms of the orders can also facilitate future compliance.

For methods of providing the parties with written orders at the time of the hearing, see chapter 7, section 7.5.1.

### **CLETS Entry (Fam. Code, § 6380)**

Once made, restraining orders are required to be entered into the California Law Enforcement Telecommunications System (CLETS). This is true of all restraining orders whether domestic violence, civil harassment or elder abuse, and whether made by a family law, juvenile, probate, or criminal court. The restraining order forms are entered into the CLETS system electronically.

In order to accomplish this task the court might (1) become an authorized CLETS entry location so that court staff immediately upon issuance can enter orders into the system, or (2) establish a protocol for transmitting orders to the law enforcement agency immediately upon issuance so that they can be entered into the CLETS system.

### **Continuances**

Continuances are not infrequent and can serve productive purposes. Often continuances for review can assist the parties to comply both with court orders such as supervised visitation, drug testing, or batterers' intervention, and with the restraining orders. Such continuances can enhance the effectiveness of the court's orders and increase safety for all involved.

Owing to the short time between the filing of the request for a restraining order and the hearing, more time may be needed by the court to gather the information it needs to make safe and functional orders that will last. Continuances for the purpose of focusing on the following areas are also thoughtful and productive:

1. Family court services mediation;
2. Any issues related to child custody; and
3. Production of financial information needed for child support orders.

Sometimes, however, continuances can be unnecessary and unproductive. Examples include additional court dates set owing to inaccurate paperwork, lack of proof of service, inability to serve, and confusion related to multiple cases within a court or between counties.

## 9.7 Social Services Coordination and Compliance Monitoring (See Chapter 10)

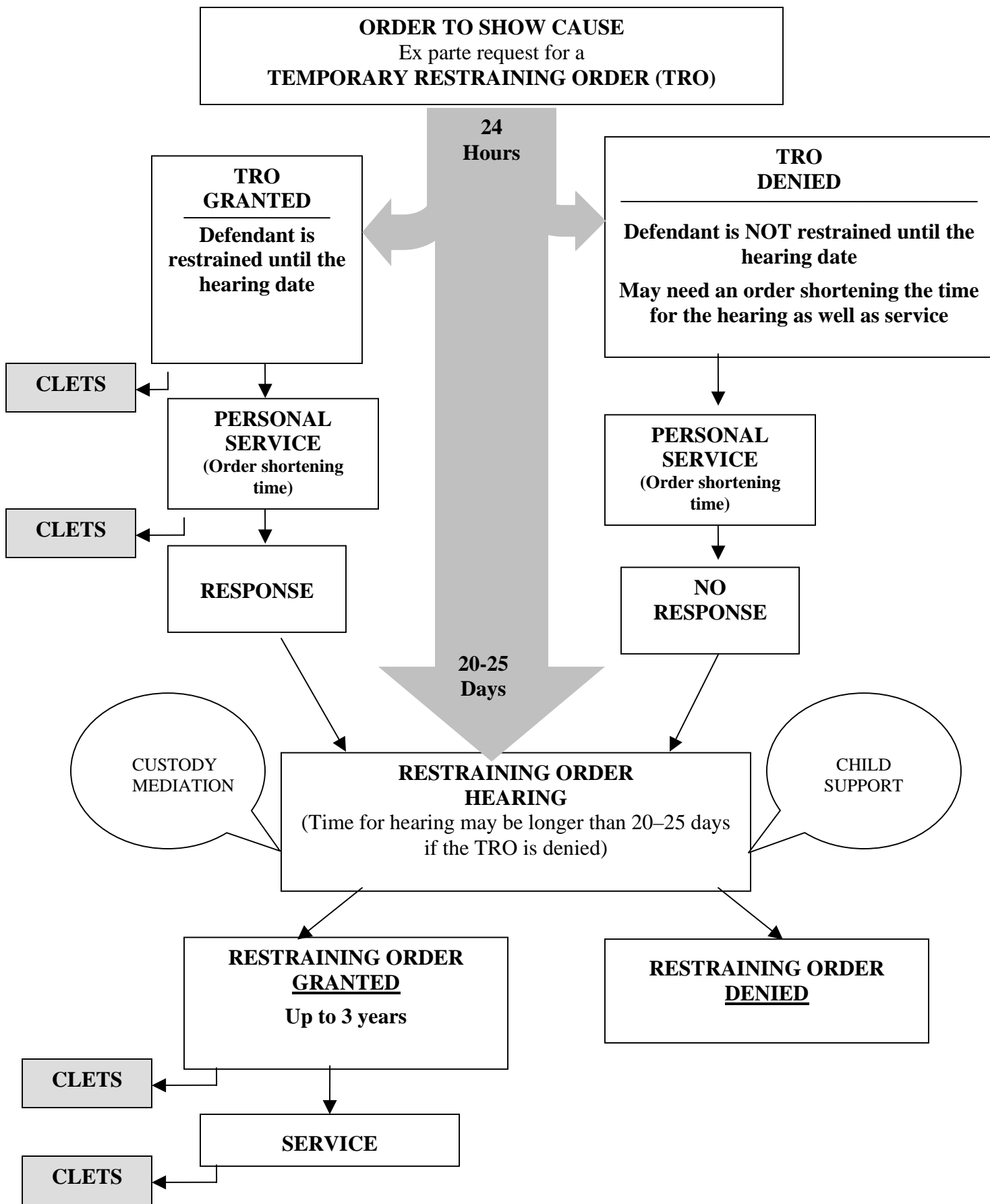
There are a number of types of orders for social service interventions possible in a DVPA case. Batterers' intervention, drug testing, and substance abuse treatment are among the most frequent. When issues of custody and visitation are included, other important concerns arise: child custody mediation and possible evaluation, counseling for parents and children, parent education, and supervised visitation. If there is a juvenile dependency case, the parties will be subject to a plan for reunification. If there has been a criminal case, one or both parties may be subject to the terms of probation. The ability of the parties to comply with these terms and complete the services varies, and different agencies may be charged with making and keeping track of referrals and compliance in different circumstances. When families are involved in more than one case in an uncoordinated court, the possibility of duplicate or conflicting orders for services arises. Please refer to chapter 10 for a more detailed discussion of these issues.

## 9.7 Procedural Overview: Civil Domestic Violence Restraining Orders

1. Petitioner files application for temporary restraining order.
2. Within one business day, court must decide whether or not to grant. If granted, it lasts until the hearing date.
3. At least 5 days before the hearing, the order must be served on the defendant.
4. If the temporary restraining order is granted, both a copy of the order and a copy of the proof of service on the respondent must be entered into the California Law Enforcement Telecommunications System (CLETS)
5. Within 21 days (or 25 days if good cause appears to the court), the court must hold a hearing regarding the request for a long-term restraining order.
6. If the order has not been served, the petitioner can request a reissuance of the temporary restraining order. The court can then set a new hearing date.
7. At the hearing, the court may grant or deny the orders requested. Frequently cases are continued so that the court can collect more information related to the allegations of violence, trail the case until after a disposition in a co-occurring criminal case, or monitor compliance with orders for social services.
8. Permanent restraining orders last up to three years. However, child custody and child support orders can last longer, until the child turns 18.

9. A copy of the restraining order, and copy of a proof of service on any respondent not present at the hearing, must be entered into the CLETS system.
10. The orders may be renewed for 3 years or permanently.

**Chart 9A: Civil Domestic Violence Restraining Orders**



**CHAPTER 10: SOCIAL SERVICE COORDINATION AND COMPLIANCE MONITORING**

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## 10.1 Protecting Legal Safeguards for Families

Unified courts for families are likely to be making orders for various types of social services. Coordinating these services and making effective referrals are two primary goals of the court—goals that must always be pursued with an eye to protecting the legal safeguards for families. A basic aspect of coordinating services is the reduction in duplicate or conflicting orders, which will save scarce resources for both courts and service providers, and assist litigants in complying with the orders.

Protection of legal safeguards for families is particularly important when working with services and service providers, whose interactions with families are extremely personal. Often the ability of individuals to benefit from social services depends on the level of safety they feel about honest communication with the service providers. The importance of privacy in these areas is recognized in the evidentiary protections afforded such communications as well as in the ethical codes for both legal and mental health professionals. At the same time, the unified court strives to provide judicial officers with substantial information on which to base orders related to the family. Both courts and families benefit when orders are based on reliable and complete information, and families receive effective services. (See chapter 3, Confidentiality and Information Sharing.)

### 10.1.1 Critical Steps

It is crucial that the following actions be taken:

1. Protect the privacy rights of the parties;
2. Ensure that all litigants are aware of the limits of confidentiality in any interactions with unified court personnel; address concerns about self-incriminating statements when there is a pending criminal case;
3. Inform litigants of the possible consequences of signing authorizations to release information among social service providers, or waivers of privacy privileges potentially available to them;
4. Develop clear written standards about what information may be shared, and who is entitled to access to the information;
5. Develop written policies about how the information is to be maintained and how to protect the privacy of the families;
6. Implement procedures that protect against inappropriate ex parte communication between judicial officers and court staff, case managers, or other service providers;
7. Implement procedures to ensure that the parties, and their attorneys if they have them, are aware of all information that is given to the judicial officer on their case
8. Ensure that a litigant's right to a hearing is never obstructed either by the use of alternative dispute resolution or by any social service intervention.
9. Ensure that social service providers such as child custody evaluators and supervised visitation programs comply where required with statutory mandates.

### 10.1.2 Avoiding Multiple Service Orders

The process of resolving disputes in a unified court is protracted. Issues such as child custody and visitation, child support, and spousal support remain under the jurisdiction of the court, often



for years after the judgment is entered. In a protracted dispute resolution process, orders for various types of community social services can help expedite the restoration of peaceful stability to families. In a unified family court, orders for various types of supportive social services are a common feature of the dispute resolution process. When families have multiple cases, the potential for duplicate and conflicting orders for social services is fairly high. In such cases it is possible to literally set families up for failure.

### **Multiple or Conflicting Services—*Examples***

1. A defendant is ordered to 52 weeks batterer intervention after pleading no contest to criminal spousal abuse. In the civil restraining order case this same person is ordered to 20 weeks of anger management as a condition of visitation.
2. An individual who is participating in a drug treatment court program is tested weekly for substance use. In the family law case, after the other parent files a request for a restraining order, this same person agrees to an order for random drug testing as a condition of visitation.
3. Pursuant to drug court participation, a defendant is participating in counseling with a certified substance abuse counselor. In the civil restraining order case, this person is also ordered to participate in substance abuse counseling, but there is a requirement that the counselor be licensed differently (e.g. therapist, social worker, psychologist).
4. As part of a reunification plan, a mother is ordered to undergo a psychiatric assessment. She is to comply with any medication recommendation and attend individual therapy sessions twice a week. She has another child who is the subject of a family law custody proceeding. As part of that case she is ordered to attend parenting classes, co-parenting counseling, and parent–child counseling.

## 10.2 Social Service Case Management

Coordination of services can promote efficient court processes and benefit the litigants. Mindful of confidentiality and other due process concerns, the unified court might employ a system of social service case management designed both to assist families and to expedite the court process.

Social service case management is a multifaceted endeavor that includes the following tasks:

1. Checking for multiple orders for services;
2. Coordinating multiple orders if they are not conflicting;
3. If orders are conflicting, bringing the conflict to the attention of the court;
4. Providing assistance to litigants to obtain and complete court-ordered services;
5. Locating services requested voluntarily by litigants;
6. Serving as a contact point of reference at the court for social service providers;
7. Tracking compliance; and
8. Organizing progress reports for judges.

### **10.2.1 Records Maintenance (See Chapter 3, Confidentiality and Information Sharing)**

The following types of records must be maintained:

1. Relevant family social service history;
2. List of court orders for social services; and
3. List of voluntary participation in social services.

### **10.2.2 Making Referrals for Social Services**

Social service case management requires accurate knowledge of what services are currently available to families. Further, it is important that litigants be sent to services that can actually meet their needs. Service providers as well need a contact point at the court to take in various sort of information, such as problems with orders for unavailable services, changes in days and hours of operation, and client progress reports.

The court must do the following:

1. Maintain list of services currently available;
2. Maintain ongoing contact with intake personnel at social service agencies;
3. Advise litigants of what they should expect from services;
4. Record and follow up on complaints from litigants about services.

### **10.2.3 Types of Services to be Coordinated**

There are numerous potential participants in a social services case plan. There can be varying types of services needed. Referrals for services may come from various places, such as the probation department, family court services, or child welfare department.

#### **Court Services—*Examples***

1. Family court services mediation/evaluation;
2. Juvenile dependency mediation;
3. Probate investigator services; and
4. Drug court services.

#### **Other Government Social Services—*Examples***

- |   |   |
|---|---|
| <ol style="list-style-type: none"> <li>1. Department of social services</li> <li>2. Adult protective services</li> <li>3. Public guardian</li> <li>4. Juvenile probation</li> </ol> | <ol style="list-style-type: none"> <li>5. Adult probation</li> <li>6. Victim-witness services</li> <li>7. Department of child support services</li> </ol> |
|---|---|

#### **Community Social Services—*Examples***

- |  |   |
|--|---|
| <ol style="list-style-type: none"> <li>1. Domestic violence shelters</li> <li>2. Batterers' intervention</li> <li>3. Mental health services</li> <li>4. Family counseling</li> <li>5. Housing</li> <li>6. Public benefits</li> <li>7. Supervised visitation</li> </ol> | <ol style="list-style-type: none"> <li>8. Parenting classes</li> <li>9. Substance abuse treatment</li> <li>10. Drug testing and assessment</li> <li>11. Vocational and job assistance</li> <li>12. Education Resources</li> <li>13. Medical care</li> </ol> |
|--|---|

### 10.3 Compliance Monitoring

In a unified court, compliance with court-ordered services can involve several possible monitoring agencies. Examples are family court services, drug court services, probation department, child welfare department, and the department of child support services (DCSS). Any social service case management provided to litigants through other unified court operations should be working in collaboration with these and other partners.

#### **10.3.1 Legal Assistance**

It is important that litigants understand what the court expects of them. Providing written orders at the time of hearing is important. It is also important that self-represented litigants understand the content of their orders. To assist in compliance efforts, litigants can be referred for help with obtaining written orders if they are missing, or for explanation of orders in hand. The following agencies may provide such help:

1. Family law facilitator (for child support);
2. Family law information center, self-help center;
3. Other court-case self-help centers; and
4. Qualified community legal services.

#### **10.3.2 Facilitating Initial Intake**

Litigants often have the most trouble early in the process when they are least familiar with the services offered or the people with whom they will be dealing. Social services case management can promote progress and compliance by facilitating the first contact between a social services provider and the litigant.

#### **10.3.3 Maintaining Contact With Litigants to Assist in Compliance**

As the process progresses, a number of issues may arise that can be handled by a social service case management system. The court can benefit greatly from information from litigants about the effectiveness of the services they are receiving.

The court should take the following actions:

1. Receive information about helpfulness of services;
2. Check reasons for any noncompliance;
3. Assess services received; and
4. Help resolve compliance problems.

#### **10.3.4 Maintaining Contact With Service Providers to Assess Progress**

Service providers also benefit from having a single point of contact at the court so that information can be exchanged. This function can be performed by a case manager or by a court staff position specifically dedicated to liaison work with the community. Development of efficient systems of referrals and progress reporting is important. Communication with and among social service providers is critical to the court, but must be carefully controlled in order to protect the safety and welfare of the families.

The court's social services case management strategy should have staff specifically dedicated to performing the following functions:

1. Serve as a single point of reference at the court for service providers;
2. Work in collaboration to establish efficient referral systems;
3. Accept progress reports from service providers; and
4. Help resolve complaints from litigants about providers.

### **10.3.5 Making Referrals to Alternate Providers**

As cases progress through the court process, different or additional needs for social services might be identified, orders modified, or services requested by the litigants themselves. There may be problems with original referrals in terms of scheduling or amenability to specific treatment modalities. The ability to refer to alternate services or service providers can help foster compliance with orders.

### **10.3.6 Coordinating With Compliance Monitoring of Other Agencies**

Compliance may be monitored by various agencies. Collaboration between the unified court and those charged with compliance monitoring of social service orders can enhance the court's ability to see that families are complying with its orders.

The court should collaborate with the following agencies:

1. Family court services;
2. Department of child support services;
3. Probation department; and
4. Child welfare department.

### **10.3.7 Tracking Upcoming Court Appearances**

Keeping track of upcoming court appearances can facilitate efficient court processing by making sure that reports are in when due, that information is provided to litigants and their attorneys prior to court, and that continuances can be arranged when appropriate without need of a court appearance.

### **10.3.8 Maintaining Service Progress Reports for the Court**

A social services case management system can also facilitate efficient use of the courtroom by ensuring that progress reports are presented to judicial officers, litigants, and their attorneys in a timely and orderly manner. Service providers also benefit from uniform court procedures in making progress reports. (See chapter 3, Confidentiality and Information Sharing.)

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## 11.1 Description and Duties

This chapter discusses the possible duties, roles, and training of judicial officers and various court staff in a unified court. Many of the roles and duties of particular staff and judicial officers will vary depending upon the organization of each given court. Additionally, the assignment of responsibilities will depend greatly on staff resources and expertise in any county.

### 11.1.1 Presiding Judge

The unified court will need the support and guidance of its presiding judge. The presiding judge will oversee implementation and coordination efforts, guide formal training of other judicial officers and court staff, and attend to matters of legal and procedural import. A unified court presiding judge can also be particularly effective in educating the public about the court and its importance to the community, particularly with respect to such issues as domestic violence, substance abuse, and child abuse or neglect.

### 11.1.2 Other Judicial Officers

Depending on the size of the county and the caseload volume, a unified court is likely to have several judges assigned to hear family and juvenile cases. Even smaller counties should have more than one judge who can hear such matters in the event of disqualification or absence of a judge.

Judges whose primary duties are in the family and/or juvenile courts should demonstrate a personal commitment and interest in the unified court, and willingness to participate in ongoing judicial education. Short-term assignments are not optimal, since cases are often complex and litigation protracted. Judicial continuity generally leads to more informed and comprehensive decisions. In child welfare cases, it may even increase the likelihood that reunification or permanent placements will occur in a timely manner. Additionally, a lengthy term in these courts increases the likelihood that judicial officers will develop the requisite expertise.

### 11.1.3 Unified Court Manager

The court should establish one person who is responsible for managing the administrative aspects of the unification project.

#### **Possible Administrative Tasks**

Although duties may be delegated, this person will be responsible for managing all administrative aspects of the unification project. Some of those tasks are listed below:

1. Coordinate communication with the community, other courts, the Administrative Office of the Courts (AOC), and other agencies and governmental entities;
2. Collect and provide data for the court's own evaluation and that of outside assessors;
3. Coordinate training for unified court staff and judicial officers;
4. Coordinate staff participation in state and nationwide unified court programs;
5. Maintain all program records and files;
6. Organize and lead site visits;
7. Administer grants and apply for funding; and

8. Manage personnel.

#### **11.1.4 Clerks/Administrative Assistants**

Efficient court operations are central to successful unified courts. It will frequently fall to court clerks to initiate coordination activity at the time cases are filed, or when orders to show cause or motions are filed. Historically, the task of dealing with coordination issues has rarely been identified as a specific workload item, and has fallen to court operations staff, court clerks, and judges. With the development of the unified family court these tasks must become clearly delineated elements of the overall structure. A large part of the coordination effort will remain dependent on the work of court administrative staff.

#### **Possible Coordination Tasks**

While some of the following duties can and, in some situations, must be done by other court staff, court clerks or administrative assistants may be the appropriate personnel for these duties:

1. Identify crossover cases at filing;
2. Link cases in database;
3. Notify court, parties, and involved agencies of coordination of cases;
4. Coordinate calendar dates and hearings;
5. Collect data;
6. Participate in meetings;
7. Participate in effort to refine and standardize the process of case coordination;
8. Pull related files and bundle cases;
9. Enter data; and
10. Generate and send notices and orders.

#### **11.1.5 Case Manager**

A case manager's duties will depend on how a particular court defines the job. Most of this person's work will be devoted to the coordination of multiple cases and the facilitation of effective case processing. In a unified court this role also includes providing judges with the best information available about the families so that they can create optimal dispute resolution plans. The case manager also attends to the implementation and successful completion of these plans.

#### **Case Processing Tasks—*Examples***

The duties of a case manager will involve finding related cases, coordinating the sharing of information, and tracking and calendaring cases through the system. Specific tasks include the following:

1. Assist in management of unified court cases from docketing to disposition;
2. Develop and implement procedures, protocols, and rules for the unified court project;
3. Create forms, information sheets, and waivers of confidentiality;
4. Search for related cases at intake to determine eligibility for unified court program and link cases on database;
5. Provide notices to parties and judicial officers of coordinated cases;
6. Coordinate exchange of information or case files between court locations;
7. Monitor case filings and integrate family matters for judges:
  - a. Possible techniques:
    - i. Prepare a bundled case report,



- ii. Create a physically bundled file,
- iii. Link cases in the computer system, and/or
- iv. Develop databases to monitor the status of all cases involving families in unified court project;
  - Ensure that databases contain all necessary information and linkages to inform judges of status of unified court cases;
- 8. Coordinate calendar dates and hearings;
- 9. Identify and facilitate resolution of contradictory and duplicate orders;
- 10. Track case flow time, continuances, and progress toward judgment or dismissal;
- 11. Develop and participate in training for judicial officers, court staff, and agency representatives;
- 12. Supervise staff assigned to perform coordination duties;
- 13. Provide data to AOC and researchers; and
- 14. Respond to inquiries from other counties' courts.

### **Service Management Tasks—Examples**

A case manager's duties may also involve meeting with the families and service providers, assisting in the development of a comprehensive case plan, and monitoring agencies' provision of services for the court and families' participation in these services. Specific tasks include the following:

1. Identify and assess current services;
2. Assess families' service needs and refer families to appropriate services;
3. Facilitate development of family case plans among service providers—integrate service provider plans into comprehensive approach for family, with documented desired outcomes and expected service dates;
4. Develop family case diagram and case summary practices;
5. Serve as primary contact for families in program;
6. Provide family orientation;
7. Manage cases, including assessment of needs, recommendation of level of service, and facilitation of access to services;
8. Follow up with families and agencies to ensure that families are participating in services, progress is being made, and any obstacles are addressed;
9. Coordinate information flow between judicial officers and service providers;
10. Meet with family court services to track case flow and progress;
11. Conduct and participate in meetings; and
12. Coordinate with other unified court staff.

### **11.1.6 Community Liaison**

Establishing a community liaison for the court can be an effective way to ensure that litigants are referred to quality services and to facilitate the flow of procedural information between the court and the community.

### **Community Liaison Tasks—Examples**

The following are some possible duties for a community liaison:

1. Investigate quality of services by agencies to ensure that referrals are appropriate and effective;

2. Conduct regular site visits to all service providers to determine type and quality of services provided;
3. Create and maintain a comprehensive list of service providers and agencies, with contact information, services provided, eligibility guidelines, fees for services, and capacity of organization to serve particular populations;
4. Participate in ongoing effort to refine and standardize the service referral process and follow-up;
5. Convene service providers in unified court cases upon request of the provider, the family, or the judge, and lead multiagency discussions related to current services, family strengths, areas to emphasize in case plan, and expected outcomes;
6. Facilitate information exchange between service providers and the court, when permissible, and coordinate court attendance of agencies or treatment professionals when needed;
7. Assist in the development of a training plan for court staff and service providers; and
8. Conduct public outreach activities, including speaking at meetings, preparing materials about the unified court project, answering questions from other courts, and acting as a liaison between community agencies and the unified court project.

#### **11.1.7 Technical Staff**

Coordination of family and juvenile matters requires a great deal of information retrieval, sharing, and storage, the bulk of which is done using computer databases and systems in most counties. As a result, most unification projects benefit greatly from dedicated technical staff working on the project.

#### **Technical Support—*Examples***

The duties of technical staff would include the following:

1. Conduct an assessment of software programs currently on staff computers;
2. Install programs needed to support project;
3. Create statistical programs;
4. Work with other unified court staff to determine the best way to set up databases, flags, and searches for coordinated cases, and then implement the design;
5. Troubleshoot systems and databases;
6. Modify existing systems to accommodate new forms and procedures implemented by unified court project;
7. Investigate, assess, and make recommendations to administration regarding new programs that may enhance project; and
8. Enhance and update information on Web sites to promote self-help.

#### **11.1.8 Court Services: Investigation and Mediation**

Family court services, juvenile dependency mediation, and probate investigation have important roles in the unified family court. The relationship between these court services is critical, particularly when the safety of family members is at stake.

Mediation is often a valuable piece in the comprehensive approach a court may take with a family or a group of related cases. Family court and dependency mediators work to ensure that all parties involved understand the limitations on confidentiality. Mediation should assist the

parties to resolve their disputes, but it should not be used as a barrier to the parties' rights to a hearing before a judge.

### **11.1.9 Research Attorney**

Courts routinely use research attorneys to assist them with determining the law and its application in particular cases. A court attempting unification may also need a research attorney to assist it in developing new procedures and ensuring their legality.

#### **Research Attorney Tasks—*Examples***

A research attorney's duties would include the following:

1. Analyze statutes, local court rules, and other legal issues related to the unified court;
2. Advise project staff on confidentiality, due process, and information-sharing issues;
3. Review legal documents and forms to ensure legal compliance and sufficiency;
4. Assist in development of protocols, rules, and forms; and
5. Provide legal assistance to judicial officers, case managers, and service coordinators.

### **11.1.10 Family Law Facilitator and Other Pro Per Assistance**

Assistance to self-represented litigants is critical to the efficient operation of a unified court. In most courts, the majority of litigants will be unrepresented by counsel in family law matters—particularly in cases of domestic violence or Title IV-D child support enforcement.

Unrepresented litigants will need assistance throughout the entire court procedure. The California Judicial Council's Task Force on Self-Represented Litigants has found that providing court-operated self-help centers that are staffed and supervised by attorneys is the optimal method of providing cost-effective services to the public and promoting the efficient processing of pro per cases within the court.

#### **Types of Services**

Self-help centers should be encouraged to include an array of services designed to assist the public and the court in the processing of cases involving self-represented litigants. Family law facilitators may only provide services related to child support, health insurance, and collection of spousal support when there is a child support order. Self-help centers should offer the following services:

1. Diagnostic assessment;
2. Triage and referral to other legal assistance;
3. Assistance with forms and procedures;
4. Courtroom assistance to prepare orders, reach agreements, or answer questions;
5. Mediation of financial issues and drafting of stipulations;
6. Assisting litigants with preparation of judgments;
7. Assisting in coordination of related cases and in development of optimal court operations to expedite cases involving self-represented litigants;
8. Serving as a resource for judicial officers and court staff on legal and procedural issues affecting self-represented litigants;
9. Providing litigants with information about enforcement of orders and judgments;
10. Serving as special experts in particular proceedings;
11. Assisting the court with research; and
12. Providing information to litigants about how to get help with the appellate process.

A self-help center must be diligent in providing notice to litigants about the limits on the confidentiality of information given to the self-help center, the fact that it is not providing them with legal advice, and the fact that services of the center are available to both sides of a case.

### **Sources for Pro Per Assistance—*Examples***

1. **Family law facilitators:** Each of California’s 58 counties has a family law facilitator. Family law facilitators are attorneys who assist pro per litigants with issues of parentage, child support, health insurance, and collection of spousal support when there is a child support order. They are federally funded under Title IV-D. This funding restricts them to work that concerns child support–related issues only. Many courts, however, have provided supplemental funding that allows the facilitators to assist with other important issues such as dissolution, custody, visitation, domestic violence matters, and non–Title IV-D support.
2. **Family law information centers:** Family law information centers can provide services that are not provided by the family law facilitator. The use of family law information centers can expedite the court process for litigants and save valuable time for judges and other court staff.
3. **Other court-based services for self-represented litigants:** Whenever possible, court-based pro per assistance services should be integrated within a county or regional self-help center system. Smaller counties may be better able to serve self-represented litigants by pooling resources to create cross-county programs.

Litigants often have legal issues covering more than one area of law. Self-help centers should therefore strive to cover the comprehensive range of service areas affecting self-represented litigants and include such existing programs as the family law facilitators. For example, litigants will frequently need help with family law issues other than child support. Litigants with unlawful detainer may also have family law or small claims cases. Juvenile dependency litigants may also have domestic violence cases. Litigants with unresolved traffic tickets may face loss of license that will affect their ability to transport their children as well as to get to work.

An integrated program is the most cost-effective way to maximize attorney resources. It facilitates the sharing of information among staff, broadens the reliable referral base, increases the opportunities for in-house training and expansion of professional expertise, promotes uniform procedures and forms, and allows the public to bring all of their questions to one program.

#### **11.1.11 Volunteers**

Courts should also consider using volunteers to assist parties and the court. Internship programs for legal and social work students can be mutually beneficial for court staff and the students. Further, such internships provide hands-on training for future court staff, family and juvenile attorneys, local service providers, and judicial officers. Volunteers can be used in providing general information about the court and helping the public navigate through the courthouse. With appropriate levels of training, volunteers can also assist with mediation, preparing orders after

hearing, conducting information workshops, and providing basic assistance to litigants without attorneys.

**Volunteers—*Examples***

1. Law student interns;
2. Clinical interns;
3. Other students;
4. Interpreters; and
5. Court Appointed Special Advocate (CASA) volunteers.

## 11.2 Training

As society has become more complex, so have the cases coming into the courts. Cases often require greater use of social services. Judges and appropriate staff need to develop the necessary expertise and knowledge to provide comprehensive and effective family dispute resolutions. As with all complex litigation, family and juvenile courts utilize experts in many fields, both court appointed and privately retained, to advise on issues requiring specialized knowledge—particularly in financial and psychological areas. It is important that judges and other court staff receiving this information be trained so that they can evaluate it critically and give it appropriate weight in their decision-making.

Providing the necessary training to judicial officers and court staff is critical to ensuring that they have the knowledge and expertise to perform their jobs. Similarly, courts should encourage other professionals in family and juvenile law to develop the necessary expertise in this complex area. In court systems that have begun the process of unification, training may be even more critical because these systems may require staff to have or develop expertise in a greater number of legal areas than before. Additionally, court staff and judicial officers will need to master the new court practices and procedures.

### **11.2.1 Possible Subject Matter Areas**

The areas in which the unified court should consider offering training include the following:

1. Domestic violence;
2. Child abuse;
3. Child development;
4. Basics and developments in family and juvenile law;
5. Laws and procedures regarding confidentiality and due process;
6. Providing unrepresented litigants with access to services and expertise;
7. Cultural competency;
8. Substance abuse;
9. Mental health;
10. Use of automated systems;
11. Community relations and available services;
12. Public benefits laws; and
13. The Indian Child Welfare Act.

### **11.2.2 Training Required by Law**

For many court professionals, the law and rules of court dictate the required training. The chart below provides a list of some of those requirements. It does not contain all requirements and should not be relied upon exclusively.

Chart 11A: Training Requirements Chart

<b>JOB TITLE</b>	<b>STATUTE OR RULE CONTAINING REQUIREMENTS OF TRAINING, CONTINUING EDUCATION, EXPERIENCE, AND/OR QUALIFICATIONS</b>
Child custody investigators and evaluators	Cal. Rules of Court, rules 5.220, 5.225 and 5.230 Fam. Code, §§ 1815 and 1816
Court-connected dependency mediators	Rule 1405.5
Court-connected child custody mediators, the mediation supervisor, and the family court services director	Rules 5.210(f) and 5.215 Fam. Code, §§ 1815 and 1816
Family court judicial officers	Rule 5.30
Family law facilitator	Rule 5.35
All family court services staff	Rule 5.215 Fam. Code, § 1816
Court clerk staff handling Title IV-D cases	Rule 5.355
Attorneys in juvenile cases	Welf. & Inst. Code, §§ 317, 317.5, 317.6 Rule 1438, Rule 1479
Child support commissioners	Rule 5.340
Court Appointed Special Advocates (CASA)	Rule 1424

**CHAPTER 12: THE COURT AND ITS RELATIONSHIP TO THE COMMUNITY AND SERVICE PROVIDERS**

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## 12.1 Identification of Stakeholders

Participation by the community is an essential component to any successful unification or coordination of family and juvenile courts. Community participants might include governmental agencies, the legal community, community social service providers, and the families. Any court attempting to coordinate family and juvenile proceedings should develop a plan for community involvement and relations.

Input from community stakeholders is critical in developing a unified family court. Planning is enhanced by participation from appropriate community members from the beginning of the coordination effort. Courts will be relying on the community for providing services, identifying problems, and assisting with trouble-shooting, both in individual cases and concerning the larger picture. Stakeholders can form a large family-and-juvenile-law advisory group that also contains subcommittees to deal with particularly thorny issues.

The unified court must start by identifying the stakeholders who are most crucial to its operations. Perhaps the most important stakeholders are the families and children that come before a unified family court. Careful attention to input from these individuals will provide invaluable information that can enhance the effectiveness of court operations. In addition to the families, many others may have a stake in the implementation and operation of a unified court.

### **12.1.1 The Court**

Court stakeholders include judges, administrators and other court staff. Below are examples of court stakeholders:

1. Judges;
2. Subordinate judicial officers;
3. Courtroom staff;
4. Family court services;
5. Family law facilitator;
6. Other self-help center staff;
7. Dependency mediators;
8. Probate investigators;
9. Research attorneys;
10. Court clerks;
11. Administrative staff; and
12. Court technology staff.

### **12.1.2 Community Service Providers**

There are numerous potential partners in the community with which a court might work. Some examples are set out below:

1. Low- or no-fee legal services;
2. Homeless services;
3. Crisis intervention services;
4. Community health clinics;
5. County hospital and related programs;

6. Sexual abuse clinics or resource centers;
7. Supervised visitation programs;
8. Other neutral drop-off centers;
9. Parenting classes and assistance;
10. Child care / respite care programs;
11. Mental health and psychiatric services, including individual, couple, family, and group therapy programs; mental health evaluation programs; and providers of medication evaluations, medications, and monitoring;
12. Substance abuse treatment programs, including inpatient rehabilitation centers and outpatient services such as Alcoholics Anonymous;
13. Evaluation and assessment services, including child custody, mental health, and substance abuse programs;
14. Programs for mediation and other forms of alternative dispute resolution;
15. Independent living skills programs for youth in the foster care and juvenile justice systems;
16. Vocational training and employment assistance programs;
17. Domestic violence prevention programs offering treatment, counseling, advocacy, and shelters;
18. Batterers' intervention programs;
19. Court-Appointed Special Advocates (CASA);
20. Housing services;
21. Anger management classes;
22. Foster care agencies;
23. Adoption agencies;
24. Boys' and Girls' clubs;
25. Runaway youth shelters;
26. Other youth groups—including those that focus on advocacy, activities, skill-building, and vocational training;
27. Transportation services, particularly for the elderly and for those with disabilities or health problems;
28. State and local agencies on aging;
29. Regional centers for persons with disabilities and other disability services; and
30. Centers for Independent Living.

### **12.1.3 Legal Stakeholders**

Legal stakeholders in the unified court might include the following:

1. Local bar associations—court-appointed panels;
2. Private attorneys: family, juvenile, criminal, probate;
3. Legal services;
4. Community-based self-help center attorneys;
5. Public defenders;
6. District attorneys;
7. Department of child support services attorneys;
8. City attorneys and county counsel; and
9. Local law schools and professors.

#### **12.1.4 Other Government Agencies**

Many other government agencies may be available to assist families, in addition to the unified court. These might include the following:

1. Law enforcement agencies;
2. Victim witness assistance programs;
3. Adult protective services;
4. Public guardians;
5. County mental health / foster care mental health agencies;
6. Departments of public health;
7. Local child welfare agencies, including child protective services and public assistance programs;
8. Juvenile and adult probation departments;
9. School districts and county boards of education;
10. Social security offices; and
11. Department of immigration offices.

#### **12.1.5 Other Potential Stakeholders**

Other potential stakeholders might not be as directly involved in all aspect of the unified court, yet have a clear interest in its success.

1. Community organizers;
2. Local government officials;
3. Legislators;
4. Clinical and social work training programs;
5. Youth advocates;
6. Senior advocates; and
7. Disability access experts.

### **12.2 Involving and Organizing the Community**

Court and community collaboration is greatly facilitated when the court assumes a leadership role. Implementation of the following measures may promote successful leadership and collaboration.

#### **12.2.1 Assign Dedicated Staff: Community Liaison Position**

The community liaison would establish and maintain communication and coordination with members and organizations of the community.

#### **Potential Tasks**

The community liaison would have the following responsibilities:

1. Ensure that service delivery occurs on a timely and cost-effective basis;
2. Develop and maintain a directory of community services;
3. Monitor the delivery of services to families referred by the court;
4. Identify and meet on a regular basis with court liaisons (persons appointed to represent each major community agency) to strengthen the linkage between the family court and that agency;
5. Assist with development of information-sharing protocols;

6. Identify gaps in community services and participate in planning to fill gaps; and
7. Evaluate agencies and services through interviews with agency and organization staff, site visits, and interviews with clients.

### **12.2.2 Facilitate Regular Stakeholder Meetings**

Regular stakeholder meetings can help identify problems and concerns, and also successes. A designated facilitator not only provides structure during the meetings, but can also serve to summarize and organize the results of meetings for the participants.

#### **Potential Meeting Facilitator Tasks**

The meeting facilitator would have the following responsibilities:

1. Keep communication productive, ensuring that everyone gets a voice;
2. Ensure balanced participation;
3. Keep participants on task and on schedule;
4. Assist the participants in coming to consensus or deciding that more information is needed before a certain decision can be made;
5. Articulate what has been decided and make sure that participants are clear about those decisions;
6. Ensure that tasks are assigned and that participants know their assignments; and
7. Sum up what was accomplished, and what will be addressed at the next meeting.

### **12.2.3 Create a Directory of Community Resources**

The court/community liaison should develop a comprehensive list of services and community resources to enable court staff to make informed and useful referrals. Such directories might include the following information about each resource:

1. What services it provides;
2. Whether it has eligibility guidelines;
3. Who uses its services—in demographics and numbers;
4. How it is funded;
5. How referrals are taken;
6. How clients gain access to services;
7. Hours of operation;
8. Language capacity;
9. Disability access;
10. Fees for service;
11. Rules on client confidentiality; and
12. Who is willing to be a contact between the court and the agency.

### **12.2.4 Provide Community Education**

Judges and court staff in a unified court can be invaluable in educating the public about how the court operates and what it can and cannot do. Participation by judges and other court staff in community education will help foster realistic expectations of the court by other community stakeholders.

A unified court might make more training available to a variety of its stakeholders on issues such as domestic violence, custody and visitation, eviction, and foster care placement. Law

enforcement agencies, for example, are sometimes asked to enforce orders for which the individual seeking assistance has no written document; or arguing parties may present an officer with orders that appear to conflict. Unified courts need ongoing input from law enforcement staff about problems they are experiencing enforcing court orders in the field. All stakeholders have valuable information that should be shared to the greatest extent possible. Joint training efforts are key.

Educational materials describing court processes can be developed. Videotapes, speaker materials, and talking points on a variety of legal issues could be prepared for use by public-access television stations, self-help centers, law libraries, and other information outlets. Informational videotapes might be shown before a court calendar is called to explain the basic procedures and legal issues to be covered.

## **APPENDIX A**

# **PROFILE OF THE UNIFIED COURTS FOR FAMILIES PROGRAM'S Mentor Courts**





## Butte and Glenn Counties

### **Coordination Approach**

Butte and Glenn formed a regional collaboration to (1) locate and provide information to judges regarding families with multiple cases and (2) coordinate the services that families need. Butte has a two-track system: a one-judge-one-family track and a paper bundled track. Glenn has a one-judge-one-family model. A coordinated services manager is shared by the two courts to assure that services needed by families are offered within an effective system of collaboration among local service providers. Two case coordinators, one in each county, are assigned to begin coordination of the cases as they are identified. As a mentor court, the Butte-Glenn partnership plans to provide outreach and training for regional court neighbors. The training will cover, among other things, forms, resource information, and data collection methodology.

### **Case Types**

The court handles child custody issues, family support issues, restraining orders, juvenile dependency cases, juvenile delinquency cases, criminal cases, and all other issues in which children are involved. All dependency filings are screened for eligibility for the Coordinated Family Court project. Each active case involving family members is included in a report to the judge for review. Eligibility criteria include (1) being a family with more than one open case, and (2) having a need for coordinated court services, particularly due to domestic violence in the family. In order to avoid duplicative services, families that participate in the coordinated family court project will not be eligible for other collaborative courts. The judge will determine which families are selected for the project. Cases in domestic violence court and family treatment court are screened to determine if there is a second case involving a child as well as other family members. This could make them eligible for the bundled paper track in Butte.

### **Definition of Family**

“Family” is defined by the parties involved in the cases. In interviews, the mother(s), children, and father(s) are asked to identify those they consider to be important people in their family unit. Service providers will also give information regarding the family members who are important in the creation of a safe environment in which children will thrive. At a minimum, the coordinated family court project cases will include children and the adults who play a role in those children’s lives. Bundled cases could include the mother(s) of the children in the case, the biological father(s), stepfather(s), and other adult companions who participate significantly in the lives of the children. Family Advocate Coordination Team (FACT) meetings may include guardians, grandparents, aunts, uncles, stepmothers, foster parents, domestic partners, friends, teachers, or religious advisors.

### **Additional Key Components**

Protecting confidentiality is a key component of the coordinated family court project’s coordinated family services. Family members must freely agree to participate in the program, after receiving complete program information.

## Del Norte County

### **Coordination Approach**

Using a one-family-one-case-manager model, Del Norte is coordinating all cases involving children. The court hired a case manager, who facilitates the gathering of case information for judicial officers and works directly with families and service providers to resolve specific issues. Del Norte is also enhancing its self-help center and has initiated the WrapAround program, which provides services for families. The court also plans to create a relational database to track cases and identify related cases.

### **Case Types**

Case types include domestic violence, dissolution (with child involved), guardianship, juvenile dependency, and juvenile delinquency cases, family support orders, and petitions to establish parental rights.

### **Definition of Family**

Del Norte's unified court's definition of "family" pivots on the child(ren). If a case involves a child either directly or indirectly, we will identify all people related to the child, using these criteria: blood relation, relation by marriage (e.g., step-parent), relation by guardianship, relation due to living in the same household.

### **Additional Key Components**

The case manager utilizes intake forms, interviews, case files, computer system queries, and some subjective methods to determine the participants' "level of risk." The course of action depends upon the current level of risk.

**Level 1 – Low Risk:** These cases are usually begun as the result of a dissolution or paternity case. The cases should have no complicating factors (e.g., restraining orders, alleged drug or alcohol abuse, child abuse, domestic violence, mental illness, instability, or criminal behavior).

**Level 2 – Medium Risk:** These cases are usually begun from domestic violence restraining orders, dissolutions, paternity petitions, or requests for guardianship. The cases may show one or more of the following complicating factors: attempt at control on the part of one parent; allegations of drug or alcohol abuse, but no history or evidence; accusations of emotional abuse of spouse and/or children; request by one parent for restricted visitation for the other parent; need for parenting classes, drug testing, or anger management.

**Level 3 – High Risk:** These cases are usually precipitated by domestic violence restraining orders, dissolutions, paternity petitions, or requests for guardianship. Cases show evidence of one or more complicating factors: history of drug or alcohol abuse; domestic violence; allegations of sexual, physical, or mental abuse of children; allegations of severe mental illness or instability; or criminal behavior. Referrals to the WrapAround program may come from the judicial officer, mediator, evaluator, or caseworker.

**WrapAround** is a program designed to help address high-risk family issues in a very intensive manner. Community resources are applied to the family situation in creative and dynamic ways, and a conscious decision is made by the service team to apply whatever resources are deemed

necessary to ensure success. WrapAround is a planning process that helps the family identify needs and gives them the ability to create unique methods and plans to meet those needs. The goal of providing intensive, individualized response to families is to enable children to live and grow up in a safe, stable, permanent family environment. Areas that WrapAround might address include creating a livable environment (e.g., fix the refrigerator or make sure power is working); providing a way for nonresidential parents to communicate with their children regularly (e.g., providing access to a phone when needed); supplying beds for children so that they can spend overnights with nonresidential parents; shuttling kids to visitation with nonresidential parents, babysitters, after school-programs, and other destinations; helping arrange for a babysitter so that a parent can attend WrapAround meetings; and helping the family apply for needed government assistance.

## Los Angeles County

### **Coordination Approach**

Los Angeles is utilizing a case management team approach to coordinate multiple or crossover cases and improve information sharing. Their program includes improvement projects in the areas of reassigning and hiring staff; policy, procedures, and protocol development; training and internal communications; agency and service provider collaboration; expansion of services and information; and operations.

### **Case Types**

The court is focusing on coordination of dissolution, Domestic Violence Prevention Act (DVPA), dependency, delinquency, and Title IV-D child support cases initially in 12 courts throughout the county. This project includes the following combinations of case types: (1) dissolution with dependency, delinquency, DVPA, and Title IV-D cases; (2) Title IV-D with dissolution and dependency; (3) dependency with dissolution, Title IV-D, delinquency, and DVPA; (4) delinquency with dependency and dissolution; and (5) DVPA with dissolution and dependency

### **Definition of Family**

For purposes of this grant, a family is defined as a child or children and their (1) biological parents, (2) adoptive parent(s), (3) step-parent(s), (4) legal guardian, or (5) relative or other person with custody. The family does not include extended family such as grandparents or aunt and uncle, unless they are the legal guardians or have custody. Boyfriends or girlfriends of the parents also are excluded from the definition of “family.”

### **Additional Key Components**

**Court rules** will be written to (1) combine custody and visitation issues in Title IV-D cases with family law dissolution cases; (2) require parties in dissolution, domestic violence, and Title IV-D cases to file a face sheet that identifies other pending cases; and (3) require attorneys to disclose other pending cases to the judicial officer. The case manager coordinates and assists in training both judicial officers and staff on the identification and processing of crossover cases.

Training covers the kinds of inquiries that should be made to determine if a case should be flagged as a crossover case; who should be notified about a crossover case; and how to access an automated system in another area of litigation for coordination purposes. Training is ongoing as the program expands, as policies are developed, and as programs are installed on staff computers. The service coordinator will assess our current lists of service providers and work to identify all available resources, including mental health and substance abuse treatment providers. Updating and maintaining lists of service providers will be an ongoing duty of the service coordinator. The service coordinator will engage in regular community outreach activities to improve communication between the court and provider agencies and improve access to services for our litigants.

## Napa County

### **Coordination Approach**

Napa's unified court program includes a resource specialist and a case management coordinator. The coordinator conducts searches in the court's automated system to identify families with more than one case in the court system and presents that information to the court and court-connected services. The resource specialist is familiar with community based services and provides referrals and assistance to families and to the court.

### **Case Types**

The project includes family, delinquency, dependency, child support, paternity, guardianship, adoptions, domestic violence and related criminal proceedings as deemed appropriate.

### **Definition of Family**

The core definition of "family" includes blood relationships and all adults who are either married or have bonds of voluntary affection and children in common. This definition includes the parents or those who have acted as parents under a court order or other agreement, and could encompass extended family or nonrelatives who have a preexisting relationship with the child. As each case is different, the definition needs to effectively account for individual characteristics of a particular child's family at the time they approach the court for resolution of their legal issues. Underlying this definition is the foundational principle and statutory requirement to address the best interests of the child. It must take into account legal parameters as well as dynamic, real-world family circumstances that may include foster parents, step-parents, and various relatives providing care or other nurturing to children.

### **Additional Key Components**

The case coordinator conducts the review when a case belonging to one of the included case types is filed and provides information about the existence of related cases to the judicial officer. Napa is engaged in the following efforts:

1. Considering ways to
  - a. Ensure clear guidelines for staff regarding which cases are to be assigned to the family court, and
  - b. Improve search methods for identifying existing cases, which includes finding and designating the best identifier for ensuring accuracy;
2. Reorganizing family division program functions separate from civil division functions;
3. Exploring the idea of one file for one family, instead of separate files for each case;
4. Creating a computer field on the calendar for recording related cases; and
5. Creating a case intake sheet to capture case information at the earliest possible point.

Interagency agreements will be developed that clarify the following areas: (1) referral criteria; (2) what information will be shared, how it will be shared and who will have access; (3) the purposes for sharing; and (4) methods for assuring that parties will not disclose this information inappropriately.

The court has also made changes to the calendar structure. In order to reduce the amount of waiting time and allow additional time to provide more complete procedural information to self-represented litigants, pro per cases are being scheduled separately from cases with attorneys.

The family law facilitator's schedule is also being modified to ensure that the facilitator has time available to see litigants referred from the pro per calendar. The court also coordinates appearance dates for different case types. In order to address the need to link more effectively with community agencies, the court hired a family court resource specialist. The specialist's duties are to (1) provide families with appropriate referrals, (2) develop and maintain a directory of community services, (3) monitor the delivery of services to families, and (4) and meet regularly with court liaisons (persons appointed to represent each major community agency) to strengthen the linkage between the family court and the agencies.

## San Joaquin County

### **Coordination Approach**

San Joaquin uses an information-sharing approach to coordinate a set of cases included into their unified family court project.

### **Case Types**

The San Joaquin Superior Court is focusing on family law, domestic violence, dependency, delinquency, guardianship, and adult drug court matters. Sixty or more families will be identified each year for inclusion in the project. The criteria are that the family have at least one active juvenile proceeding and an additional case or cases involving family members.

### **Definition of Family**

For the purpose of this project, only those family members that are no more distantly related than the second degree of consanguinity are considered for project inclusion. For example, grandparents, parents, and children could be included in that category. This would also include half-blood relationships such as half-siblings by the same mother and a different father, but no more than two generations distant.

### **Additional Key Components**

During year one, the project limited its scope to 60 multiple-case families that have three or more cases pending and that cross over among the case types noted above. These families were identified based on the personal knowledge of judges, the family law facilitator, courts services staff, the domestic violence prosecutor, probation staff, and child protection staff. The case coordinator assigns a unified family court master file number to each family member file, using a high-visibility file cover sheet. Once the master file number has been established, the case coordinator prepares a family case diagram that provides a visual representation of all cases in which the family is involved. Each case includes an original file number, identification of the parties and their relationships, and date of filing. The case coordinator also prepares a case summary document for insertion in each file, which includes an annotated description of each case that can be attached to the family file. Important to the project is the ability of the case coordinator to log significant case proceedings into the unified court master file. A shorthand code is utilized for this purpose. The logging of significant case events is expected to result in coordination with other family proceedings in other courtrooms and to significantly increase the ability of family members to comply with court orders, which will not be redundant or conflicting.

## Yolo County

### **Coordination Approach**

Yolo County is taking a one-judge-one-family approach. All prior, recent, or pending cases, whether within the jurisdiction of the Unified Family Court of the Yolo Superior Court (UFCY) or without (e.g., criminal cases), are centrally accessible on the court's case management system (CMS). The UFCY case manager reviews the calendars of all case types except those in the juvenile area, where the judge researches the case and reviews the juvenile files to determine if the minor's name appears in connection with a family law, guardianship, or domestic violence proceeding. If the minor's name appears, the judge requests the case manager to retrieve the related files. Family law filings, including petitions for the guardianship of a minor, are reviewed by the case manager for related cases. Case prints are reproduced, highlighted, and placed in each file. Should a child who is subject to a juvenile proceeding also be involved in a pending family law case, the family law judge will transfer those cases directly to the juvenile court judge, who has the discretion to hear all case types simultaneously to a final conclusion. Related civil cases are pulled and bundled to enable the judge to coordinate hearing dates and avoid conflicting orders. The file bundle is delivered to the appropriate judicial officer at least three days prior to hearing.

Because the UFCY has consolidated its family and juvenile divisions, the same judge will hear all noncriminal matters pertaining to the same family. In domestic violence cases, the case manager examines each case by name or number as it appears on the court calendar. Each case is researched in the court's CMS to determine if there are prior to pending cases involving violence, domestic violence, dissolution, harassment, drugs, alcohol, bench warrants, guardianship, juvenile dependency, or family support, or if there are related unlawful detainer cases. When these appear, a case print of the related case(s) is reproduced, highlighted for future court dates, and placed in the file for review by the judge. Related cases are pulled to alert the judge from making conflicting orders, such as a domestic violence restraining order in a civil case when there may be a criminal protective order out of another court. In such a case, the criminal protective order takes precedence; and civil court orders are coordinated whenever children are the subjects of one or both orders. Waivers of confidentiality are received prior to disclosures of information by the agency.

### **Case Types**

Case types include all family, juvenile, and probate guardianship cases and coordination of these cases with criminal domestic violence and adult drug courts.

### **Definition of Family**

All children of the mother and maternal grandparents are defined as family. Subsequently included are all fathers, including presumed and alleged fathers, all children of fathers, all paternal grandparents, and all individuals who reside in the household of the mother or father, whether or not they are blood related, and any other resident of the household where the child is living. As a practical matter, there must be judicial inquiry on each case because of the frequent changes in the family composition, including changes that take place as the case progresses.



### **Additional Key Components**

Families may be eligible for a wide array of therapeutic services. Specialized advocates from the Yolo County Sexual Assault and Domestic Violence Center, the Family Protection and Legal Assistance Clinic, and the district attorney's parental abduction unit are in court each day to address the needs of domestic violence victims. An in-court mediator, selected from a panel of licensed clinicians, is available to immediately assist families, and CASA representatives may be appointed. The court may also refer the family to a dedicated mental health clinician to immediately address the issues. Information regarding the families' multiple court matters is usually immediately available to the agencies and providers. With the cooperation of the Yolo County Probation Department, UFCY has expanded referrals for drug testing and treatment to include voluntary testing for certain family law and probate litigants. The case manager performs, when needed, Cal/Works or Medi-Cal screening, and coordinates the "Healthy Families" program to assure health insurance for all children of unrepresented parties.

*Child Abuse and Neglect.* Yolo County agencies and the court have recently adopted an Interagency Protocol for Child Abuse and Neglect Cases for coordinating the testimony of children and reducing the number of times that a child is required to testify. An interdisciplinary team conducts the investigation after the initial interview establishing need.

*Self-Represented Parties.* Self-represented parties in the UFCY currently have available to them assistance from the family law facilitator (FLF), who holds office hours at a dedicated office in the courthouse three days per week, and the guardianship facilitator, who is available a half-day a week. The FLF also holds additional office hours at the County Employment and Social Services office in the city of West Sacramento to enable social workers assisting low-income families with same-day referrals to the FLF for preparation of court papers. When appropriate, the FLF receives referrals from the civil process clerks, the department of child support services, the public defender, and the district attorney's Child Abduction Unit. The FLF hours coincide with the pro per calendar days so that court orders entered in the minutes can be prepared and promptly submitted, usually on the same day, including referrals from Yolo County Sexual Assault and Domestic Violence Center and the U.C. Davis Family Protection Clinic for domestic violence victims. The FLF's office utilizes undergraduate interns, who assist with case intake and initial interviewing of litigants and occasional screening for pro per referrals, retrieve case files, and help with the preparation of basic pleadings. Law students are used as research interns. At least one intern is fluent in Spanish.