

# Common Core 3.0

## Legal Procedures and Responsibilities

### Trainee Guide



April 30, 2019

# Table of Contents

Introduction to Common Core .....	3
Curriculum Introduction .....	4
Segment 1A: Agenda .....	5
Segment 1B: Learning Objectives .....	6
Segment 1B: California Core Practice Model .....	8
Segment 2A: Legal Procedures eLearning Review – Trainee’s Guide .....	9
Segment 3: Confidentiality .....	14
Segment 4A: ICWA and Legal Procedures .....	19
Segment 5A: Participants in Court .....	21
Segment 6A: Preparation for Testimony and Guidelines for Testifying .....	23
Segment 6B: Legally Sound Decisions .....	26
Segment 7A: Preparing for Court .....	27
Segment 7B: Preparing for Court Work Sheet .....	48
Segment 8: Engaging Families in the Court Process .....	50
Resources .....	51

## Introduction to Common Core

Common Core curriculum and training for new child welfare workers in California is designed to be generalizable across the state, cover basic child welfare knowledge and skills, and is important for all CWS positions within an agency.

California's Common Core Curricula for Child Welfare Workers is the result of the invaluable work and guidance of a great many people throughout the child welfare system in California and across the country. It would be impossible to list all of the individuals who contributed, but some groups of people will be acknowledged here.

The Content Development Oversight Group (CDOG) a subcommittee of the Statewide Training and Education Committee (STEC) provided overall guidance for the development of the curricula. Convened by the California Social Work Education Center (CalSWEC) and the California Department of Social Services (CDSS), CDOG membership includes representatives from the Regional Training Academies (RTAs), the University Consortium for Children and Families in Los Angeles (UCCF), and Los Angeles County Department of Children and Family Services.

In addition to CDOG, a Common Core 3.0 subcommittee comprised of representatives from the RTAs, the Resource Center for Family Focused Practice, and counties provided oversight and approval for the curriculum development process.

Along the way, many other people provided their insight and hard work, attending pilots of the trainings, reviewing sections of curricula, or providing other assistance.

California's child welfare system greatly benefits from this collaborative endeavor, which helps our workforce meet the needs of the state's children and families.

The Children's Research Center provided technical support as well as The Structured Decision Making System that includes the SDM 3.0 Policy and Procedure Manual and Decision Making Tools. These resources are used in compliance with CRC copyright agreements with California. Additionally, content in this curriculum has been adapted from CRC's SDM 3.0 classroom curriculum to meet the training needs in California.

In compliance with the Indian Child Welfare Act (1978) and the California Practice Model, social workers must identify American Indian/Alaska Native children in the system. For an overview of *Implementing the Indian Child Welfare Act* view: <https://www.youtube.com/watch?v=BIQG65KFKGs>

The curriculum is developed with public funds and is intended for public use. For information on use and citation of the curriculum, please refer to:

[http://calswec.berkeley.edu/CalSWEC/Citation\\_Guidelines.doc](http://calswec.berkeley.edu/CalSWEC/Citation_Guidelines.doc)



FOR MORE INFORMATION on California's Core Curricula, as well as the latest version of this curriculum, please visit the California Social Work Education Center (CalSWEC) website: <http://calswec.berkeley.edu>

## Curriculum Introduction

Legal Procedures is a full-day curriculum, designed to introduce new social workers to basic legal concepts. The full-day curriculum is based on the basic knowledge gained in the eLearning, focusing on basic legal concepts, standards of evidence, purpose and time frames for each hearing. The classroom takes the information provided in the eLearning, and applies it in a practical manner helping social workers develop skills and become confident in preparing for court. The curriculum ends the day in a skill based activity designed to engage families in the court process. This course is meant as an introductory only, and does not take the place of consultation with your supervisor, county counsel, and county policy.

## Segment 1A: Agenda

☐ Segment 1: Welcome and Review of Agenda	9:00 – 9:30 AM
☐ Segment 2: Legal Procedures eLearning Review	9:30 – 10:00 AM
☐ Segment 3: Confidentiality	10:00 – 10:20 AM
☐ Segment 4: ICWA Legal Procedures	10:20 – 10:40 AM
Break	10:40 – 10:55 AM
☐ Segment 5: Participants in the Courtroom	10:55 – 11:05 AM
☐ Segment 6: Guidelines for Providing Testimony	11:05 AM– 12:05 PM
Lunch	12:05 – 1:05 PM
☐ Segment 7: Preparing for Court	1:05 – 2:25 PM
Break	2:25 – 2:40 PM
☐ Segment 8: Engaging Families in the Court Process	2:40 – 3:20 PM
☐ Segment 9: Wrap up and Post-test	3:20 – 4:00 PM

## Segment 1B: Learning Objectives

### Knowledge

- K1.** The trainee will define the concept of confidentiality (WIC Code 827 and 362.5) as it pertains to the court process and proceedings.
- K2.** The trainee will state the concept and document of Reasonable Efforts and reasonable services to prevent removal, facilitate reunification, and finalize a permanent plan.
- K3.** The trainee will state the concept of Active Efforts as it relates to the Indian Child Welfare Act (ICWA) and be able to differentiate between Reasonable Efforts and Active Efforts.
- K4.** The trainee will be able to identify how Tribal sovereignty influence Tribes' relationship with child welfare services.
- K5.** The trainee will be able to identify the following guidelines for providing testimony:
  - a. Be truthful
  - b. Avoid bias
  - c. Testify only to facts within your experience and knowledge
  - d. Listen carefully to the question and pause before answering
  - e. Answer only the questions asked
  - f. Do not give an opinion unless requested
  - g. Be aware of your verbal and non-verbal communication
  - h. Speak slowly, loudly, and clearly

### Skill

- S1.** The trainee will be able to describe the four standards of evidence and identify the level of evidence needed at each hearing:
  - a. Prima Facie
  - b. Preponderance
  - c. Clear and Convincing
  - d. Beyond Reasonable Doubt
  
- S2.** Given scenarios, the trainee will be able to identify the purpose and timeframes of each hearing below, and be able to provide the information needed to prepare for and testify in each hearing:
  - a. Initial Petition Hearing
  - b. Jurisdiction Hearing
  - c. Disposition Hearing
  - d. Status reviews (FM and FR hearings)
  - e. 366.26 Hearing
  - f. Post Permanency Hearing (366.3 and 361.31 hearings)
  - g. Termination of Jurisdiction Hearing (391 requirements)
  - h. Re-Entry Hearing for Non-Minor Dependents (388.1)

**S3.** Given a scenario, the trainee will be able to demonstrate ways in which presentation of the purpose of the hearing, time frames and court process, can enhance the family’s ability to understand the dependency process.

**Values**

**V1.** The trainee will respect the role of the social worker in preparing for a court hearing, gathering information, and testifying in court.

**V2.** The trainee will endorse the role of collaboration between the social worker and families in providing information about the legal process.

## Segment 1B: California Core Practice Model

- The California Child Welfare Core Practice Model Practice behaviors that support working with the court, agency representatives, and families for legal responsibilities are:
  - **Foundational**
    - Be transparent about the role of the court and child welfare agency.
    - Show deference to Tribal Leadership and their titles in written and verbal communication.
    - Model accountability and trust by doing what you say you're going to do, be responsive (including submitting reports on time and being on time for appointments), and follow ICWA and other federal and state laws.
    - Be aware of and take responsibilities for your own biases, missteps, and mistakes.
  - **Teaming Behaviors**
    - With the family's permission, contact family, cultural, community, and Tribal connections, and ask them to serve as team members as early as possible.
    - Facilitate early and frequent sharing of information and coordination among parents, caregivers, and agency partners.
    - Ensure that all team members understand that legal, regulatory, and policy constraints may limit shared decision making options available to address the family members' needs, including placement options, reunification, and service options.

## Segment 2A: Legal Procedures eLearning Review – Trainee’s Guide

You were provided with this at the start of the eLearning, Legal Procedures. If you brought your filled in copy with you, please feel free to use it. If you forgot to bring the filled in copy with you, please use this one.

1. What are two websites you can use to look up legislative information, and information about the courts?

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2. In your own words define the following terminology:

- a. Family Maintenance
- b. Family Reunification
- c. Permanent Placement
- d. Reasonable Efforts
- e. Active Efforts

3. There are six permanent placement options, list them in order of preference:

- a.
- b.
- c.
- d.
- e.
- f.

What is “Burden of Proof”?

What are the four standards of evidence?

- a. \_\_\_\_\_
- b. \_\_\_\_\_
- c. \_\_\_\_\_

d. \_\_\_\_\_

The Petition:

a. Purpose

b. Time Frame

c. Burden of Proof

4. The Initial Hearing:

a. Purpose

b. Time Frame

Burden of Proof

5. Jurisdiction Hearing:

a. Purpose

b. Time Frame

c. Burden of Proof

6. Disposition Hearing:

a. Purpose

b. Time Frame

c. Burden of Proof

7. WIC 364 Family Maintenance Hearing:

a. Purpose

b. Time Frame

c. Burden of Proof

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8. WIC 366.21(e) Family Reunification Hearing also known as 21(e) or 6 month hearing:

a. Purpose

b. Time Frame

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c. Burden of Proof

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9. WIC 366.21(f) Permanency Hearing, also known as 21(f) or 12 month hearing:

a. Purpose

b. Time Frame

---

c. Burden of Proof

---

10. WIC 366.22 Permanency Review Hearing, also known as 18 month hearing:

a. Purpose

b. Time Frame

---

c. Burden of Proof

---

11. WIC 366.25 Subsequent Permanency Hearing:

a. Purpose

b. Time Frame

---

c. Burden of Proof

---

12. WIC 366.26 Permanency Hearing:

a. Purpose

b. Time Frame

---

c. Burden of Proof

---

13. WIC 366.3 Post Permanency Hearing:

a. Purpose

b. Time Frame

---

c. Burden of Proof

---

14. WIC 366.31 Post Permanency Hearing:

a. Purpose

b. Time Frame

---

c. Burden of Proof

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15. WIC 391 Termination of Jurisdiction Hearing:

a. Purpose

b. Time Frame

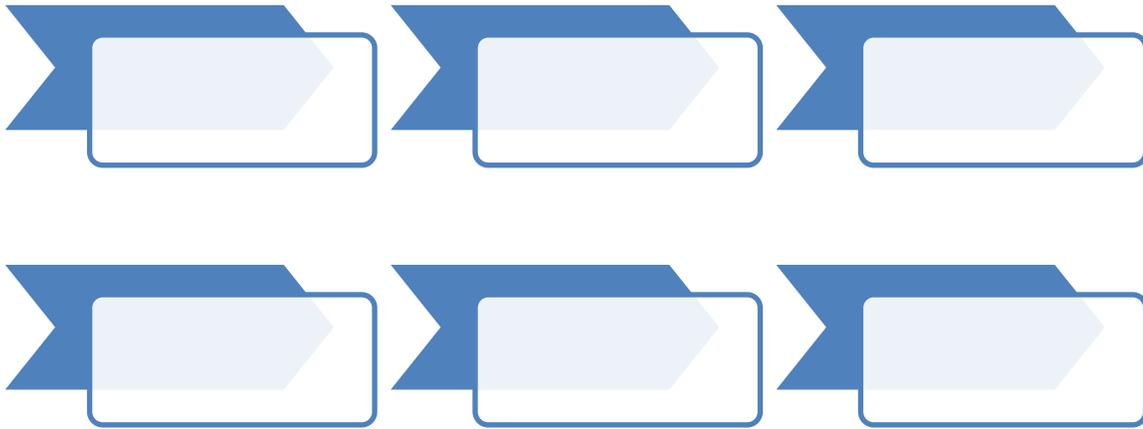
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c. Burden of Proof

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NOTES:

HEARING ORDER:



## Segment 3: Confidentiality

Brainstorm in Pairs	Table Group Definition

Confidentiality Definition:

Notes:

Adapted From:

Judicial Council of California

Sharing Information About Children In Foster Care

[www.courts.ca.gov/documents/CFCC\\_Brief\\_CWAFILES.pdf](http://www.courts.ca.gov/documents/CFCC_Brief_CWAFILES.pdf)

County child welfare agencies play a critical role in coordinating care and facilitating delivery of health and education services for foster youth. To fulfill this obligation, child welfare agencies must be able to disclose relevant information about foster youth and their families to appropriate parties, such as health care providers, school, Juvenile Courts, and foster caregivers. However, disclosure by child welfare agencies are limited by state laws that protect the confidentiality of child welfare files and by federal and state laws that protect the confidentiality and privilege of certain medical, mental health, substance abuse, and education information.

Although the laws limit disclosure of information in a child welfare file, the legal framework to allow the disclosure of at least some information currently exists.

Federal and state laws require child welfare agencies to maintain health and education information in each child's case plan and to provide that information to specified individuals and entities. State law requires the child welfare agency to include a child's health and education summary in court reports.

- State law requires the child welfare placing agency to provide a caretaker with a copy of the child's current health and education summary, as well as medication and treatment information about foster youth in their care.
- The federal *Child Welfare Policy Manual* and the California Department of Social Services (CDSS) *Child Welfare Services Manual* includes provisions requiring child welfare social workers to provide information to certain individuals and agencies. For example, the CDSS manual requires that the social worker "provide respite and out-of-home care providers information of any known or suspected dangerous behavior of the child."

Federal and state child welfare and Juvenile Court laws protect confidentiality of child welfare files.

- California Welfare and Institution Code Section 827 limits access to the "juvenile case file." The definition of a juvenile case file is "a petition filed in any Juvenile Court proceeding, reports of the probation officer, and all other documents filed in that case or made available to the probation officer making his or her report, or to the judge referee, or other hearing officer, and thereafter retained by probation officer, judge, referee or other hearing officer." In case law and Attorney General opinion, some courts have interpreted the definition of juvenile case file to include any documents and other information housed in a county child welfare agency file regarding a child who has suffered or is at serious risk of suffering abuse and/or neglect that brings the child within the jurisdiction of the Juvenile Court under section 300. This includes information in agency files where no Juvenile Court proceedings have been instituted and the matter is handled informally.
- California Welfare and Institutions Code Section 10850 protects the confidentiality of any records made or kept by any public officer or agency concerning any individual in connection with the administration of any provision of the Welfare and Institution code.

The applicable confidentiality laws allow the child welfare agency to release information from its files under some circumstance, which includes the following:

- Welfare and Institution Code Section 827 authorizes certain individuals and agencies to access information in the child welfare agency file. This section authorizes "members of the children's multidisciplinary teams,

persons, or agencies providing treatment or supervision of the minor” to inspect but not receive copies of information in the child welfare agency file.

- Individuals and agencies not specifically authorized to inspect or receive copies of a juvenile case file may obtain access by petitioning the Juvenile Court and obtaining a Juvenile Court order.
- Welfare and Institution Code Section 10850, allows child welfare agencies to release protected information for purposes directly connected with the administration of the child welfare system or any criminal investigation or prosecution conducted in connection with the administration of such a program.
- Welfare and Institution Code Section 10850 allows for information to also be released to school superintendents as necessary for the administration of federally assisted programs providing need-based services to individuals.
- Welfare and Institution Code Section 10850, limited information including a name, physical description, and addresses can also be given to a law enforcement agency investigating a criminal act.
- Welfare and Institutions Code Section 362.5 requires that the clerk of the Superior Court to open a separate court file for nonminor dependents under the dependency, delinquency, or transition jurisdiction of the court. The code further limits access to the nonminor dependent court file to: court personnel; the district attorney if the nonminor dependent is also a delinquency ward; the nonminor dependent; the attorney for the nonminor dependent; judges; referees and other hearing officers actively participating in juvenile proceedings involving the nonminor dependent; the social services agency or probation department; under certain circumstances the State Department of Social Services; county counsel; authorized legal staff or specialized investigators. For a complete list and specific details, please review the full text of the Welfare and Institutions Code 362.5, consult with county policy, your supervisor and county counsel.
- Penal Code Section 11167 which allows the names of the reporting party to be released to counsel for the minor, county counsel, and to the district attorney when they are prosecuting an alleged child abuse case, to a licensing agency when the abuse is reasonably suspected to have occurred in out-of-home care, or upon a court order. **It should be emphasized the social worker should protect the confidentiality of the reporting party, and the name of the reporting party shall be redacted in all written reports except where Penal Code Section 11167, allows for the release of the mandated reporters identity.**

When information in a child welfare file is subject to other applicable confidentiality and privilege laws, the child welfare agency is required to follow those laws. Don't forget to consult your supervisor, county counsel, and county policy for further instruction when releasing information.

Other federal and state laws protect the confidentiality and privilege of certain information in child welfare files. Several federal and state statutes protect the confidentiality and privilege of sensitive information, including health, mental health, substance abuse, and education information. The federal and state confidentiality and privilege laws that may apply to information in a child welfare agency file include but are not limited to the following:

- ***The Privacy Rule under the Health Insurance Portability and Accountability Act of 1996 (HIPAA)*** protects the confidentiality and limiting disclosure and use of certain health and mental health information.
- ***The Comprehensive Alcohol Abuse and Alcoholism Prevention, Treatment, and Rehabilitation Act (CAAPTR)*** protects the confidentiality and limiting disclosure and use of information about individuals in certain substance abuse treatment programs
- ***The Family Educational Rights and Privacy Act (FERPA)*** protects the confidentiality of and limiting access to and disclosure of education records.
- ***The California Confidentiality of Medical Information Act (CMIA)*** protects the confidentiality and limiting disclosure and use of some health and mental health information.
- ***The California Lanterman-Petris-Short Act (LPS)*** protects the confidentiality and limiting disclosure and use of information resulting from provision of certain mental health services.

- **The California Evidence Code and evidentiary privilege** limits the disclosure and use of “confidential communication” as evidence in court proceedings.
- **The California Education Code** protects the confidentiality and limits disclosure of pupil records.
- **The California Welfare and Institutions Code** Protects the confidentiality and limits disclosure of records relating to the administration of public social services.
- **The California Penal Code** limits disclosure of certain child abuse investigation.
- **The California Health and Safety Code section 11845.5** protects certain substance abuse treatment records and controls redisclosure by third-party recipients.
- **The California Penal Code section 11167.5** makes certain child abuse reports and investigative reports are confidential and strictly limits to whom they may be disclosed. The child welfare agency must abide by these restrictions on disclosure even where an individual or entity otherwise has authorization to inspect or obtain copies of records under Welfare and Institutions Code section 827.
- **California child fatality restrictions**, The California Department of Social Services (CDSS), in the section of its Manual and Policies and Procedures (MPP) 31-502.451 entitled “Child Fatality Reporting and Disclosure Requirements,” notes that counties “must adhere to all laws that govern confidentiality of the release of information.”

### **WHO CAN INSPECT AND RECEIVE COPIES OF INFORMATION IN A CHILD WELFARE FILE UNDER WELFARE AND INSTITUTIONS CODE (WIC) SECTION 827?**

Section 827(a) of the Welfare and Institutions Code sets out the following rules that govern who is permitted access to information in juvenile case files:

#### **1. Individuals and entities authorized to inspect and receive copies of juvenile case files**

- “The State Department of Social Services, to carry out its duties ... to oversee and monitor county child welfare agencies, children in foster care or receiving foster-care assistance, and out-of-state placements.” (WIC § 827(a)(1)(I) & (5).)
- “Members of the child protective agencies as defined in Section 11165.9 of the Penal Code.” (WIC, § 827(a)(1)(H) & (5).)
- “Court personnel.” (WIC, § 827(a)(1)(A), (E) & (5).)
- “The attorneys for the parties ... who are actively participating in criminal or juvenile proceedings involving the minor.” (WIC, § 827(a)(1)(A), (E) & (5); a parent’s attorney in a criminal matter also has access, but only to those records made available to the district attorney (*Lorenza P. v. Superior Court* (1988) 197 Cal.App.3d 607 [242 Cal.Rptr.877, 878].)
- “[J]udges, referees, and other hearing officers ... who are actively participating in criminal or juvenile proceedings involving the minor.” (WIC, § 827(a)(1)(A), (E) & (5).)
- “[P]robation officers, and law enforcement officers who are actively participating in criminal or juvenile proceedings involving the minor.” (WIC, § 827(a)(1)(E) & (5).)
- “The minor who is the subject of the proceeding.” (WIC, § 827(a)(1)(C,D) & (5).)
- “The minor’s parents or guardian.” (WIC, § 827(a)(1)(C), (D) & (5).) This does not include stepparents who do not have custody (*In re Tiffany G.* (1994) 29 Cal.App.4th 443 [35 Cal.Rptr.2d 8]) or de facto parents (*In re B.F.* (2010) 190 Cal.App. 4th 811 [118 Cal.Rptr. 3d 561, 566].)

- “The district attorney, a city attorney, or city prosecutor authorized to prosecute criminal or juvenile cases under state law” as well as the “county counsel, city attorney, or any other attorney representing the petitioning agency in a dependency action.” (WIC, § 827(a)(1)(B), (F) & (5).)
- “Persons serving in a similar capacity for an Indian tribe, reservation, or tribal court when the case file involves a child who is a member of, or who is eligible for membership in, that tribe.” (WIC, § 827(f).<sup>§</sup>)

### **OTHER CONFIDENTIALITY AND PRIVILEGE LAWS**

Several federal and state statutes protect the confidentiality and privilege of certain sensitive information, including health, mental health, substance abuse, and educational records.

When these types of information are held in a child welfare agency file, confidentiality and privilege laws may apply to control whether, when, how, and to whom the child welfare agency can disclose that information. As a result, an agency or individual authorized under section 827 to inspect or receive copies of a child welfare agency file may nevertheless be restricted from access to certain information in that file. Depending on the situation, confidentiality and privilege statutes may protect both information obtained by the child welfare agency from third parties and that generated by the child welfare agency itself. The following list of federal and state confidentiality and privilege statutes is for illustrative purposes only and is by no means exhaustive. Some of the descriptions include examples to illustrate how the statute might apply to limit or allow the release of information in a child welfare file.

**CHECK WITH YOUR AGENCY SUPERVISOR OR COUNTY COUNSEL TO DETERMINE THE PROTOCOLS ESTABLISHED**

**NOTES:**

## Segment 4A: ICWA and Legal Procedures

Adapted from: Common Core 3.0

ICWA: Working with Native American Families and Tribes

January 2016

The Indian Child Welfare Act (ICWA) requires any party seeking foster care placement or termination of parental rights to satisfy the courts that active efforts have been made to provide remedial services and rehabilitative programs designed to prevent the breakup of the Indian family and that those efforts were not successful. The remedial services and rehabilitative programs must consider the prevailing social and cultural considerations and way of life of the child's Tribe. ICWA does not define active efforts, but according to the Bureau of Indian Affairs *Guidelines for State Courts and Agencies in Indian Child Custody* and reunite an Indian child with his or her family and Tribal community. Active efforts are more than reasonable efforts. They are defined by Title IV-E of the Social Security Act, but are separate and distinct from requirements of the Adoption and Safe Families Act. Compliance with active effort provisions of the Indian Child Welfare act requires:

1. A demonstration that active efforts were made not only prior to the commencement of the proceeding, but also active efforts were made until the commencement of the proceeding.
2. A demonstration that active efforts were made until the commencement of the proceeding.
3. Documentation of what active efforts were made.
4. A showing that active efforts have been unsuccessful.

Active efforts include, but are *not* limited to:

- 1. Engaging the Indian child, his or her parents, family members and custodian;
- 2. Taking steps necessary to keep siblings together;
- 3. Actively engaging the family and their safety network in a process to help them identify appropriate services and ways to overcome barriers, including actively assisting parents in engaging in services;
- 4. Actively engaging the family and their safety network in a process to help them identify, notify, and invite representatives of the Indian child's Tribe to participate;
- 5. Conducting or causing to be conducted a diligent search for the Indian child's extended family members for assistance and/or possible placement;
- 6. Taking into account the Indian child's Tribe's prevailing social and cultural conditions and way of life, and requesting assistance of representatives designated by that Tribe who have substantial knowledge of the prevailing social and cultural standards;
- 7. Offering and employing all available and culturally appropriate family preservation strategies;
- 8. Completing a comprehensive and balanced assessment of the circumstances of the Indian child's family (what is working well, what are the concerns, etc.), with a focus on safe reunification as the most desirable goal;
- 9. Notifying, creating an ongoing safety network with and consulting with the Indian child's extended family members to provide family structure and support for the Indian child, to assure cultural connections, and to serve as placement resources for the Indian child;

- 10. Making arrangements to provide family interaction in the most natural setting that can ensure the Indian child's safety during any necessary removal;
- 11. Actively engage the family and their safety network in a process to help them identify community resources including housing, financial, transportation, mental health, substance abuse, and peer support services and actively assist the Indian child's parents or extended family in utilizing and accessing those resources;
- 12. Monitoring progress and participation in services and engage the safety network in this process so they are able to support the family when the county is no longer involved.
- 13. Providing consideration of alternative ways of addressing the needs of the Indian child's parents and extended family, if services do not exist or if existing services are not available;
- 14. Supporting regular visits and trial home visits of the Indian child during any period of removal, consistent with the need to ensure the safety of the child; and
- 15. Providing post-reunification services during monitoring.

The requirement to engage in active efforts begins the moment the possibility arises that an agency case or investigation may result in the need for the Indian child to be placed outside the custody of either parent or Indian custodian in order to prevent removal. Active efforts must be conducted while investigating whether the child is a member of a Tribe, is eligible for membership in a Tribe or whether a biological parent of the child is a member of a Tribe.

**Activity:**

If you know the program you will be working, check the active effort requirements that pertain to your program. If you do not know what program you will be assigned, check active efforts you feel you need to learn more about, and develop an action plan to increase your knowledge in providing active efforts.

**Action Plan:**

## Segment 5A: Participants in Court

The judge is the center of the court process. The judge presides over court proceedings, conducts the trial impartially and in an open court, hears all the witness testimony and any other evidence presented in the case, assesses the credibility and arguments of the parties and issues a ruling on the matter based on the law.



Tips:

- ✓ Introduce yourself to the judge;
- ✓ Speak and write clearly;
- ✓ Be concise and to the point;
- ✓ Be prepared, know your case;
- ✓ Provide reasonable services to families;
- ✓ Follow through with orders of the court;
- ✓ Dress appropriately for court;
- ✓ Be respectful and polite;
- ✓ Do not display emotion;
- ✓ Be professional.

- The Court Clerk normally works for the judge, and sits next to the judge. They are responsible for taking the court minutes in the proceedings, and making sure the judge's orders are addressed in the minute orders.
- The Court Reporter is a person who transcribes the spoken or recorded speech into written form, using shorthand, machine or voice writing equipment to produce official transcripts of court hearings, depositions, and other official proceedings.
- The County Counsel is the legal advisor to the county, and your partner in court. They represent the child welfare agency and you in court.
- The Court Officer/Social Worker is the social worker who is often assigned to court to represent the child welfare agency. This social worker should be viewed as a liaison between the agency, court, and county counsel.
- The Juvenile Defense Panel, Public Defender, and Lawyers provide legal and zealous representation to children and teens, their parents, and to those designated to care for these minors. They handle all matters heard in the Juvenile Court. They are appointed by the court to represent the children and teens, their parents, and to ensure that due process, rights, and the various individuals' best interests are represented in court.
- The Tribal Attorney represents the interest of the Tribe in dependency matters.
- The Bailiff is normally in the sheriff's uniform. Their primary responsibility is the protection of the judge, the court staff, and security of the court room.

- The Court Appointed Special Advocate (CASA) is a trained volunteer community member appointed by a Juvenile Court judge as a sworn officer of the court. CASA advocates for and helps the court to determine what is in the best interest of a child who has been removed from their home due to abuse, or neglect.
  
- A Guardian ad litem (GAL) is appointed by a court to protect the interests of a minor or adults who are incompetent in a particular matter. State law and local court rules govern their appointment. Typically, the court may appoint either a lawyer or a court appointed special advocate volunteer to serve as guardian ad litem in juvenile matters, family court matters, probate matters, and domestic relations matters.

## Segment 6A: Preparation for Testimony and Guidelines for Testifying

*Adapted from "Working with the Courts in Child Protection, U.S. Department of Health and Human Services Administration of Children and Families."*

### Preparation for Testimony

#### Getting Ready for Court: Tips for New Social Workers Part 1

<https://www.youtube.com/watch?v=kCkVArby5g>

Before every hearing, the social worker should review the case and be prepared to answer questions about it. The nature of the hearing, and type of hearing will determine the types of questions that may be asked. In order to prepare to testify, the social worker should:

- Become thoroughly familiar with the facts of the case, and with the case file;
- Meet with county counsel to discuss the case and the particulars of the testimony, especially any troublesome aspects;
- Identify key facts or points county counsel will want to elicit;
- Discuss with county counsel the expected cross examination questions;
- Outline the history of the case, including important dates and events. You may bring notes with you to the hearing, provided your county counsel agrees that this is an acceptable practice in your county;
- Summarize the services offered, the response from service providers, and the outcomes,
- Prepare to answer questions about reasonable efforts, or in ICWA cases active efforts made;
- Talk with any previous social workers about their involvement with the family;
- Always consult with your supervisor.

## Guidelines for Testifying

### Getting Ready for Court: Tips for New Social Workers Part 2

<https://www.youtube.com/watch?v=nV6Wjr-qoFI>

During direct examination, the attorney calls the social worker to be a witness and asks questions. Generally, the rules for direct examination requires open ended questions. When testifying, social workers should:

- Be professional, in your manner, dress, tone of voice, and facial expressions. All of these factors contribute to the judge's perception of you and your testimony;
- Remain respectful and tactful at all times during your testimony, be polite even under pressure;
- Be confident and self-assured;
- Listen carefully to the question, pause before answering and answer the question directly;
- Ask for a question be repeated if it is difficult to hear or understand, but not make a habit of doing so;
- Answer only the question asked;
- State facts, not opinions or conclusions (e.g. instead of saying the mother was uncooperative or resistant to services, state exactly what she said or did);
- Do not give an opinion, unless it has been requested;
- State whether an answer is known or cannot be recalled;
- It is okay if you do not know the answer to the questions, just say you don't know;
- Speak slowly, clearly, distinctly, and loudly enough to be heard by the entire court;
- Make eye contact with the person asking the question and the judge;
- Be aware of your verbal and non-verbal communication;
- Refer to the case file only as necessary in order to recall information;
- If an attorney objects to a question or moves to strike an answer, wait until the judge rules on the motion before speaking. If the judge denies the objection (overrides it), then you must answer the question asked. If the judge agrees with the objection (sustains it), you do not need to answer the question. However, the attorney can restate the question, and if it is not objected to as restated then you must answer the question.

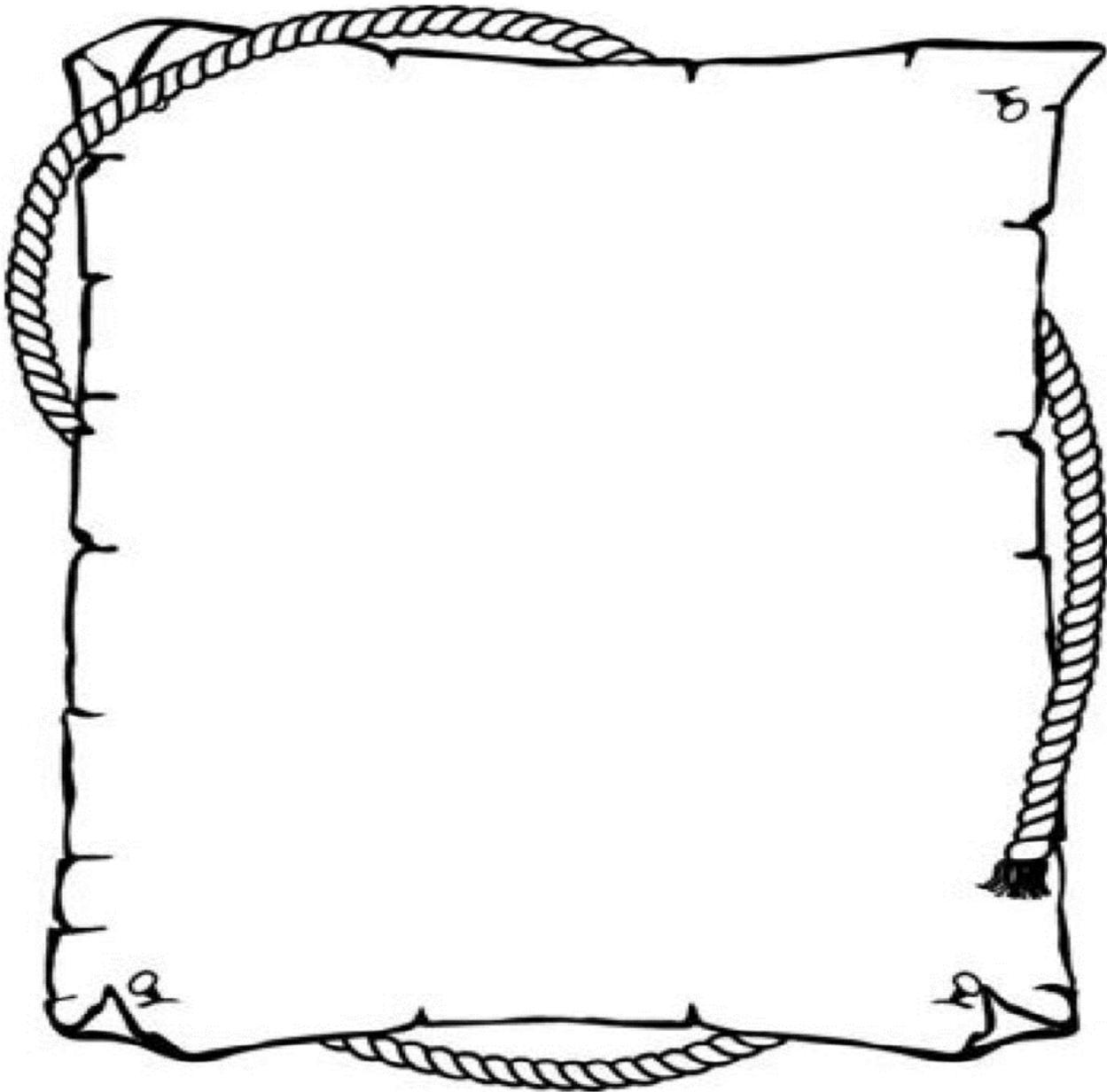
Social worker may also be questioned by attorneys during cross examination. The purpose of the cross examination is to expose weaknesses, errors, inconsistencies, biases, or other deficiencies in the testimony of the witness. The cross-examining attorney also may focus on the social worker's lack of experience or qualification and try to show that the social worker did not do a thorough investigation or exercised poor judgment. Cross examination can be unpleasant, but it is important that the social workers not take it personally and remain outwardly calm, confident, and respectful. Keep in mind, it is not personal, the attorneys are doing their job representing the best interest of their clients.

**\*\*Note** if it is not documented it did not happen. It is critical to make sure you document in the contact narrative and the court report your interactions, services provided, and results of those services. Consult your county policy and supervisor for documentation requirements.

NEXT STEPS:

## Segment 6B: Legally Sound Decisions

Journal the differences between the reasons for non-reunification that the table group originally charted, and the legal reasons as outlined in WIC 361.5 for non-reunification. What are the differences, and what are strategies that you can use to ensure you are providing legally sound decisions?



## Segment 7A: Preparing for Court

*Dependency proceedings are on-going in nature. Consequently, there are a number of hearings that may occur in Juvenile Court dependency proceedings, depending upon the direction of the case. The case direction is based on the court's responsibility to protect the rights of parties before the court and ensure safe, permanent homes for abused and neglected children. Child welfare agencies, services providers, guardians ad litem, and attorneys all play critical roles in child maltreatment cases and in providing evidence to the court to assist the court in making decisions.*

### **Burden of Proof**

Prima Facie - Prima Facie is a Latin expression meaning to assist the court in making "first sight."

"Prima facie may be used as an adjective meaning "sufficient to establish a fact or raise a presumption unless disproved or rebutted;" e.g., prima facie evidence. It may also be used as an adverb meaning "on first appearance but subject to further evidence or information;" e.g., the agreement is prima facie valid."

Preponderance of the evidence - Is the greater weight of evidence required in a civil (non-criminal) lawsuit for the trier of fact (a judge or jury) to decide in favor of one side or the other. The standard is met if the proposition is more likely true than not true, and it is satisfied if there is a greater than fifty percent chance that the proposition is true. The amount of evidence is not important for example; evidence may be more credible from one knowledgeable witness in a civil (non-criminal) lawsuit for the trier of fact (a judge).

Clear and Convincing evidence - is a higher level of burden than preponderance of the evidence. It means that the evidence presented by a party during the trial must be highly and substantially more probable to be true than not. The level of evidence must have a firm belief or conviction in its factuality.

Beyond a Reasonable Doubt - is the highest standard and generally applies only to criminal court. In an ICWA case, termination of parental rights requires evidence beyond a reasonable doubt to be presented showing that continued custody of the Indian child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. If there is real doubt based upon reason and common sense after careful consideration of the evidence, then the burden has not been proven. Proof beyond a reasonable doubt is so convincing that one would be willing to rely and act upon it. However, it does not mean an absolute certainty.

## **Court Hearings:**

- Detention Hearing
- Jurisdiction Hearing
- Disposition Hearing
- Family Maintenance Status Review Hearing
- Six-Month Status Review Hearing
- Twelve-Month Status Review Hearing
- Eighteen-Month Status Review Hearing
- Twenty-Four-Month Subsequent Permanency Review Hearing
- Selection and Implementation Hearing
- Permanent Plan Review
- Termination of Dependency WIC 391 Hearing

Each of these hearings has a specific purpose, time frame, and burden of proof that are required. It is the responsibility of the agency and social worker to provide a report to the court that is supported by evidence based on the required burden of proof for the particular type of hearing. The social worker should review the previous court report, hearing outcomes, and minute orders when preparing for the next court hearing. In addition, the social worker should know the specific purpose of the hearing they are preparing for, and what decisions the court must make. The social worker then provides the evidence needed to support their recommendations to the court. Once the social worker reviews the prior court report, hearing outcomes, minute orders, and knows the purpose of the current hearing, they can then adequately prepare for court and providing fact based testimony.

### **DETENTION HEARING:**

Once a child is removed from the parent's or guardian's home, and if the agency does not return the child, a petition must be filed within 48 hours of the removal and a detention hearing held by the end of the next judicial day after the petition is filed.

The purpose of a detention hearing is to determine if the child comes within one of the provisions of Welfare and Institution Code section 300 and if there is sufficient risk of abuse and/or neglect to require continued out-of-home placement pending the next court hearing. Basically, the court is asking the question, "Must this child be detained in order to be safe from abuse or neglect?"

#### *Detention Hearing Purpose:*

The detention hearing also serves several other important purposes:

- To advise the parents of the reason for the hearing, the nature of the allegations, the potential consequences of Juvenile Court intervention and the time limits for reunification.
- To identify permanent mailing addresses for each parent, for purpose of sending future notices of hearing.
- To initiate a parentage determination for the child.
- To ensure that all parties are represented by an attorney if they want to be and to appoint an attorney for any party who is unable to hire one, if the party is entitled to appointed counsel.
- To identify relatives to assess for possible placement.
- To determine whether the Indian Child Welfare Act may or does apply.
- To determine whether the rights of the parent to make educational or developmental decision must be limited pending the disposition hearing.
- To issue orders necessary to ensure that the child welfare agency is able to obtain necessary medical, mental health, and educational services and records for the child.

#### *Presentation of Evidence and Burden of Proof:*

In the detention hearing, the social worker (as the representative of the child welfare agency) has the burden of proving that a prima facie case has been established to show that the child comes within the provision of Welfare and Institutions Code section 300 and cannot be protected from abuse or neglect without removal from the home.

*Possible Hearing Outcomes:*

- Child returns home and the petition is dismissed, or
- Child returns home and receives family maintenance services, or
- Child is detained in relative placement or foster care.

**Jurisdiction Hearing:**

The jurisdiction hearing must be held within 15 court days of the detention hearing, if the child is detained. If the child is not detained, the jurisdiction hearing must be held within 30 calendar days of the initial hearing.

*Purpose:*

At the jurisdiction hearing the court determines whether the allegations in the petition are true and, if true, whether the child falls within Welfare and Institutions Code section 300.

*Presentation of Evidence and Burden of Proof:*

It is the burden of the social worker (as the representative of the child welfare agency) to prove the allegations in the petition. An allegation will be found true if it has been proven by a preponderance of the evidence. Note: that in ICWA cases, no foster care placement may be ordered in the absence of a determination by the court, supported by clear and convincing evidence (including testimony of an expert witness) that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The most important part of meeting the burden of proof in the jurisdiction hearing is a complete, well-written report by the social worker. The court will base its determination solely on the evidence in the court report, unless there is a trial.

*Possible Hearing:*

- If allegations are not found true, the court will dismiss the petition.
- If some or all of the allegations are found true, the court will proceed to the disposition hearing.
- If the county of residence is another county than that in which the proceedings are being held, the court may transfer the case to the county of residence for disposition, if doing so is in the child's best interest.

**Disposition Hearing:**

If the child is detained, the disposition hearing must be held within 10 court days of the jurisdiction hearing. If the child is not detained, the disposition hearing must be held within 30 calendar days of the jurisdiction hearing. The disposition hearing is a hearing in itself with its own purpose, time frame, and evidence requirements, but can sometimes be held at the same time as the jurisdiction hearing.

*Purpose:*

The purpose of the disposition hearing is to decide whether the child should be declared a dependent of the court and, if made a dependent, how to give the child safety and permanency.

*Presentation of Evidence and Burden of Proof:*

The social worker is required to submit a court report that reviews the child and family's social history and makes recommendations as to the proper disposition for the child. If the social worker recommends that the child be made a dependent, the court report must also contain recommendations for what services, if any, the parents or guardian

should be required to complete. The social worker must justify recommendations in the report. The court will make its disposition decisions based only on the court report unless the parents request a trial.

Most decisions the court makes at the disposition hearing must be supported by a preponderance of the evidence. Note: that in ICWA cases, no foster care placement may be ordered in the absence of a determination by the court, supported by clear and convincing evidence (including testimony of an expert witness) that the continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. However, in order to remove the child from the custody of the parent or guardian, there must be clear and convincing evidence that one of the following exists:

- There is or would be substantial danger to the physical health, safety, protection or emotional well-being of the child if returned home and there is no reasonable means by which the child's physical health can be protected without removal.
- The parent or guardian is unwilling to have physical custody.
- The child is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal or aggressive behavior toward self or others, and there are no reasonable means by which the child's emotional health may be protected without removal.
- The child or the child's sibling has been sexually abused or is deemed to be at substantial risk of being sexually abused by a parent, guardian, member of the child's household or other person known to the parent and there are no reasonable means by which the child can be protected.
- The child has been left without any provision for support.
- The parent is incarcerated or institutionalized and cannot arrange for the child's care.
- A relative or other adult custodian with whom the child has been left is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown despite reasonable efforts to locate the parent.
- In an ICWA case, the court must find that continued custody of a child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child. The child welfare agency must present testimony from a "qualified expert witness" to support its finding.

#### *Possible Hearing Outcomes:*

The court has numerous options at the disposition hearing:

- Dismiss the petition and allow the child to remain with or return to the parent or guardian.
- Allow the family to undertake voluntary family maintenance services and, without dismissing the petition, terminate the dependency action.
- With or without making the child a dependent, appoint a legal guardian for the child.
- Make the child a dependent and order family maintenance services.
- Make the child a dependent, remove the child from the custodial parent, place the child with the previously non-custodial parent (regardless of that parent's immigration status) and terminate the dependency.
- Make the child a dependent, remove the child from the custodial parent, place the child with the previously non-custodial parent (regardless of that parent's immigration status) and order family maintenance services for that parent.
- Make the child a dependent, remove the child from the custodial parent, place the child with the previously non-custodial parent (regardless of that parent's immigration status) and order services for both parents.
- Make the child a dependent, remove the child from the parents and order reunification services for the parents.
- Make the child a dependent, remove the child from the parents, deny the parents reunification services and schedule a selection and implementation hearing.

Unless the court terminates the dependency or denies reunification services, the court will order the parents to complete the child welfare services case plan. The court will advise the parents that if they fail to reunify with the child, a permanent plan will be established for the child, which could be termination of parental rights and adoption of the child.

The judge also issues various other orders such as:

- Visitation with parents, siblings and grandparents.
- Authorization of the child welfare agency and/or care provider to obtain routine medical treatment for the child and authority for the child welfare agency to obtain the child's medical records.
- Scheduling the next hearing and ordering the parties to appear.

### **Review Hearings:**

After children have been declared dependents of the Juvenile Court, there must be periodic review hearings to monitor the safety of the children and the progress of the parents toward resolving the problems that led to Juvenile Court involvement. These hearings are commonly referred to as “Status Review Hearings.”

For children allowed to remain in the care of their parents, the provisions for review hearings are found in Welfare and Institutions Code section 364.

For children removed from their parents, the four types of review hearings to be held during the reunification period are found in Welfare and Institutions Code:

- Section 366.21 (e)—Six-Month Review Hearing.
- Section 366.21 (f) and (g)—Twelve-Month Permanency Hearing.
- Section 366.22—Eighteen-Month Permanency Review Hearing.
- Section 366.25—Twenty-Four-Month Subsequent Permanency Review Hearing.

### **Section 364—Family Maintenance Review Hearings:**

A Family Maintenance Review Hearing must be held within six months after the disposition hearing and every six months thereafter.

#### *Purpose:*

At review hearings for children living with their parents, the court is interested in:

- Whether continued court supervision of the family is necessary.
- Whether conditions which would justify initial assumption of court jurisdiction under section 300 still exist or are likely to exist if court supervision is withdrawn.
- What services the agency offered to the family.
- Whether the parents have been participating regularly in court-ordered treatment programs.
- The parents' progress on resolving the issues that led to the court's involvement.

#### *Presentation of Evidence and Burden of Proof:*

The social worker must prepare a court report for this hearing. The social worker's burden is to:

- Prove by a preponderance of the evidence (a higher level of evidence is required in ICWA cases, when recommending continued court supervision, that conditions still exist which would justify initial assumption of court jurisdiction under section 300 or that those conditions are likely to exist if court supervision is withdrawn.
- Describe the services the agency offered to the family.
- Describe the regularity of the parents' participation in court-ordered treatment programs.

- Describe the parent's progress, or lack thereof, in completing the child welfare services case plan and in resolving or eliminating the problems that led to the court's involvement.
- Make and support updated recommendations regarding whether continued supervision is necessary and, if so, what services should be provided to the family.

*Possible Hearing Outcomes:*

- The court first determines whether continued court supervision of the family is necessary.
- The court is required to terminate its jurisdiction unless it finds that the agency has proven, by a preponderance of evidence, that the conditions still exist which would justify initial assumption of court jurisdiction under section 300 or that those conditions are likely to exist if court supervision is withdrawn.
- The failure of the parent or guardian to participate regularly in any court-ordered treatment program is considered prima facie evidence that the conditions which justified initial assumption of jurisdiction still exist and that continued court supervision is necessary.

**Section 366.21(e) – Six Month Review Hearing:**

The Six-Month Review Hearing must be held no later than six months after the disposition hearing.

*Purpose:*

*At Six-Month Review Hearings, the court is interested in:*

- Whether the agency provided or offered reasonable services to the parents.
- What efforts the agency made to achieve legal permanence for the child should efforts to reunify fail.
- The family's progress on the family reunification plan.
- Whether the child continues to be in need of out-of-home placement or can be returned to parental care.
- If the child cannot be returned, services should continue or a WELFARE AND INSTITUTIONS Code section 366.26 Selection and Implementation Hearing must be set.

*Presentation of Evidence and Burdens of Proof:*

The social worker must prepare a court report for this hearing. The social worker's burden is to:

- When recommending continued foster care prove by a preponderance of the evidence, that return of the child to the parent would create a substantial safety risk, protection or physical or emotional well-being of the child.
- Prove by a preponderance of the evidence that reasonable services were provided or offered to the parents.
- When recommending that a Selection and Implementation Hearing pursuant to Welfare and Institutions Code section 366.26 be scheduled:
  - In any case involving a child who was under the age of three years at the time of initial removal, or a sibling group in which one child was under the age of three years at the time of initial removal, prove by clear and convincing evidence that the parent failed to participate regularly and make substantive progress in a court-ordered treatment program. In addition, prove by a preponderance of the evidence that there is not a substantial probability the child (or sibling group) may be returned to the parent before the Twelve-Month Permanency Hearing.
  - In any case where the child was removed from the parent under Welfare and Institutions Code section 300(g), prove by clear and convincing evidence that the parent's whereabouts are unknown.

- In any case where the parent has failed to maintain contact with the child, prove by clear and convincing evidence that the parent has failed to visit and contact the child, taking into account any particular barriers to the parent's ability to maintain contact with the child due to the parent's incarceration, institutionalization, detention by Homeland Security or deportation.
- In any case where the parent has been convicted of a felony indicating parental unfitness, prove that conviction by clear and convincing evidence.
- Describe the regularity of the parents' participation and progress in court-ordered treatment programs.
- Describe the parents' progress, or lack thereof, in completing the child welfare services case plan and in resolving the problems that led to the child's removal.
- Evaluate whether the child continues to be at risk of harm in the care of the parents, in light of the parents' progress.
- Make and support updated recommendations, in particular whether the child should be returned to the parents and whether services should be continued or terminated.

*Possible Hearing Outcomes:*

At Six-Month Review Hearings, the court must return the child to the custody of the parents unless the court finds by a preponderance of the evidence that return would create a substantial detriment of risk, safety, protection or physical or emotional well-being of the child. The failure of the parent or guardian to participate regularly or make substantive progress in court-ordered treatment programs is considered prima facie evidence that return would be detrimental. In making the determination whether returning the child to the parent would be detrimental, the court must also consider:

- The efforts or progress, or both, demonstrated by the parent or legal guardian; and
- The extent to which the parent or guardian availed himself or herself to services provided, taking into account the particular barriers to an incarcerated, institutionalized, detained or deported parents or guardian's access to those court-mandated services and ability to maintain contact with the child.

The court may order that reunification services terminate if any of the following circumstances exist:

- The child was under 3 years of age at the time of removal, or is part of a sibling group that was removed together and one of the siblings was under 3 years of age at the time of removal, and there is clear and convincing evidence that the parent failed to participate regularly or make substantive progress in court-ordered treatment programs, unless there is a substantial probability that the child or sibling group may be returned to the parent before the Twelve-Month Permanency Hearing.
- The court sustained an allegation under Welfare and Institutions Code section 300, subdivision (g) and there is clear and convincing evidence that the parent's whereabouts are unknown.
- There is clear and convincing evidence that the parent failed to contact or visit the child.
- There is clear and convincing evidence that the parent has been convicted of a felony which demonstrates that the parent is unfit.

If the child is returned to the parent, the court will schedule a Code section 364 Family Maintenance Review Hearing.

**Section 366.21(f) & (g) Hearing – Twelve-Month Permanency Hearing:**

The Twelve-Month Permanency Hearing must be held no later than 12 months from the date the child entered foster care. The date of entry into foster care is either the date of the completed jurisdiction hearing or 60 days after the child's initial removal from the home, whichever date is earlier.

*Purpose:*

At the Twelve-Month Permanency Hearing, the court is interested in:

- The child's permanent plan, whether they return to the parent or guardian or an alternate plan?
- Whether the agency provided or offered reasonable services to the parents.
- Whether the agency provided services to youth 16 years of age or older to assist in transitioning from foster care to independent living.
- The family's progress on the family reunification plan.
- Whether the child can be returned to parental care now or continues to be in need of out-of-home placement.
- Whether, if the child cannot be returned, whether services should continue or a Welfare and Institutions Code section 366.26 Selection and Implementation Hearing must be set.

*Presentation of Evidence and Burdens of Proof:*

The social worker must prepare a court report for this hearing. The social worker's burden is to:

- Prove by a preponderance of the evidence, when recommending continued foster care, that return of the child to the parent would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the child.
- Prove by clear and convincing evidence that reasonable services were provided or offered to the parents.
- Prove by a preponderance of the evidence, when recommending services be continued, that there is a substantial probability the child will be returned to the physical custody of the parents and safely maintained in the parents' home within the extended period of time.
- Prove by a preponderance of the evidence, when recommending services be continued to a parent or guardian who
  - Has been arrested and issued an immigration hold,
  - Has been detained by Homeland Security, or
  - Has been deported to his or her country of origin,

that there is a substantial probability the child will be returned to the physical custody of the parents and safely maintained in the parents' home within the extended period of time or that reasonable services were not provided to the parent or guardian.

- Describe the regularity of the parents' participation and progress in court-ordered treatment programs.
- Describe the parents' progress, or lack thereof, in completing the child welfare services case plan and in resolving the problems that led to the child's removal.
- Evaluate whether the child continues to be at risk of harm in the care of the parents, in light of the parents' progress.
- Make and support updated recommendations, in particular whether the child should be returned to the parents or whether services should be continued to the Eighteen-Month Permanency Review Hearing.

*Possible Hearing Outcomes:*

At a Twelve-Month Permanency Hearing, the court must return the child to the custody of the parents unless the court finds by a preponderance of the evidence that return would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the child. The failure of the parent to participate regularly or make substantive progress in court-ordered treatment programs is considered prima facie evidence that return would be detrimental. As it makes its determination whether returning the child to the parent would be detrimental, the court must also consider:

- The efforts or progress, or both, demonstrated by the parent or legal guardian; and
- The extent to which the parent or guardian availed himself or herself to services provided, taking into account the particular barriers to an incarcerated, institutionalized, detained or deported parent's or guardian's access to those court-mandated services and ability to maintain contact with the child.

If the child cannot be returned to the parent, the court is required to terminate services except in three circumstances:

- Reasonable services have not been provided to the parent or guardian.
- There is a substantial probability the child will be returned to the parent or guardian and safely maintained in the home within whatever time remains of the eighteen-month period from the date of initial removal. In order for the court to find such a substantial probability, it must find all of the following:
  - That the parent consistently and regularly contacted and visited with the child.
  - That the parent made significant progress in resolving the problems that led to the child's removal from the home.
  - That the parent has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.
- There is a substantial probability the child will be returned to the parent or guardian and safely maintained in the home within whatever time remains of the eighteen-month period from the date of initial removal, when the parent or guardian has been:
  - Arrested and issued an immigration hold;
  - Detained by Homeland Security; or
  - Deported to his or her country of origin.

In order for the court to find a substantial probability of return to such a parent or guardian, it must find all of the following:

- That the parent or guardian consistently and regularly contacted and visited with the child, taking into account any particular barriers to a parent's ability to maintain contact with his or her child due to the parent's arrest and receipt of an immigration hold, detention by Homeland Security or deportation.
- That the parent or guardian made significant progress in resolving the problems that led to the child's removal from the home.
- That the parent has demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical and emotional well-being, and special needs.

If the child is returned to the parent, the court will schedule a Welfare and Institutions Code section 364 Family Reunification Review Hearing.

If the child is not returned to the parent and the court extends reunification services, it will schedule a Welfare and Institutions Code section 366.22 Eighteen-Month Permanency Review Hearing.

If the court terminates services to the parents, it will schedule a Welfare and Institutions Code section 366.26 Selection and Implementation Hearing.

**Section 366.22 Hearing – Eighteen-Month Permanency Review Hearing:**

The Eighteen-Month Permanency Review Hearing must be held no later than 18 months after the child's initial removal from the home.

*Purpose:*

At the Eighteen-Month Permanency Review Hearing, the court is interested in:

- Whether the agency provided or offered reasonable services to the parents.
- The family's progress on the family reunification plan.
- Whether the child can be returned to parental care now or continues to be in need of out-of-home placement.
- Whether, if the child cannot be returned, services should continue. A Welfare and Institutions Code section 366.26 Selection and Implementation Hearing must be set or a permanent plan of long-term foster care should be ordered.

*Presentation of Evidence and Burdens of Proof:*

The social worker must prepare a court report for this hearing. The social worker's burden is to:

- Prove by a preponderance of the evidence, when recommending continued foster care, that return of the child to the parent or guardian would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the child.
- Prove by clear and convincing evidence, when recommending that a Welfare and Institutions Code section 366.26 Selection and Implementation hearing be set, that reasonable services were provided or offered to the parents or guardians.
- Prove by a preponderance of the evidence, when recommending that services be extended to twenty-four months that reasonable services were provided or offered to the parents or guardians.
- Prove by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services, when recommending that services be extended to twenty-four months to a parent or guardian who is making significant and consistent progress in a substance abuse treatment program.
- Prove by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services, when recommending that services be extended to twenty-four months to a parent or guardian recently discharged from incarceration, institutionalization or the custody of Homeland Security who is making significant and consistent progress in establishing a safe home for the child's return.
- Describe the regularity of the parents' or guardian's participation and progress in court ordered treatment programs.
- Describe the parents' or guardian's progress, or lack thereof, in completing the child welfare services case plan and in resolving the problems that led to the child's removal.
- Evaluate whether the child continues to be at risk of harm in the care of the parents or guardian, in light of the parents' or guardian's progress.
- Make and support updated recommendations, in particular whether the child should be returned to the parents or guardian, whether services should be continued to the Twenty-Four-Month Subsequent Permanency Review Hearing or whether a Welfare and Institutions Code section 366.26 Selection and Implementation Hearing should be set.

*Possible Hearing Outcomes:*

At an Eighteen-Month Permanency Review Hearing, the court must return the child to the custody of the parents unless the court finds by a preponderance of the evidence that return would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the child. The failure of the parent to participate regularly or make substantive progress in court-ordered treatment programs is considered prima facie evidence that return would

be detrimental. As it makes its determination whether returning the child to the parent would be detrimental, the court must also consider:

- The efforts or progress, or both, demonstrated by the parent or legal guardian; and
- The extent to which the parent or guardian availed himself or herself to services provided, taking into account the particular barriers to an incarcerated, institutionalized, detained or deported parent's or guardian's access to those court-mandated services and ability to maintain contact with the child.

If the child cannot be returned to the parent, the court is required to terminate services unless

- The parent is making significant and consistent progress in a substance abuse treatment program; or
- Was recently discharged from incarceration or institutionalization and is making significant and consistent progress in establishing a safe home for the child's return.

However, to order those continued services, the court must find by clear and convincing evidence that extending services to such a parent would meet the child's best interests. The court may only continue services to such a parent if it finds that there is a substantial probability of return within whatever time remains of the twenty-four-month period from the date of initial removal. In order for the court to find such a substantial probability, it must find all of the following:

- That the parent has consistently and regularly contacted and visited with the child.
- That the parent has made significant and consistent progress in the prior 18 months in resolving problems that led to the child's removal from the home.
- That the parent has demonstrated the capacity and ability both
  - To complete the objectives of his or her substance abuse treatment plan, as evidenced by reports from a substance abuse treatment provider and to provide for the child's safety, protection, physical and emotional well-being, and special needs; or
  - To complete a treatment plan post-discharge from incarceration, institutionalization or detention by Homeland Security or, following deportation, his or her return to the US, and to provide for the child's safety, protection, physical and emotional wellbeing, and special needs.

If the child is returned to the parent, the court will schedule a Welfare and Institutions Code section 364 Family Reunification Review Hearing.

If the child is not returned to the parent and the court orders further reunification services, it will schedule a Welfare and Institutions Code section 366.25 Twenty-Four-Month Subsequent Permanency Review Hearing.

If the court terminates reunification services, it will schedule a Welfare and Institutions Code section 366.26 Selection and Implementation Hearing.

### **Section 366.25 Hearing – Twenty-Four-Month Subsequent Permanency Review Hearing:**

The Twenty-Four-Month Subsequent Permanency Review Hearing must be held no later than 24 months after the child's initial removal from the home.

At the Twenty-Four-Month Subsequent Permanency Review Hearing, the court is interested in:

- Whether the agency provided or offered reasonable services to the parents.
- The family's progress on the family reunification plan.
- Whether the child can be returned to parental care now or continues to be in need of out-of-home placement.

- Whether, if the child cannot be returned, a Welfare and Institutions Code section 366.26 Selection and Implementation Hearing must be set or a permanent plan of long-term foster care should be ordered.

*Presentation of Evidence and Burdens of Proof:*

The social worker must prepare a court report for this hearing. The social worker's burden is to:

- Prove by a preponderance of the evidence, when recommending continued foster care, that return of the child to the parent or guardian would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the child.
- Prove by a preponderance of the evidence that reasonable services were provided or offered to the parents or guardian.
- Describe the regularity of the parents' or guardian's participation and progress in court ordered treatment programs.
- Describe the parents' or guardian's progress, or lack thereof, in completing the child welfare services case plan and in resolving the problems that led to the child's removal.
- Evaluate whether the child continues to be at risk of harm in the care of the parents or guardian, in light of the parents' or guardian's progress.
- Make and support updated recommendations, in particular whether the child should be returned to the parents or guardian or continued in out-of-home placement with a Welfare and Institutions Code section 366.26 Selection and Implementation Hearing set or a plan of long-term foster care ordered.

*Possible Hearing Outcomes:*

At a Twenty-Four-Month Subsequent Permanency Review Hearing, the court must return the child to the custody of the parents unless the court finds by a preponderance of the evidence that return would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the child. The failure of the parent to participate regularly or make substantive progress in court-ordered treatment programs is considered prima facie evidence that return would be detrimental. As it makes its determination whether returning the child to the parent would be detrimental, the court must also consider:

- The efforts or progress, or both, demonstrated by the parent or legal guardian; and
- The extent to which the parent or guardian availed himself or herself to services provided, taking into account the particular barriers to an incarcerated, institutionalized, detained or deported parent's or guardian's access to those court-mandated services and ability to maintain contact with the child.

If the child is returned to the parent, the court will schedule a WELFARE AND INSTITUTIONS Code section 364 Family Maintenance Review Hearing.

If the court does not return the child to the parent, it must terminate services to the parents and either schedule a WELFARE AND INSTITUTIONS Code section 366.26 Selection and Implementation Hearing or order long-term foster care.

**Section 366.26 Hearing – Selection and Implementation Hearing:**

The selection and implementation hearing must be held within 120 days after denial or termination of reunification services.

*Purpose:*

When a child cannot be returned to the parent, the court must establish an alternate plan for the child which is most likely to provide the child with a stable and permanent family. The permanent plans available are:

- Adoption,
- Tribal customary adoption,
- Guardianship,
- Placement with a fit and willing relative, or
- For youth 16 and older Another Planned Permanent Living Arrangement.

*Presentation of Evidence and Burdens of Proof and Outcomes:*

Termination of Parental Rights and Adoption

If the child has been declared an Indian Child, and there is clear and convincing evidence that the child will likely be adopted the evidence presented must be beyond a reasonable doubt. The court must terminate parental rights and order a plan of adoption unless one of several statutorily identified circumstances exists. Those circumstances are:

- The child is living with a relative who is unable or unwilling to adopt (for reasons that do not include unwillingness to be legally or financially responsible for the child) but is willing and capable of providing the child with a stable and permanent environment through legal guardianship, and removal would be detrimental to the child's emotional well-being.
- There is a compelling reason for determining that termination of parental rights would be detrimental to the child for one or more of the following reasons:
  - The parents have maintained a parent-child relationship with the child through regular visitation and the child would benefit more from continuing that relationship than from being adopted.
  - The child is 12 years old or older and objects to termination of parental rights.
  - The child is in a residential treatment facility, adoption is not likely or desirable and failure to terminate parental rights will not prevent locating a permanent family for the child when residential placement is no longer needed.
  - The child is living with a foster parent or Indian custodian who is unable or unwilling to adopt (for reasons that do not include unwillingness to be legally or financially responsible for the child) but is willing and capable of providing the child with a stable and permanent environment, and removal would be detrimental to the child's emotional well-being. (Does not apply to children under age six or to sibling groups with one child under age six who should be adopted as a sibling group.)
  - There would be substantial interference with the child's sibling relationship and the child would benefit more from continuing that relationship than from being adopted.
- The child is an Indian child and there is a compelling reason for determining that termination of parental rights would not be in the best interest of the child. Some of the reasons that might be compelling are:
  - Termination of parental rights would substantially interfere with the child's connection to his or her Tribal community or the child's Tribal membership rights.
  - The child's Tribe has identified guardianship, long-term foster care with a fit and willing relative, Tribal customary adoption or another planned permanent living arrangement for the child.
  - The child is a non-minor dependent and both the non-minor dependent and the Tribe have identified Tribal customary adoption for the non-minor.

As an alternative to having the court terminate their parental rights, parents can voluntarily relinquish their child for adoption, if the agency's adoption service is willing to accept the relinquishment. When the adoption service accepts

the relinquishment and files it with the California Department of Social Services, parental rights are terminated and the court does not need to do anything more to terminate that parent's rights.

### *Tribal Customary Adoption*

Tribal customary adoption, or TCA, is an adoption by and through the law, customs or traditions of an Indian child's Tribe, and does not require terminating parental rights. TCA is a permanent plan option for Indian children under California law. TCA becomes a permanency option once a Tribe affirms that the child is an Indian child. When recommended by the child's Tribe, it is the preferred permanent plan for an Indian child. When TCA has been identified as the permanent plan option, the Tribe will issue a TCA order and submit it to the Juvenile Court. Once the TCA order has been afforded full faith and credit, it has the same legal force as a regular adoption order. Supervision of the adoption placement may continue for up to six months but the continued supervision may be shortened by one month for every month the child was previously in foster care with the family or may be avoided if the child is placed with a prospective adoptive relative with whom the child already had a relationship. After the designated supervision period has ended, the Juvenile Court will issue a final adoption decree.

### *"Difficult to Place" Adoption*

If the Court finds that the child has a probability for adoption but is "difficult to place" for adoption and there is not yet an identified prospective adoptive parent, the court will continue the section 366.26 hearing for up to 180 days to allow the adoption agency and/or Tribe to locate an adoptive parent. A child is considered "difficult to place" for adoption only if there is no identified prospective adoptive parent because

- The child is a member of a sibling group
- The child has a diagnosed medical, physical or mental handicap, or
- The child is seven years of age or older.

### *Legal Guardianship*

If there is not a likelihood or probability that child will be adopted (including by Tribal customary adoption) or one of the statutory reasons prevented termination of parental rights, the court must determine whether there is a suitable person or persons willing to become the child's legal guardian. Ordinarily this will be someone with whom the child is currently living. If such a person is found, the court will appoint that person to be the child's guardian, issue letters of guardianship and, in most cases, terminate dependency.

### *Placement with a Fit and Willing Relative*

Placement with a "fit and willing relative" is a permanency option for all youth. A "fit and willing relative" is an approved placement with a relative who is willing and capable of providing stable and permanent home environment for the child, but is unable or unwilling to commit to legal permanence through adoption, Tribal customary adoption, or guardianship at the time of the hearing.

### *Another Planned Permanent Living Arrangement*

This is a permanent plan for youth in out-of-home foster care placement, in which a youth may remain until adulthood, when the options to return home, place with a relative, place for adoption, Tribal customary adoption, or legal guardianship have been ruled out.

### **Section 366.3 - Permanent Plan Review Hearing:**

A Permanent Plan Review hearing must be held every six months after the court establishes a permanent plan for the child. Once the child's adoption is finalized, the court must terminate the dependency. Generally, upon the appointment of a legal guardianship, the court will terminate the dependency.

*Purpose:*

The court must review the case every six months after a permanent plan has been ordered, to ensure that adequate progress is being made on finalizing the plan. In those cases, where the child remains in foster care, the court reviews whether there is any more permanent plan which could be implemented for the child or whether further efforts at reunification might be appropriate.

*Presentation of Evidence and Burdens of Proof*

The social worker must prepare a court report for this hearing. For a child whose permanent plan is adoption, the social worker's report must:

- Describe the child's current placement.
- Describe the child's current physical, mental, emotional and educational status.
- Indicate if the child has been placed with a prospective adoptive parent or parents.
- If the child has been placed with a prospective adoptive family, indicate whether an adoptive placement agreement has been signed and filed.
- If the child has not been placed with a prospective adoptive parent:
  - Identify individuals other than the child's siblings who are important to the child and the steps necessary to maintain the child's relationships with those persons, provided those relationships are in the best interests of the child.
  - Describe the efforts made to identify an appropriate prospective adoptive parent, including but not limited to child-specific recruitment efforts and listing on an adoption exchange and the progress made in these efforts. •
- Indicate whether the final adoption order should provide for post-adoption sibling contact.
- Identify any impediments to making or finalizing the child's adoptive placement.
- Identify the anticipated dates by which:
  - The child will be placed in an adoptive placement;
  - An adoptive placement agreement will be signed; and/or
  - The child will be adopted.
- Make recommendations for orders that will assist in the adoptive placement of the child or in finalization of the child's adoption.

For a child whose plan is continued foster care, the social worker's report must:

- Assess the continuing necessity for, and appropriateness of, the child's placement.
- Identify individuals other than the child's siblings who are important to a child who is 10 years of age or older and has been in out-of-home placement six months or longer as well as the steps necessary to maintain the child's relationships with those persons, provided those relationships are in the best interests of the child.
- Describe the child's current physical, mental, emotional and educational status.
- Describe the services provided to the child.
- Describe the extent of progress the parent has made toward alleviating or mitigating the causes necessitating placement in foster care.

- Describe the extent of compliance with the child's permanent plan and whether that plan remains appropriate. Discuss efforts to return the child to the safe home of the parent or to complete whatever steps are necessary to finalize the permanent placement of the child, including:
  - Efforts to maintain the child's important relationships.
  - Efforts to identify a prospective adoptive parent or legal guardian, including but not limited to child-specific recruitment efforts and listing on an adoption exchange.
  - Whether there is a significant likelihood of the child's return to a safe home due to changed circumstances of the parent and, if so, whether a second period of reunification services is in the child's best interests.
- Identify the likely dates by which the child may be:
  - Returned to, and safely maintained in, the home of the parent; or
  - Placed for adoption,
  - Placed for Tribal Customary Adoption,
  - Place with a Legal guardianship,
  - Placed with a "fit and willing relative."
- Whether there should be any limitation on the right of the parent to make educational or developmental services decisions for the child and, if so, who should be appointed to make those decisions.
- Whether the child has siblings under the jurisdiction of the Juvenile Court and, if so, all of the following:
  - The nature of the relationship between the child and his siblings, considering among other factors:
    - Whether the siblings were raised together in the same home;
    - Whether the siblings have shared significant common experiences or have existing close and strong bonds;
    - Whether either sibling expresses a desire to visit or live with his sibling; and
    - Whether on-going contact is in the child's best emotional interests.
    - The appropriateness of developing or maintaining the sibling relationships.
    - If the siblings are not placed together, why they are not placed together and what efforts are being made to place them together or why those efforts are not appropriate.
    - If the siblings are not placed together, the frequency and nature of sibling visits.
    - The impact of the sibling relationships on the child's placement and planning for legal permanence.
  - For a child 16 years or older, and for a non-minor dependent, the services needed to assist the child or non-minor dependent to make the transition from foster care to independent living.
  - Whether another section 366.26 hearing should be held to select and implement a more permanent plan for the child.

*Possible Hearing Outcomes:*

For a child whose permanent plan remains appropriate, the court will continue that plan and enter any orders that might be necessary to protect the child's stability and facilitate and expedite the permanent placement of the child.

For a child whose permanent plan is no longer appropriate, the court will set another WELFARE AND INSTITUTIONS Code section 366.26 Selection and Implementation Hearing.

At least every 12 months, the court must order that another WELFARE AND INSTITUTIONS Code section 366.26 Selection and Implementation Hearing be held. Unless there is clear and convincing evidence that there is a compelling reason for determining that a section 366.26 hearing is not in the child's best interest because

- The child is being returned to the home of the parent;

- The child is not a proper subject for adoption; or
- There is no one available to assume guardianship.

If the parents prove, by a preponderance of the evidence, that making further efforts at reunification is the best permanency alternative for the child, the court may order a six-month period of reunification services which may be followed by a six-month period of family maintenance services, if the court also determines that:

- A second period of reunification services is in the child's best interests and
- There is a significant likelihood of the child's return to a safe home due to changed circumstances of the parent.

**Section 366.31 – Last Hearing Before Child’s 18<sup>th</sup> And All Hearings for Non-Minor Dependents and Others Over Age 18:**

The review hearing is held within the last six months before the child turns 18 and every six months thereafter, for dependents over age 18, is to be held pursuant to this section and when considering termination of dependency under Welfare and Institutions Code Section 391. The review hearings continue to be held at least every six months until the court terminates jurisdiction over the dependent prior to reaching the age of 21.

*Purpose:*

The hearing focus on ensuring that dependents are able to achieve permanence, establish and maintain lifelong connections with caring and committed adults and are receiving adequate preparation for living independently, while continuing to be eligible to receive AFDC-FC, Kin-GAP or Adoption Assistance Program payments past the age of 18.

While the Juvenile Court has jurisdiction to maintain dependency over any dependent up to the age of 21, it will usually not do so unless there is a special need that will be met by continuing the dependency. One such circumstance is when a dependent child and the child welfare agency sign an agreement for the dependent's voluntary placement after age 18 in a supervised placement and otherwise qualifies for "non-minor dependent" status.

"Non-minor dependents" are those dependent youths who:

- Were under an order for foster care placement at the time they reached the age of 18 years,
- Have not yet reached the age of 21 years,
- Are voluntarily in foster care under the placement care and responsibility of the child welfare agency,
- Are participating in an approved Transitional Independent Living Case Plan (TILP) and
- Meet one of the following criteria:
  - Are completing high school or a program leading to an equivalent credential (GED),
  - Are enrolled in an institution which provides post-secondary (college) or vocational education,
  - Are participating in a program or activity designed to promote, or remove barriers to, employment,
  - Are employed for at least 80 hours per month or
  - Are incapable of any of the above four activities due to a medical condition and that incapability is supported by regularly updated information in the case plan.

*Presentation of Evidence and Burdens of Proof:*

At the last hearing before the child turns 18, the social worker must prepare a court report that describes:

- Whether the child plans to remain in foster care and to meet one or more of the participation conditions to continue to receive AFDC-FC benefits as a non-minor dependent and, if so, what those plans are.

- When and how the child was informed of the right to have Juvenile Court jurisdiction terminated upon reaching age 18.
  - When and how the child was informed of the potential benefits of remaining under Juvenile Court jurisdiction after reaching age 18 and the social worker's assessment of the child's understanding of those benefits.
  - When and how the child was informed that, if Juvenile Court jurisdiction is terminated after reaching age 18, he or she has the right to request to return to foster care and have the Juvenile Court resume jurisdiction.
  - Whether an Indian child plans to continue to identify as an Indian child for the purpose of continuing application of the Indian Child Welfare Act after reaching age 18.
- The efforts made and assistance provided to the child by the social worker so that the child will be able to meet one or more of the participation conditions for continued AFDC-FC as a non-minor dependent.
  - The efforts made toward obtaining the information, documents and services required to be provided to the child Welfare and Institutions Code Section 391 provided to the child prior to termination of dependency and the steps to be taken to complete the provision of any of those not yet obtained.
    - Whether the child has applied for Supplemental Security Income (SSI) benefits and, if such an application is pending, whether it will be in the child's best interest to remain a dependent as a non-minor until a final SSI decision is issued, to ensure that the child receives continued assistance with the application process.
    - Whether the child has an in-progress application pending for Special Immigrant Juvenile Status (SIJS) or another application for legal residency and whether an active dependency case is required for that application.

At review hearings after reaching age 18, if the case plan for a non-minor dependent is continued court-ordered family reunification services, the report must discuss:

- Whether foster care placement continues to be necessary and appropriate or the non-minor dependent can now safely reside in the home of the parent or guardian.
- What services the social worker has provided that were designed to aid the parent or guardian to overcome the problems that led to the initial removal of the non-minor dependent.
- The extent of progress the parents or guardian have made toward alleviating or mitigating the causes necessitating placement in foster care.
- If foster care placement should continue because the non-minor dependent cannot reside safely in the home of the parent or guardian or because it is not in the non-minor dependent's best interest to reside in the home of the parent or guardian, whether reunification services for the parent or legal guardian should continue or terminate. In this regard, the report should discuss:
  - Whether there is a substantial probability that the non-minor dependent will be able to safely reside in the home of the parent or guardian by the next review hearing date.
  - Whether continued reunification services are in the best interest of the non-minor dependent.
  - Whether the non-minor dependent and the parent or guardian are in agreement with the continuation of reunification services or if the non-minor dependent plans to remain in foster care and to meet one or more of the participation conditions to continue to receive AFDC-FC benefits as a non-minor dependent.
  - The likely date by which the non-minor dependent may reside safely in the home of the parent or guardian or will achieve independence.
- The agency's compliance with the non-minor dependent's TILP, including efforts to finalize the non-minor's permanent plan and prepare the non-minor dependent for independence. The report should discuss:

- The efforts that have been made to maintain the non-minor's connections with caring and permanently committed adults.
- The progress that has been made in providing the non-minor dependent with the information, documents and services required by Welfare and Institution Code Section 391.
- Whether the parent or guardian and non-minor dependent were actively involved in the development of the case plan.

At review hearings after reaching age 18, if the non-minor dependent's parent or guardian is no longer receiving court-ordered family reunification services and the non-minor dependent is in a planned permanent living arrangement, the court report needs to address:

- The non-minor dependent's plans to remain in foster care and to meet one or more of the participation conditions to continue to receive AFDC-FC benefits as a non-minor dependent.
- The continuing necessity for, and appropriateness of, the placement.
- The extent of the agency's compliance with the permanent plan for the non-minor dependent, including the efforts the agency has made to identify and maintain relationships with individuals who are important to the non-minor dependent.
- The continuing appropriateness of the non-minor's permanent plan.
- The actions the agency has taken to comply with the non-minor dependent's TILP.
- Whether a prospective adoptive parent has been identified and assessed as appropriate for the non-minor dependent's adoption. (Among other times, this assessment should happen whenever it is requested by a non-minor dependent who has an established relationship with an adult determined to be the non-minor dependent's permanent connection who is willing to adopt the non-minor dependent.) When there is such a prospective adoptive parent:
  - Whether the non-minor dependent is eligible for the Adoption Assistance Program (AAP) and, if eligible, whether the prospective adoptive parent has been informed about the terms of the negotiated adoption assistance agreement, and
  - Whether adoption should be ordered as the non-minor dependent's permanent plan or whether, for a non-minor dependent who is an Indian child, in consultation with the non-minor dependent's Tribe, the non-minor dependent should be placed for Tribal customary adoption.
- The adequacy of services provided to the non-minor dependent including:
  - The efforts the agency has made to maintain the non-minor dependent's connections with caring and permanently committed adults.
  - The efforts the agency has made to establish or maintain the non-minor dependent's relationship with his or her siblings who are under the Juvenile Court's jurisdiction.
  - The progress the agency has made in providing the non-minor dependent with the information, documents and services required by Welfare and Institution Code Section 391.
  - Whether the non-dependent minor needs the assistance and services required by Welfare and Institutions Code Section 391 and the progress the agency has made in providing them.
- The services needed to assist the non-minor dependent to make the transition from foster care to independent living.
- The likely date by which it is anticipated the non-minor dependent will achieve adoption or independence.

After age 18, when the social worker recommends that the court consider a permanent plan of adoption for a non-minor dependent, the social worker's report must address:

- The length and nature of the relationship between the prospective adoptive parent and the non-minor dependent, including whether the prospective adoptive parent has been established as the non-minor's permanent connection.
- Whether the non-minor dependent has any developmental disability and, if so, whether the proposed adoptive parent is suitable to meet the needs of the non-minor dependent.
- Whether the non-minor dependent is eligible for AAP and, if so, whether
  - The prospective adoptive parent has signed the negotiated adoption assistance agreement and
  - A copy of the executed negotiated agreement is attached to the report.
- Whether criminal background clearances were completed for the prospective adoptive parent.
- Whether, if the prospective adoptive parent is married and not legally separated from the spouse, consent to the adoption has been given by the non-adopting spouse, provided he or she is capable of giving that consent.
- Whether the adoption of the non-minor dependent is in the best interests of the non-minor dependent and the prospective adoptive parent.
- Whether the non-minor dependent and the prospective adoptive parent have mutually consented to the adoption.

*Possible Hearing Outcomes:*

- Continue the child or non-minor dependent as a dependent of the court and order that family reunification services continue.
- Continue the child or non-minor as a dependent of the court, terminate family reunification services and order the non-minor dependent into an Another Planned Permanent Living Arrangement consistent with the non-minor dependent's TILP.
- Continue the child or non-minor as a dependent of the court, terminate family reunification services and order development of an another planned permanent living arrangement under a mutual agreement, which may include:
  - Continued placement with the current caregiver,
  - Placement with another licensed or approved caregiver or
  - Placement in a supervised independent living placement, consistent with the dependent's TILP.
- Continue the non-minor as a dependent of the court, order that non-minor dependent adoption be the permanent plan for the non-minor and set a hearing within 60 days to consider adoption for the non-minor dependent.
- Complete the adoption of the non-minor dependent and terminate the dependency after
  - Approving the adoption agreement.
  - Declaring that the non-minor dependent is the adopted child of the adoptive parent and that the non-minor dependent and adoptive parents agree to assume toward each other the legal relationship of parent and child and to have all of the rights and be subject to all of the duties and responsibilities of that relationship.
  - Declaring that from the time of the adoption, the birth parents of the non-minor dependent are, from the time of the adoption, relieved of all and responsibilities for, the adopted non-minor dependent and have no rights over the adopted non-minor dependent.
- Continue the non-minor as a dependent of the court for the period of time necessary for the agency to meet the information, document and services requirements outlined in Welfare and Institutions Code section 391, if termination of dependency without the information, documents and services in place would be harmful to the child's best interests.
- Terminate the dependency under the terms allowed by Welfare and Institutions Code section 391.



## Segment 7B: Preparing for Court Work Sheet

*A worker from your unit has left the department, and her cases needed to be reassigned. You received one of the families. The child is Jazmine Isa Infant, six months old. The review hearing is in three weeks and the report has already been written. You meet with your supervisor and she is worried about the case, but does not provide a lot of specifics. She tells you to prepare for court, and to speak to county counsel prior to the hearing.*

**Review the Detention, Jurisdictional and Dispositional Findings and Orders (Minute Orders) if needed and, Section 366.21(e) – Six Month Review Hearing, starting on page 28 of this guide. After you have read the suggested documents, answer the following questions as a table group:**

Date of Removal:

300 WIC Code Section:

Date of Detention Hearing:

Services Ordered:

Date of Jurisdiction/Disposition Hearing:

Services Ordered:

What are the strengths in the report?

What are your concerns about the report?

What are your next steps to help you prepare for the hearing?

Is this a family where ICWA applies?      Yes      No

Which applies reasonable efforts or active efforts?

Does the report adequately speak about the parent’s progress in their case plan? If not what other information would you like to know?

Do you agree with the summary of recommendations made by the social worker? Y      Yes      No If not, why?

When recommending continued foster care placement evidence must be presented that return to the parent would create a substantial risk of detriment to the safety, protection or physical or emotional well-being of the child by a preponderance of the evidence. Does the report rise to this level? Why or Why not? If not what more information would you need to prevent returning a child to their parent?

Were all special orders made by the court addressed in the court report?      Yes      No

## Segment 8: Engaging Families in the Court Process

### Court Orientation Video

<http://www.courts.ca.gov/cfcc-dependency.htm>

Self-select into triads. Each triad will complete three role plays, and each trainee will have the opportunity to play the social worker, parent or caregiver, and observer. You will have three minutes to role play, and two minutes for the observer to provide strength based feedback to the trainee playing the social worker.

#### Round 1:

Using the Jazmine Isa Infant status review hearing report, explain the court hearing, and recommendations to the mother, Ms. Infant.

#### Round 2:

##### Twist:

You have obtained additional information that worries you about the mother's ability to care for Jazmine Isa Infant. You have obtained additional information that the mother has not enrolled or participated in substance abuse treatment, and her last two tests were positive for methamphetamine. You consulted with your supervisor and she requested that you hold a family meeting prior to the upcoming court hearing. You have called the mother, Ms. Infant, and have scheduled a meeting to talk about your new worries, prior to the team meeting.

#### Round 3:

##### Twist:

The mother has enrolled in substance abuse treatment, and according to the therapist is doing well. She has tested clean for four months. The aunt who is the caregiver has expressed concerns about Jazmine returning to live with either parent, and cannot understand why the department and team would even consider it, especially since she is willing to adopt Jazmine. The aunt has attended all of the family meetings, and has remained silent for most of them. You have to explain the court process, and that your recommendation and the recommendation of the team is to return Jazmine to the care of both parents, because they are meeting the goals of their Family Reunification Case Plan.

## Resources

California State Legislature. (n.d.). California Legislative Information. Retrieved from:

<http://leginfo.legislature.ca.gov/>

California Department of Social Services. (2014). *All County Information Notice (ACIN) I-05-14: Sharing Information with Caregivers* [http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acin/2014/I-05\\_14.pdf](http://www.cdss.ca.gov/lettersnotices/entres/getinfo/acin/2014/I-05_14.pdf)

Federal Register. (2016, March 2). Indian Child Welfare Act; Designated Tribal Agents for Services of Notice. Retrieved from: <https://www.federalregister.gov/articles/2016/03/02/2016-04619/indian-child-welfare-act-designated-tribal-agents-for-service-of-notice>

Judicial Council of California. (n.d.). California Court: The Judicial Branch of California. Retrieved from: <http://www.courts.ca.gov/>

Judicial Council of California. (n.d.). Caregivers and the Courts. Retrieved March 20, 2016, from: <http://www.courts.ca.gov/documents/caregivers.pdf>

Judicial Council of California. (n.d.). Juvenile Dependency Court Orientation Video for Parent. Retrieved from: <http://www.courts.ca.gov/1205.htm>

Judicial Council of California. (2001). The Dependency Court: How it Works. Retrieved March 20, 2016, from: <http://www.courts.ca.gov/documents/jv055.pdf>

Judicial Council of California. (1999). Juvenile Court Information for Parents Retrieved March 20, 2016, from: <http://www.courts.ca.gov/documents/jv050.pdf>

Judicial Council of California. (2014). The Juvenile Dependency Court and You: A Guide for Parents. Retrieved March 20, 2016 from: <http://www.courts.ca.gov/documents/juvenile-dependency-court-and-you.pdf>

Some content in this curriculum was developed by NCCD and the Northern California Training Academy as part of the Safety Organized Practice Curriculum. Safety Organized Practice (SOP) is a collaborative practice approach that emphasizes the importance of teamwork in child welfare. SOP aims to build and strengthen partnerships with the child welfare agency and within a family by involving their informal support networks of friends and family members. A central belief in SOP is that all families have strengths. SOP uses strategies and techniques that align with the belief that a child and his or her family are the central focus, and that the partnership exists in an effort to find solutions that ensure safety, permanency, and well-being for children. Safety Organized Practice is informed by an integration of practices and approaches including:

- Solution-focused practice<sup>1</sup>
- Signs of Safety<sup>2</sup>
- Structured Decision making<sup>3</sup>
- Child and family engagement<sup>4</sup>
- Risk and safety assessment research
- Group Supervision and Interactional Supervision<sup>5</sup>

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<sup>1</sup> Berg, I.K., and De Jong, P. (1996). Solution-building conversations: co-constructing a sense of competence with clients. *Families in Society*, pp. 376-391; de Shazer, S. (1985). *Keys to solution in brief therapy*. NY: Norton; Saleebey, D. (Ed.). (1992). *The strengths perspective in social work practice*. NY: Longman.

<sup>2</sup> Turnell, A. (2004). Relationship grounded, safety organized child protection practice: dreamtime or real time option for child welfare? *Protecting Children*, 19(2): 14-25; Turnell, A. & Edwards, S. (1999). *Signs of Safety: A safety and solution oriented approach to child protection casework*. NY: WW Norton; Parker, S. (2010). *Family Safety Circles: Identifying people for their safety network*. Perth, Australia: Aspirations Consultancy.

<sup>3</sup> Children's Research Center. (2008). *Structured Decision Making: An evidence-based practice approach to human services*. Madison: Author.

<sup>4</sup> Weld, N. (2008). The three houses tool: building safety and positive change. In M. Calder (Ed.) *Contemporary risk assessment in safeguarding children*. Lyme Regis: Russell House Publishing.

- Appreciative Inquiry<sup>6</sup>
- Motivational Interviewing<sup>7</sup>
- Consultation and Information Sharing Framework<sup>8</sup>
- Cultural Humility
- Trauma-Informed Practice

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<sup>5</sup> Lohrbach, S. (2008). Group supervision in child protection practice. *Social Work Now*, 40, pp. 19-24.

<sup>6</sup> Cooperrider, D. L. (1990). Positive image, positive action: The affirmative basis of organizing. In S. Srivasta, D.L. Cooperrider and Associates (Eds.). *Appreciative management and leadership: The power of positive thought and action in organization*. San Francisco: Jossey-Bass.

<sup>7</sup> Miller, W.R., & Rollnick, S. (2012). *Motivational Interviewing*, (3<sup>rd</sup> Ed.). NY: Guilford Press.

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