SUMMARY OF STATUTORY EXCEPTIONS TO REUNIFICATION ORDERS

W&IC section 361.5(b) Rule of Court 5.695

Exception **(proved by petitioner by clear and convincing evidence)**	***Order***
1. Whereabouts Unknown	No services; Set for 6 month review
2. Parent mentally disabled (2 experts state parent incapable of caring for child)	Services UNLESS "competent evidence by mental health professionals" establishes that services are unlikely to enable the parent to care for the child w/in 12 months
3. Child or sibling previously removed due to physical or sexual abuse; returned and now being removed again for physical or sexual abuse.	No services UNLESS by *clear and convincing* that reunification is in the best interest of the child (Burden on parent if court finds basis not to offer services.)
4. Parent caused the death of another child through abuse or neglect	SAME
5. 300(e) sustained	No services UNLESS Parent proves by pre-ponderance and based on "competent testimony that services are likely to prevent re-abuse, or that it would be detrimental to the child to not order services.

6. Severe sexual or physical abuse to the child, a sibling, or half-sibling, by the same parent, and court finds that reunification services would not benefit the child. (Abuse as defined in 361.5(b)(6))	<u>No services UNLESS</u> Parent proves by clear and convincing evidence that reunification is in the best interest of the child. 361.5(h) sets out factors the court is to consider.
7. The parent is not receiving services for a sibling or half-sibling because of sections 3, 5 or 6 above.	SAME: 361.5(h) sets out factors court is to consider.
8. The child was conceived as a result of a violation of Penal Code section 288 or 288.5. (Statutory rape.)	<u>No services UNLESS</u> Parent proves by clear and convincing evidence that reunification is in the best interest of the child.
9. The child was abandoned and thereby placed in serious danger, or child has been surrendered under H&S §1225.7.	SAME
10. The court ordered termination of reunification services for a sibling or half-sibling, AND the court finds that the [same] parent has not made a reasonable effort to treat the problems that led to removal of the sib or half-sib.	SAME
11. Parental rights of the same parent have been terminated AND the court finds that the [same] parent has not made a reasonable effort to treat the problems that led to removal of the sib or half-sib.	SAME
12. The parent has been convicted of a violent felony as described in Penal Code section 667.5(c).	SAME
13. The parent has a history of "extensive, abusive and chronic use" of alcohol and other drugs and (a) has resisted prior court ordered treatment for this problem during a 3 years period immediately prior to the filing of the petition that brought the child to the court's attention, OR (b) has failed or refused to	SAME

comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least 2 prior occasions, even though the programs identified were available and accessible.

14. Parent has advised the court not interested in family maintenance or reunification services or having child returned or placed in the parent's custody and does not wish services. Must have an attorney, be advised by the court of rights and consequences, including possible termination of rights. Court must state its finding that the parent has knowingly and intelligently waived right to services. — SAME

15. On at least one occasion, parent has abducted the child or sibling or half-sibling from placement and refused to reveal whereabouts, to return custody to placement or to social worker. — SAME

Setting a 366.26 hearing: **If 361.5(b)(2)-(15) basis of no reunification services or 361.5(e) court SHALL set .26 hearing**

UNLESS: <u>Other parent receiving services</u>

(Can also go to long term foster care if proper findings made..)

<u>Parent or Guardian Incarcerated or Institutionalized:</u>

§361.5(e): Shall order services

<u>UNLESS</u> court determines by clear and convincing evidence that services would be detrimental to the child.

Court shall consider the following:

a. Age of child
b. degree of relationship
c. length of sentence
d. nature of the treatment
e. nature of the crime or illness
f. degree of detriment to child if no services
g. if child 10 or over; child's attitude
h. any other appropriate factors

Services may include:

a. collect phone calls
b. transportation (where appropriate)
c. visitation (where appropriate)
d. services to extended family members or foster parents IF services not detrimental to child
e. order to parent to attend counseling, parenting classes, vocational training –IF AVAILABLE

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W & IC section 366.21 Rule of Court 5.710
SIX MONTH REVIEW

Court may terminate reunification services and go to a .26 hearing IF:

NO SERVICES GOING TO THE OTHER PARENT AND the court finds by clear and convincing evidence that:

1. A 300(g) petition has been sustained and the whereabouts of the parent remains unknown; or

2. The parent has not had contact with the child for 6 months; or

3. The child was under 3 when initially removed or a member of a sibling group as described by §361.5(a)(1)(C), AND the court finds by **clear and convincing evidence** that the parent has **failed to participate regularly in the court ordered treatment plan**, *[ordered at Disposition]* **and make substantive progress** UNLESS, the court finds a substantial probability of return within 6 months or that reasonable services have not been offered or provided; or

4. The parent has been convicted of a felony indicating parental unfitness; or

5. The parent is deceased.

NOTE: May be applied to a sibling of the child who was under 3 at time of initial removal. Court must consider several factors, including, but not limited to:

a. Was sibling group removed together?
b. Closeness of the group;
c. Ages of all the children;
d. Detriment if group not maintained;
e. Likelihood of finding permanent home for the group;
f. Are they placed together now in a preadoptive home or is there a concurrent plan for them to remain in same home?

g. Wishes of the children;
h. Best interest of each child.

At dispo, court must inform parent that although one or more of the children were over 3 when removed, the time allowed may be limited to 6 months for all the siblings.