JUVENILE LAW UPDATE

Beyond the Bench
December 2017

Judge Jerilyn Borak
Judge Anthony Trendacosta

Who is here?

Judicial Officers?

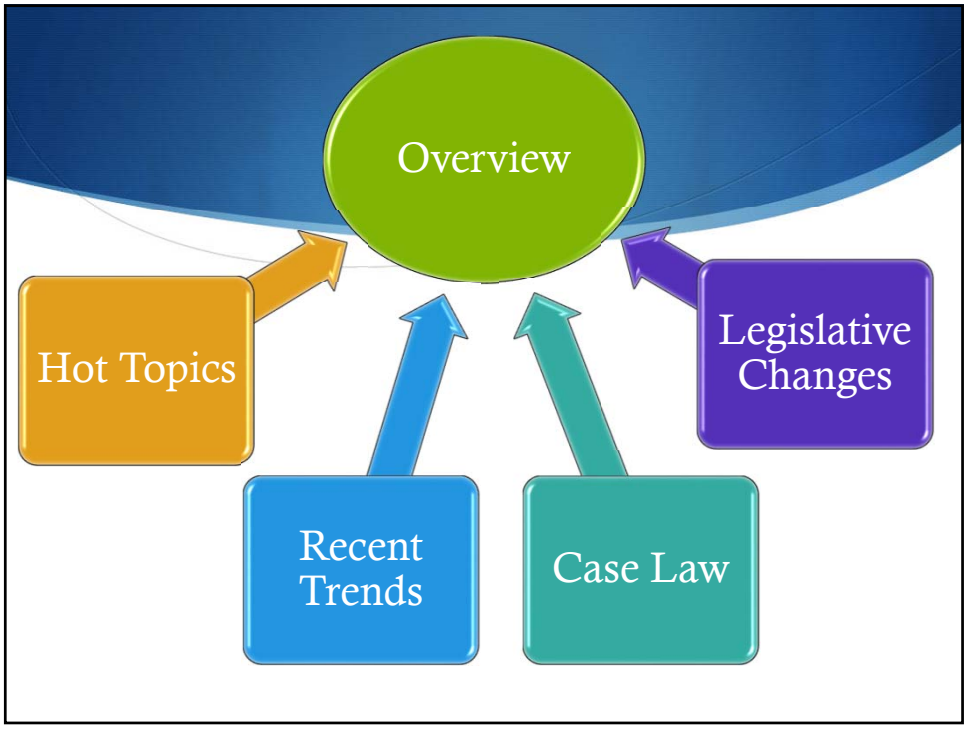
Attorneys?

CASAs?

Social Workers?

Mental Health Professionals?

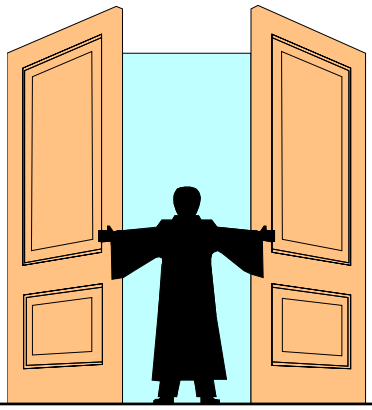
Tribal Representatives?



Hot Topics

- "Unable to Protect" WIC 300(b)(1)
- ICWA
- Parentage (Three parent cases)
- UCCJEA
- WIC 361 – Removal from non-custodial parent
- Due Process

JURISDICTION



UCCJEA

Original Jurisdiction?

YES

Uniform Child Custody and Enforcement Act (UCCJEA) Famil. Code §3400 et seq. applies to Dependency cases.

NO

In re R.L. (2016) 4 Cal.App.5th 125

- When did parent and child arrive in the state?
- Are they residents of another state or country?
- Has another state previously exercised jurisdiction over child custody issues?
- If so, it's your obligation to contact the judge in the other state to determine the best forum to decide the case.

In re A.C. (2017) 13 Cal.App.5th 661

As with all UCCJEA cases, this one is fact very specific. The parties agree that Mexico is the children's home state, as the mother raised the children there for the past nine years. The court took emergency jurisdiction and then sent two e-mails and followed up with phone calls to the Mexican courts inquiring whether they declined to exercise jurisdiction over the children's case in favor of California.

As in the case *In re M.M.* (2015) 240 Cal.App.4th 703, a home state may decline jurisdiction by failing to commit one way or another to protect a child in a child custody proceeding by declining to communicate. Likewise, substantial evidence supports the court's finding that the children had significant connections with California and of the children's care, protection, personal training, and personal relationships in California as required under 3421(a)(2). The mother spent most of her life in California and the children's grandparents often provided daily care for the children in California

In re Aiden L. (2017) 16 Cal. App. 5th 508

Second Dist. Div. Seven October 23, 2017

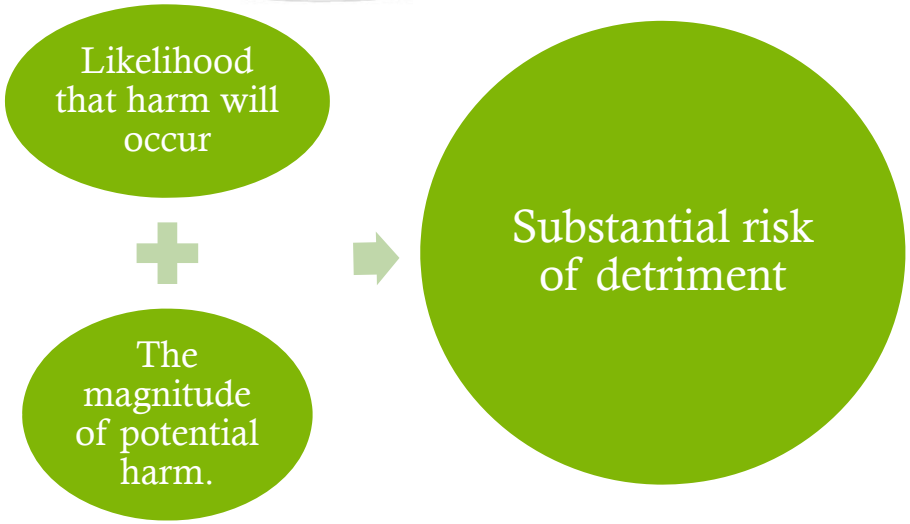
Reversal of termination of parental rights for failure to properly follow UCCJEA

Long history in Arizona and the parent's two other children in LG with grandparents in AZ.

SUBSTANTIAL

RISK and FAILURE or INABILITY TO PROTECT

In re I.J. (2013) 56 Cal.4th 766



In re R.T. (2017) 3 Cal.5th 622

The Supreme Court affirmed the Court of Appeal finding that jurisdiction under section 300(b)(1) does not require a finding that a parent was neglectful or in some way to blame for the failure or inability to adequately supervise or protect his or her child

The requirement of a finding of parental unfitness to establish jurisdiction under section 300(b)(1) created by *In re Precious D.* (2010) 189 Cal.App.4th 1251 and *In re Rocco M.* (1991) 1 Cal.App.4th 814, is disapproved

In re Mia Z. (2016) 246 Cal.App.4th 883

300(f)

Is an argument that Mother's lack of supervision was not a substantial factor in sibling (Destiny)'s death sufficient for appeal?

No. "The issue is not whether Mother knew the exact instrumentality that posed a risk to Destiny, but whether Mother should have appreciated the risk of death to which she exposed Destiny letting her roam the streets unattended."

In re Z.G. (2016) 5 Cal.App.5th 705

300(f)

Co-sleeping causing the death of another child through neglect. The substantial factors: not using a crib, co-sleeping, being under the influence, sleep deprivation, father's awareness of these events, that lead to his death.

In re M.R. (2017) 8 Cal.App.5th 101

DUI "single incident" sufficient for jurisdiction

The appellate court found substantial evidence that there was a substantial risk that the behavior will recur. Specifically, the appellate court notes that the parents failed to take responsibility for the incident, saw no need for departmental involvement, and had yet to get involved in any alcohol education programs at the time of the jurisdiction hearing.

- Contrary to *In re J.N.* (2010) 181 Cal.App.4th 1010

In re Luis H. (2017) 14 Cal.App.5th 1223

The juvenile court sustained the failure to protect and sexual abuse allegations as to the daughter who had been sexually abused; dismissed the allegations as to the three siblings.

The juvenile court stated that the abuse did not "reach the level of egregiousness…where it obviously puts the other children at risk."

The two brothers timely appealed dismissal of the dependency on the grounds that substantial evidence did not support the finding that they were not at substantial risk of harm.

Dismissal upheld.

Transportation of Drugs

In re Yolanda L. (2017) 7 Cal.App.5th 987

Here there was evidence that father's possession of methamphetamine was not an isolated occurrence; specifically, father was the subject of a multi-agency drug trafficking investigation and admitted to transporting drugs at least one other time.

Also guns!

Guns

In re Yolanda L. (2017) 7 Cal.App.5th 987

In re C.V. (2017) 15 Cal.App.5th 566

As a matter of first impression, section 300(b) dependency jurisdiction may be based on evidence that the parent stored a loaded gun in such a manner that it could be accessed by a child. "Concealing an item in a bag would not deter a normal four-year-old from seeking to find out the contents of that bag. In addition, the average four-year-old can reach a shelf that is only four feet from the floor, and is capable of scooting a chair over and climbing up on it to reach items placed up high." (*Yolanda L.*, at p. 996.)

The potential risk of "police raids, gang retaliation, shoot-outs in the home," based on father's admitted gang membership and his possession of the firearm is not sufficient.

These risks are not supported by substantial evidence: no evidence of any such past events and at the time of hearing; father had been sentenced to 32 months incarceration. (*C.V.*, at p. 573.)

In re Joaquin C. (2017) 15 Cal.App.5th 537

No Substantial Evidence — Mental Health Treatment

The evidence overwhelmingly indicates that despite any mental health concerns raised, the child was safe and well cared for in the mother's custody. There was no evidence that the child had met the conditions required under section 300(b).

The juvenile court's reliance on the mother's agreement to voluntary family maintenance services constituting evidence she understood she was a risk to the child is devoid of factual support**. Further, treating a parent's willingness to accept services as evidence of an admission of parental neglect and risk to the child understandably would compel parents to avoid these services.**

HOWEVER

In re Travis C. (2017) 13 Cal.App.5th 1219

As amended, the petition contained jurisdictional allegations that were supported by the facts presented, including mother's refusal to remain medication compliant and her history of psychotic episodes in the presence of the children.

Further, contrary to mother's argument, it was not necessary for DCFS to predict the specific type of harm the children would suffer as a result of mother's untreated mental illness.

The juvenile court order is sustained

In re Madison S. (2017) 15 Cal.App.5th 308

300(e)

The juvenile court's analysis as to the child's injuries being a result of child abuse and assigning culpability as to the father was reasonable, logical, and well-grounded in substantial evidence.

The court heard evidence from three medical experts and properly drew conclusions from their testimony that the injury was non-accidental. The court's finding of culpability by the father was strongly reinforced by a Pretext Phone Call. The father's multiple arguments sought repeatedly for the appeals court to re-weigh the evidence and substitute its judgement for that of the juvenile court. Because the findings and orders were supported by substantial evidence, this was not necessary.

WATCH FOR THIS CASE

- In re I.C. (2015) 239 Cal.App.4th 795
- Reliability and admissibility of hearsay of a child who is not competent to testify due to age.
- Pending in S.C. for two years!

Stay tuned!

AB 1401

This bill authorizes the court to issue a protective custody warrant, without filing a petition in the juvenile court alleging that the minor comes within the jurisdiction of the court as a dependent: if there is probable cause to believe the minor comes within the jurisdiction of the court; there is a substantial danger to the safety or to the physical or emotional health of the child; and, there are no reasonable means to protect the child's safety or physical health without removal.

Disposition
Services
Placement
Bypass

In re E.G. (2016) 247 Cal.App.4th 1417

361.5(b)(13) Bypass for persistent substance abuse and resistance to court ordered treatment.

Drug Diversion qualifies as "Court Ordered."

Even though voluntary, failure to comply carries criminal repercussions.

In re Z.G. (2016) 5 Cal.App.5th 705

361.5(b)(4)-Bypass

Regardless of the specific instrumentality of his death, the Parents' conduct and neglect put him on the path to be in the place where those factors were ultimately applied, under circumstances which increased the risk to he child. This conclusion follows regardless of whether Mother was under the influence or not because co sleeping was dangerous in the first place.

Jennifer S. v. Superior Court (2017) 15 Cal.App.5th 1113

Bypass per 361.5(b)(10) and (11) upheld upon the finding that it was not in the child's best interests to provide reunification.

Very fact specific case and contrasted with the facts in *In re G.L.* 222 Cal.App. 4th1153

In re Carl H. (2017) 7 Cal.App.5th 1019

Improper dismissal per WIC 390 at dispo

Although child's sibling was in mothers care at time of death, Carl was in the physical custody of his father, thus 361.2 was not applicable and dismissal was inappropriate.

In re Destiny D. (2017) 15 Cal.App.5th 197

Under section 361(c), the juvenile court has wide discretion to make orders necessary to protect the child and that it deems necessary and proper for the best interests of the minor. This includes the discretion to terminate jurisdiction when the child is in parental custody and no protective issue remains.

Destiny D. (Cont.)

The court has the ability to impose necessary limitations on an offending parent's conduct with a dependent child before terminating its jurisdiction. If no substantial risk of harm exists once these limitations are in place, and ongoing supervision is unnecessary, termination of jurisdiction is appropriate. A hearing under section 364 is only necessary if the court orders continued supervision.

Interpreter and Language Barrier Issues – Reasonable Efforts at Disposition

The lower court's disposition orders are reviewed for abuse of discretion. The lower court does not have unfettered discretion to fashion reunification services; rather, the court's orders must be reasonable and designed to eliminate the conditions that led to dependency. Here, the lower court ordered father to participate in alcohol treatment programs and parenting programs despite being informed by DCFS that it could not find any programs in language that father could understand.

In re J.P. (2017) 14 Cal.App.5th 616

361.2

New legislation

AB 1332-Effective 1/1/18

Essentially harmonizes the removal statute in WIC 361 for both custodial and non-custodial parents. The same clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent to live with the child or otherwise exercise the parent's right to physical custody.

Clarifies the 361(c) and 361.2 dilemma

FAMILY LAW ISSUES

In re Armando L. (2016) 1 Cal.App.5th 606

Parent's right to contest Terms of Custody Order At 364 hearing

Parentage

THREE PARENT CASES

FC 7612

In re Alexander P. (2016) 4 Cal.App.5th 475

WIC § 361.2 gives the dependency court exclusive jurisdiction to determine parentage. The dependency court was not bound by the family court's finding of parentage because the family court issued its decision after the dependency petition was filed.

Contrary to Michael's argument, res judicata and collateral estoppel were inapplicable because, upon filing of the dependency petition, the family court's jurisdiction was divested, the family court's order was void. Therefore, the dependency court had to independently determine parentage as to Michael.

In re Donovan L. Jr. (2016) 244 Cal.App.4th 1705

Application of section 7612(c) is one where there is an existing, rather than potential, relationship between a child and a possible third parent. Here, the juvenile court noted that there was not an existing relationship between the biological father and the child, thus it was error to apply section 7612(c) to the case at bar.

In re L.L (2017) 13 Cal.App.5th 1302

A person who claims to be a presumed parent has the burden of establishing, by a preponderance of the evidence, that they have an "established relationship with and demonstrated commitment to the child."

Sufficient evidence supported biological father's claim for presumed parent status but the lower court erred when it found him to be a third parent under section 7612(c) because he did not establish an existing relationship with the child or that the child would suffer detriment if only two parents were recognized.

In re M.Z. (2016) 5 Cal.App.5th 53

The court must make a finding of presumed parent status under 7611(d) before deciding whether person is qualified as a third parent under 7612(c).

Having a "caretaking role and/or a romantic involvement with a child's parent" is not enough to qualify as a presumed parent, and therefore, without an existing parent-child relationship, the factors for determining detriment for third parent status are inapplicable.

ICWA

"Active Efforts"
In re Abbigail A. (2016) 1 Cal.5th 83

The Court rejects the argument that rule 5.482(c) encourages prompt resolution of cases because it avoids the possibility of additional jurisdiction and disposition hearings upon discovery that the case does involve an Indian child. In fact, the Court states that rule 5.482(c) causes unnecessary delay by requiring the department to enroll children who are not Indian Children and may never become Indian children, without regard to the family's wishes.

As to rule 5.484(c)(2), which requires the agency to take steps to enroll an Indian child in the tribe, the Court holds that it is valid because its provisions only apply to cases involving an Indian child as defined by law. As such, it is not inconsistent with state law implementing ICWA.

In re Tal W. (AKA, T.W.) (2017) 9 Cal.App.5th 339

No reasonable services. Father in Florida and the trial court put in place a vague FR order which essentially left the father to fend for himself in locating services.

"It goes without saying that because the reasonable services and active efforts standards " 'are essentially undifferentiable' " (*In re C.F.* (2014) 230 Cal.App.4th 227, 239.), we conclude no substantial evidence supports the juvenile court's finding that active efforts were made on behalf of Father."

NOTICE! NOTICE ! NOTICE!

In re Isaiah W. (2016) 1 Cal.5th 1

In re Charlotte W. (2016) 6 Cal.App.5th 51

In re J.L. (2017) 10 Cal.App.5th 913

In re O.C. (2016) 5 CalApp.5th 1173

In re Breanna S. (2017) 8 Cal.App.5th 636

Placement, Removal and Visitation

In re Isabella G. (2016) 246 Cal.App.4th 708

Fourth District, Division 1

Isabella had lived most of her life at her PGP home. When detained, she was placed in a potential adoptive home, TPR, but PGP were not considered as placement.

Placed with NREFM.

Under 361.3, relatives have preference for placement.

Remanded. It was not a harmless mistake to not consider the grandparents for placement.

In re K.L. (2016) 248 Cal.App.4th 52

First District, Division 4

What is the standard on a 388 for placement change after Family Reunification is terminated and the court has decided that adoption is the permanent plan?

§ 361.3 establishes a relative preference in selection a temporary home when the child is removed from parental custody or when a new placement of the child is necessary.

In re Korbin Z.

3 Cal.App.5th 511 (September 2016)

Korbin & half-sister detained over allegations of physical abuse and neglect by Mother and her boyfriend. Father did not appear at J/D or Dispo.

Father appeals the juvenile court's decision to allow the child sole discretion over whether visitation occurs.

Court of Appeals ruled that it was in error to leave the discretion for visitation to child. Details can be left undecided, but not whether visitation will occur. Child argued that visitation was detrimental to his emotional health.

On remand, court will determine if visitation is in child's best interest.

In re T.M. (2016) 4 Cal.App.5th 1214

Apparently referencing father's disruptive behavior during the hearing, the court noted he was unable "to control himself in any setting, let alone should the child be subject to his behaviors." The court set review hearing dates and reiterated therapeutic visitation and conjoint counseling could begin after both father and the minor had an opportunity for individual counseling. Father appealed the juvenile court's order denying him visitation with T.M., arguing the trial court applied the wrong standard in finding that visits would be detrimental to T.M. Finding no reversible error, the Court of Appeals affirmed the trial court's judgment.

REVIEW HEARINGS

M.C. v. Superior Court (2016) 3 Cal.App. 5th 838

Incarcerated parent not in compliance with her case plan is still entitled to 12 months of services as the child was over the age of three at the time of detention.

In re J.E. (2016) 3 Cal.App.5th 557

J.E. was 14 when removed from her Mother for running away, self-injuring, and molesting her younger sister.

Family needed reasonable services – Like family counseling and J.E.'s counseling to target the molestation that was not ordered.

Mother could not control J.E. and did not feel safe having her come back home. Younger sister was afraid of J.E.

Court granted 24 months of reunification services, in attempt to reunify.

Services were found to be improper. 24 months ruling was affirmed to give J.E. more time.

Although the molestation of the younger sister was not alleged in the petition as a ground for the dependency, it was apparent to all involved that it was a "core issue" and the primary barrier to reunification. Despite this recognition, minor was offered only general individual and family therapy. The trial court reasonably concluded that the provision of generalized therapy, without a further assessment, was not tailored to meet the family's specific needs.

The case plan expressly required a psychological evaluation. The agency conceded at the 18-month review hearing that an evaluation had not been conducted.

Of Note!

In extending FR past 18 months, the court was not required to find that there was a substantial probability that the mother and minor will reunify within the extended time period. Rather, the court was required to balance a number of factors, including "the likelihood of success of further reunification services," in determining whether the continuance was in the minor's best interests. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1017.) Given minor's expressed desire to return home and mother's commitment to participate in services, the court reasonably concluded that there was a strong likelihood minor would reunify with proper treatment. We find no abuse of discretion in the extension of services under these circumstances. (*In re J.E.* 3 Cal.App.5th 557, 651.)

In re N.M. (2016) 5 Cal.App.5th 796

First District, Division 4 (November 2016)

At 366.22, the Court can terminate reunification services even if there is no reasonable efforts finding as long as those findings at the 366. 21(e) and/or 366.21(f).

Mother did not object to reasonable service findings at prior review hearings.

Statute allows for additional services if best interest of the child but in this case no facts supported that finding.

In re Hannah D. (2017) 9 Cal.App. 5th 662

Oral notice of writ rights upon termination of reunification is directory not mandatory under the circumstances of this case.

Because the father was represented by counsel and was personally served with written notice that he must seek writ review to preserve issues for appeal, the ultimate purpose of the rule (actual notice) was accomplished by written notice. Consequently, the trial court's failure to follow rule 5.590(b)(1)'s oral advisement requirement alone, does not render the requirements of section 366.26(l)(1)(A) and (1)(C)(2) inapplicable.

Termination of Parental Rights

In re D.H. (2017) 14 Cal.App.5th 719

Principles of due process require that the juvenile court not terminate a presumed father's parental rights without first finding, by clear and convincing evidence, that the father is unfit. The presumed father of D.H., argues the juvenile court violated due process by terminating his parental rights without making an unfitness or detriment finding against him by clear and convincing evidence at any point in the proceedings.

The C of A refused to depart from *Gladys L.* 141 Cal.App.4th 845 holding that juvenile courts must make a parental unfitness or detriment finding by clear and convincing evidence before terminating the rights of noncustodial, non offending fathers.

In re Noah G. (2016) 247 Cal.App.4th 1292

Second District, Division 5

Parental Relationship Exceptions

Compliance with the case plan can be a component of the trial court's assessment of the beneficial relationship.

- Such as failing to comply with orders for counseling, drug testing, and classes.

In re D.R. (2016) 6 Cal.App.5th 885

Ct. erred in ordering LG when no exception was established.

Grandmother's home study had been approved prior to the court's legal guardianship order, and grandmother had repeatedly reaffirmed her desire to adopt D.R. The juvenile court's conclusion that an exception applied because D.R.'s caretaker was unwilling to adopt is not supported by any evidence in the record. Nor was there any support for a conclusion that grandmother was unable to adopt as she had an approved home study.

DUE PROCESS

In re Grace P. (2017) 8 Cal.App. 5th 605

Father has a right to a contested 366.26 hearing and the court's request for an offer of proof is inappropriate under these circumstances.

In re Kayla W. (2017) 16 Cal.App. 5th 409

At disposition of a WIC 300 petition regarding a ***PROBATE LEGAL GUARDIANSHIP*** , mother is entitled to appointed counsel and the right to participate in the disposition hearing.

In re J.P. (2017)15 Cal.App.5th 789

The mother of a dependent child in a group home placement filed a Welfare and Institutions Code section 388 petition seeking reappointment of counsel. The juvenile court scheduled a hearing on the petition, but did not appoint counsel to represent mother at the hearing. At the section 388 hearing, the juvenile court ruled on mother's petition, but again did not appoint counsel to represent mother. The juvenile court's error in failing to timely appoint counsel for mother resulted in a miscarriage of justice.

REVERSED!

In re C.M. (2017) 15 Cal.App.5th 376

An order conditioning removal of the child from the mother's custody if she violated a restraining order is reversed because it made no additional findings or hearings on the imminent danger of physical or sexual abuse or an immediate threat to the child's health or safety.

The statutes authorizing removal of a child guarantee procedural and substantive due process to the parent and child. Removing C.M. because of contact with the stepfather by itself does not justify removal. To detain a child in protective custody, the focus must be exclusively on the question of whether the child is in imminent danger of physical or sexual abuse or the physical environment poses an immediate threat to the child's health or safety.

In re Alayah J. (2017) 9 Cal.App. 5th 469

Mother files a 388 petition asking for modification of visitation. Hearing set on the same date as the 366.26.

Trial court hears the 366.26 first and upon termination of parental rights deems the visitation request moot.

REVERSED!

Court must hold 388 hearing first.

In re J.S. (2017) 10 Cal.App.5th 1071

Mother has a right to testify at the 366.26 hearing regarding her assertion of the sibling exception to termination of reunification services.

Non-Minor Dependents

ALL COUNTY LETTER

- All County Letter (ACL) 17-83 Non-Minor Dependents (NMDs) assessed as being ready for a Supervised Independent Living Placement (SILP) may now reside in an approved and fully funded SILP in the same home as a parent or guardian, including the parent or guardian from whom the youth was initially removed. The California Department of Social Services has revised the California Title IV-E State Plan to include this policy change and submitted the plan to the Administration for Children and Families for approval.

AB 604

Provides that a minor or nonminor CSEC victim who met or would meet the criteria to be within the transition jurisdiction of the juvenile court, but for the fact that an underlying adjudication was vacated because the minor or nonminor was a victim of human trafficking when the crime was committed.

Links

Link to new Juv. And Fam. Law rules and forms:

http://courts.ca.gov/formsrules.htm

Link to new legislation enacted and signed:

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

The End

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