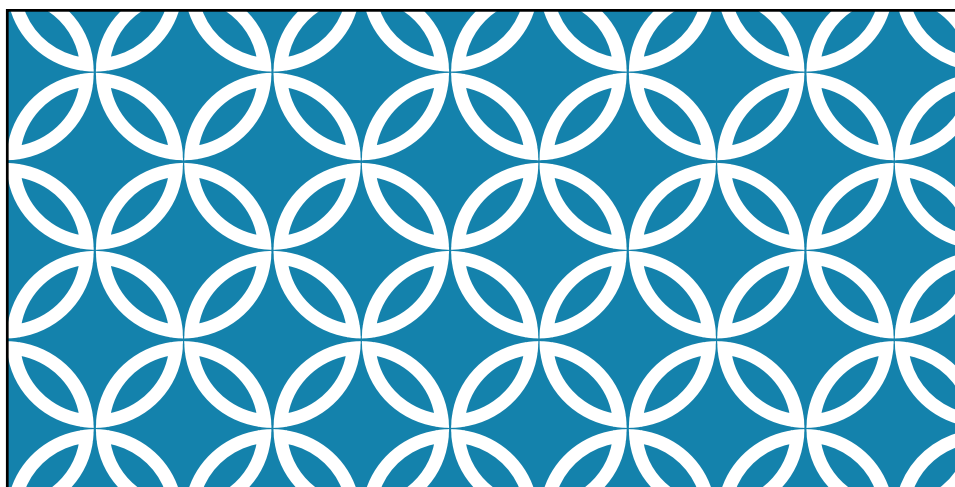


GOOD MORNING



**JUVENILE DEPENDENCY
LAW AND PROCESS**

**Beyond the
Bench 25**

WELCOME!

- ❖ Focus on Law and Process
- ❖ Utilize Workbook, Dogbook, CALDOG and resources; Courses throughout the conference for 8 hour credit
- ❖ Use notecards for questions and thoughts throughout the day
- ❖ Special Guest this afternoon
- ❖ Faculty Introduction

LET'S HONOR: NANCY ASPATURIAN 1958-2019



TAKE A MINUTE...

If you haven't already,
please review the fact
scenario that was
provided



**WHY A DEPENDENCY
SYSTEM?**

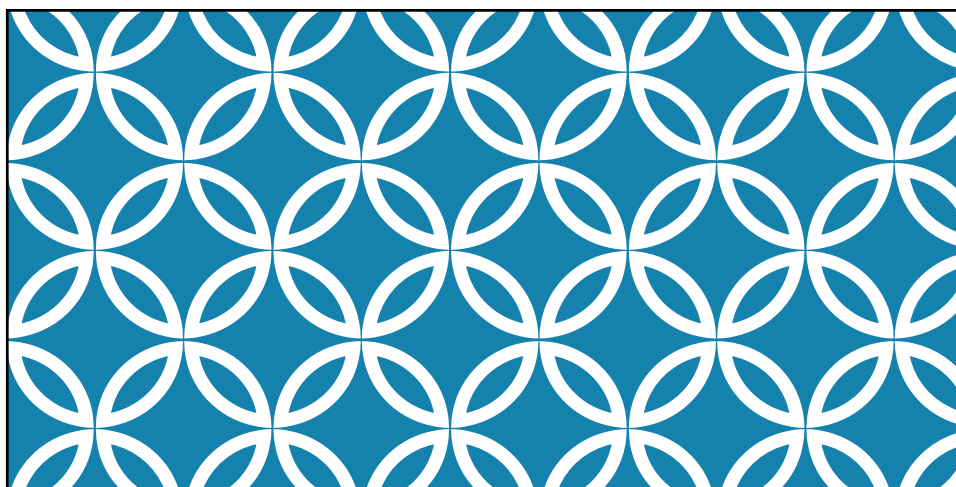


PURPOSES OF THE CHILD WELFARE SYSTEM

Maximum protection for children who are physically, sexually or emotionally abused, neglected or exploited, or at *serious risk of abuse or neglect*

Includes provision of services to the child and family and *presumes* that the best interest of the child is to remain in or be returned to the child's home or family

The mandate throughout is to keep a child at home, or return if detained or removed



**INITIAL HEARINGS--
DETENTION**

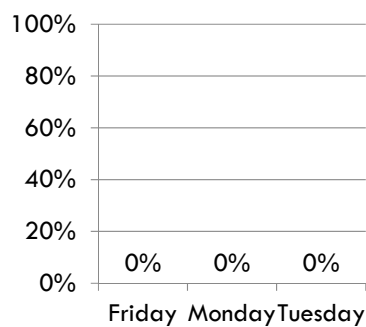
TEST YOUR KNOWLEDGE



TIMELINES

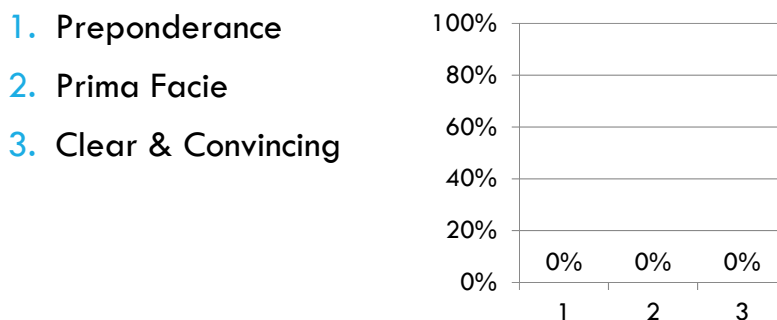
If a child was detained on Thursday morning and a petition was filed on Friday morning, by what day would an Initial Hearing need to be held?

1. Friday
2. Monday
3. Tuesday



HEARING

By what standard of proof would a court need to find that a child should be detained?



THE PETITION

If the child is detained in custody, a petition under W&IC § 300 must be filed within: **48 HOURS** OF PROTECTIVE CUSTODY

THE HEARING

The Court must hold a detention hearing within **3** days of physical removal

(the next judicial day after a petition is filed)

WIC § 315

COUNSEL FOR PARENTS

Welf & IC section 317 permits parents to be represented by counsel at all stages of the proceedings

And REQUIRES the court to appoint counsel for indigent parents if the child has been removed or the recommendation is for removal.

COUNSEL FOR CHILDREN

W&I CODE §317(c)

REQUIRES the court to appoint counsel for the child UNLESS it finds that the child would not benefit from the appointment of counsel.

Must state on the record the reasons for the finding.

CRC 5.660

To find child would not benefit, court must find:

- Child understands the nature of the proceedings
AND
- Child able to communicate and advocate effectively
w/court, other counsel, etc
- AND
- **Under circumstances, child would not gain ANY
benefit.**

AT THE HEARING, INQUIRE:

- Paternity
- ICWA
- ***Relatives/ Important
connections**

***FAMILY FINDING & ENGAGEMENT!!!!!!!!!!!!**

WHAT?

- Search for AND engagement of relatives

WHY?

- Information and Input
- Placement
- Connections
- Supports

FAMILY FINDING & ENGAGEMENT

WHEN?

- **MANDATED** From the beginning and throughout the case (WIC 319(f)(1)(A)(i))

(Placement at Dispo per 360 and 361)

- **For a child out of home for 6 months or more:**
Review Hearing report **MUST** contain efforts made to establish and maintain relationships with persons who matter to the **CHILD!** (W&IC § 16501.1(j))
- **At any TRS hearing or postpermanency hearing,** agency must make *diligent efforts* to locate and evaluate every relative submitted.

TO DETAIN CHILD COURT MUST FIND:

There is a **PRIMA FACIE** showing the child is described by

W&IC §300 (a – j)

AND

One of more of the following:

There is **SUBSTANTIAL DANGER** to the physical health of the child, or the child is suffering severe emotional harm and **THERE ARE NO REASONABLE MEANS** to protect the child's physical or emotional health without removal;

The child is already a dependent child and has run away or been removed from a court ordered placement;

The custodian of the child is likely to flee; or

The petition alleges physical or sexual abuse and the child refuses to return home.

***AND* TITLE IV-E FINDINGS
(ON THE RECORD...)**

Continuance in the home of the parents is contrary to the child's welfare. AND

Reasonable efforts have been made to prevent the removal from the parent of guardian. AND

Temporary care and placement are vested w/county welfare agency.

Failure to make these findings within 60 days of removal means child will never be eligible for Title IV-E funding

TODAY'S CASE:

■ **You be the Judge...**

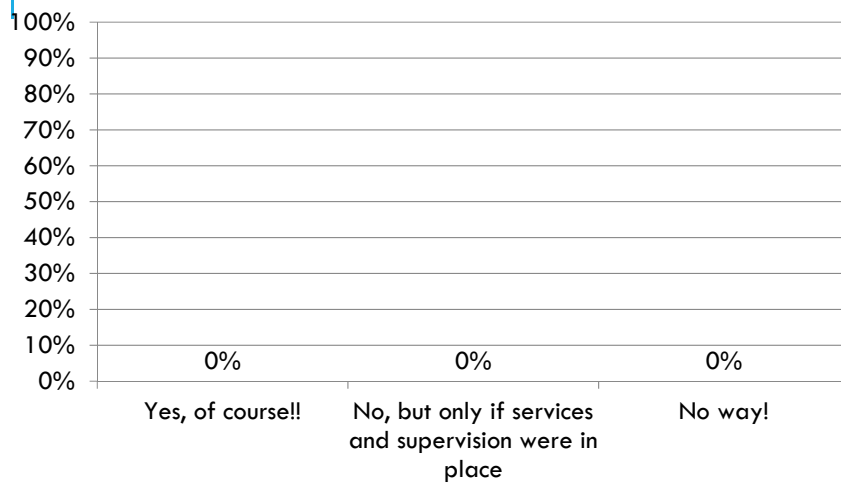


DETAIN?

Would you detain the children?

- 1. Yes, of course!!
- 2. No, but only if services and supervision were in place
- 3. No way!

DETAIN?

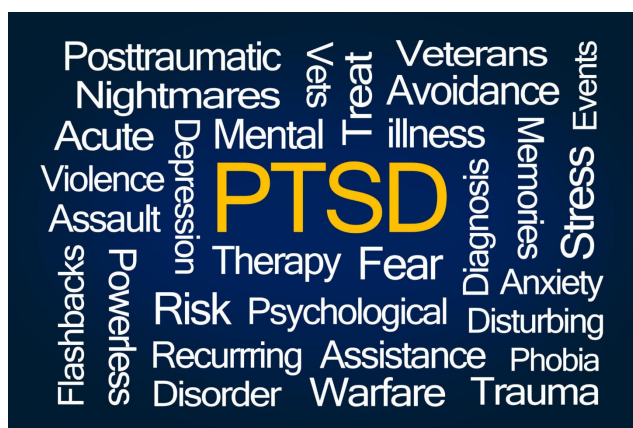




**TIP:
STRUCTURE YOUR ARGUMENT- BACK TO
BASICS**

- Return the Children
- *WIC §319 requires the children be released unless.....
- In this case...
- Therefore...

**HOW MANY OF YOU REMEMBER IRAC
FROM LAW SCHOOL?**



ISSUE (Your position)

RULE (Law, statute, rule)*****

ANALYSIS (facts of your case with law applied)

CONCLUSION (therefore, I'm asking for..)

ALL TOO OFTEN, THE **LAW*** IS MISSING...

“Your Honor, I’m asking you to return the child because my client has done.....

“Your Honor, the child should not go home because it’s not in their best interest,” or worse yet- “I have concerns...”

“Your Honor, the child should be detained because the parents have a drug problem...”

NOW LET'S GO TO THE TAPE...

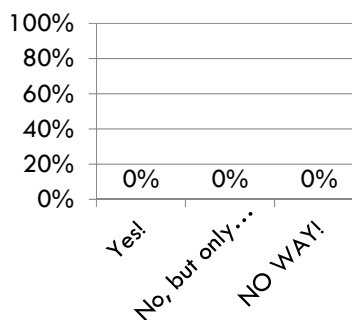


DID THAT CHANGE YOUR POSITION?



DETAIN?

1. Yes!
2. No, but only with supervision and services in place.
3. NO WAY!



WHAT DID YOU THINK? (NOTE CARDS ON THE TABLES)

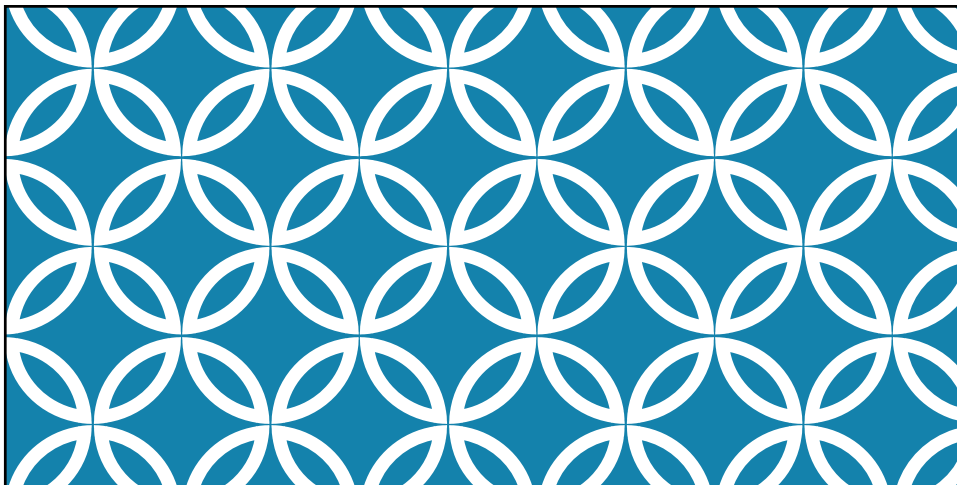
Whether your position changed or didn't, what did you think was good or bad about the arguments?

What were the qualities of the argument that was persuasive?

Who seemed most prepared and/or most convincing and why?

| **DETENTION**

Expert Panel?



JURISDICTION |

TEST YOUR KNOWLEDGE

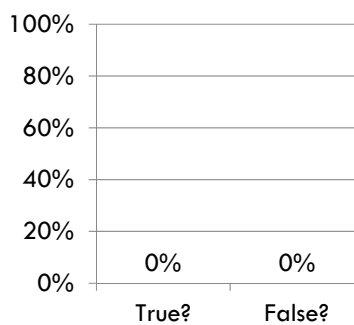


HEARING

At the Jurisdiction Hearing, the court will make a determination whether the child is adjudicated a dependent of the court

1. True?

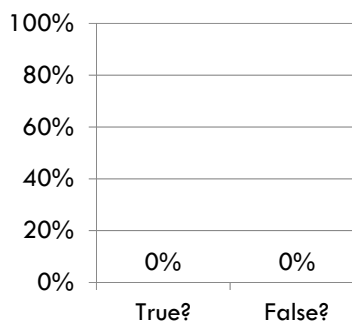
2. False?



HEARING

At the Jurisdiction Hearing in determining whether to sustain an allegation, the court can **only** consider statements of the child's teacher contained in the report, if that teacher testifies in court.

1. True?
2. False?



THE HEARING

- Must occur within 15 court days of the detention order (WIC § 334)
- Purpose: make a determination of the allegations

The court shall consider any legally admissible evidence that is relevant to the circumstances alleged to bring the minor within the jurisdiction of the court and must determine by a preponderance of evidence if the minor is a person described by WIC § 300, and the specific subdivisions of § 300 under which the petition is sustained. (WIC § 355; 358).

THE HEARING:

Parent/Guardian can:

- Admit
- Plead no Contest
- Submit on the Report
- Contest and request evidentiary hearing

EVIDENCE

- **In re Malinda S.** (1991) 51 C 3rd 368
- Social Study: Prepared by Social Worker
 - Must be provided to parties within a reasonable time prior to hearing
 - Admissible under WIC § 355(b)
 - Preparer must be available for Cross
 - Can and usually does contain hearsay

HEARSAY IN THE REPORT- WIC 355

If a party objects with
“reasonable specificity” and within
a reasonable period of time...

Hearsay objected to **MUST NOT**
be the **SOLE** basis of a true
finding of a petition..

UNLESS-

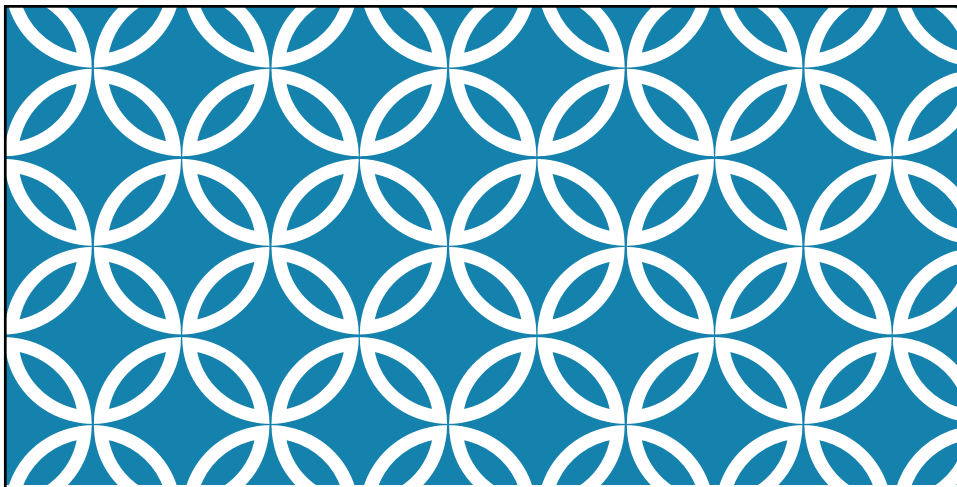
- Admissible under other exception; or
- Declarant is under 12 and the subject of the petition UNLESS the testimony was obtained by fraud, deceit or undue influence and is therefore unreliable; or
- Declarant is a peace officer, health practitioner, SW, teacher, AND the statement would be admissible if the declarant were present in court; or
- Declarant is available for cross exam

JURISDICTION-

Expert Panel?

LUNCH (YAY!!)

IN THE ROOM... (BOOO..)



DISPOSITION |

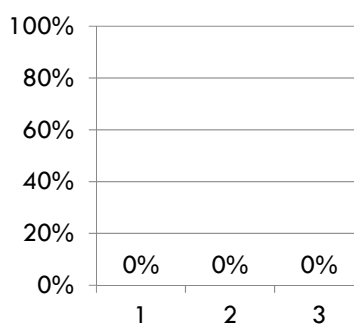
TEST YOUR KNOWLEDGE



HEARING

To remove, the court must find that there would be _____ to the health, safety, protection, or physical/emotional well being of the child and...

1. Immediate risk
2. Substantial danger
3. Imminent harm

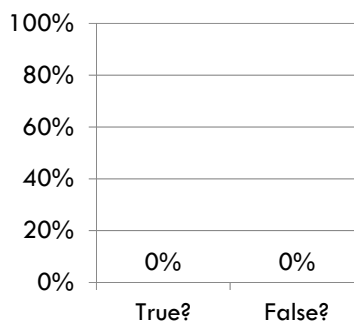


HEARING

If the Agency recommends that a parent receive no reunification services per WIC § 361.5, the Court **SHALL** continue the Disposition hearing at the parent's request

1. True?

2. False?



HEARING

Must occur within 10 court days of Jurisdiction. If no services are recommended because of bypass, hearing shall be continued up to 30 days, but can never be later than 60 days of Detention Hearing unless exceptional circumstances are found.

(WIC §358)

**THE LAW:
TO REMOVE—CLEAR AND CONVINCING EVIDENCE OF:**

1. **Substantial danger** to the physical/emotional well-being **AND NO reasonable means** to protect w/o removal; OR
2. Parent/guardian unwilling to have physical custody; OR
3. Child suffering severe emotional damage; OR
4. Child or sib suffered sexual abuse and **NO reasonable means** to protect OR child does not wish to return; OR
5. Child w/o provision or support, or incarcerated parent cannot arrange for care.

INDIAN CHILDREN

In an Indian Child custody proceeding, the child shall not be removed unless clear and convincing evidence that continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and that finding is supported by the testimony of a “qualified expert witness” per §224.6.

(WIC §361(c)(6))

COURT'S OPTIONS: NO REMOVAL

Dismiss the petition

Order informal services [W&IC §360(b), (c)]

Appoint a legal guardian [W&IC § 360(a)]

Declare dependency and appoint a legal guardian [W&IC § 360(a)]

Declare dependency and child still with custodial parent; order services

OPTIONS—REMOVAL W&IC 361 AND 361.2

Declare dependency, remove from custodial parent and

- 1. Award custody to non-custodial parent and dismiss dependency w/exit orders OR**
- 2. Place child w/non-custodial parent w/services to either or both parents OR**
- 3. Make an out-of-home placement order and consider reunification services and**

VISITATION

REUNIFICATION SERVICES W&IC §361.5(A)

Court SHALL order reunification services to:

- ***Child***
- ***Mother***
- ***Statutorily Presumed Father***
- ***Guardians***
- **MAY order to declared bio father if will benefit CHILD**

BY-PASS (SEE CHART)

To deny—court must make findings by CLEAR & CONVINCING

For most, burden shifts to parent (or child) to produce evidence of benefit to child.

(WIC §361.5(b))

VISITATION

- Critical at every phase of proceeding
- Most important mandated reunification service
- Must have minimums in place and ability to increase and enhance
- Don't forget siblings, other relatives and maybe even important connections

CONCURRENT PLANNING

Child removed: CWS has DUAL responsibilities

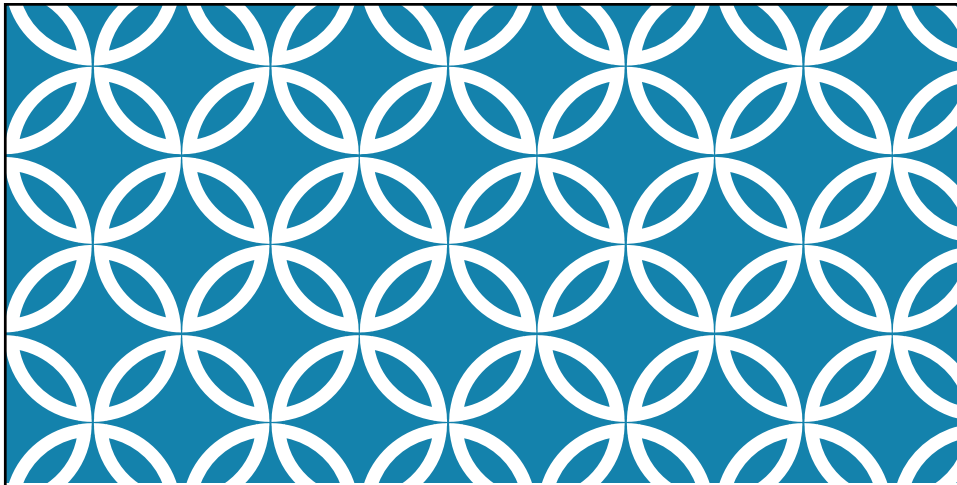
Reunification plan w/services AND plan for "achieving legal permanence" if reunification does not occur

Should utilize input from CFT

Requires frequent re-analysis of prognosis

DISPOSITION

Expert Panel?



REVIEWS

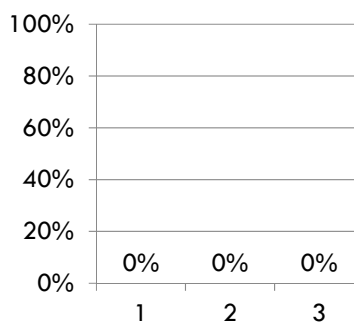
TEST YOUR KNOWLEDGE



TIMELINES

The first statutory review hearing (6 Mos. Review) shall be held within:

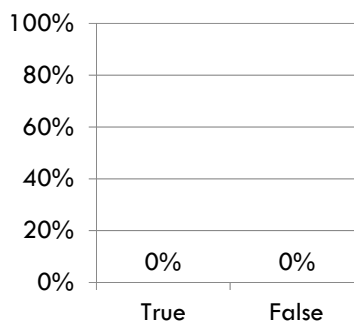
1. 6 months of the jurisdictional finding
2. 6 months of physical protective custody
3. 6 months of the Disposition hearing



HEARING

At a statutory review hearing, the court can return the child if it finds by a preponderance of evidence that return is in the child's best interest

1. True
2. False



IF YOU ANSWERED TRUE...



SIX MONTH REVIEWS ***W&IC § 366.21***

When? 6 mo. from dispo hearing,

BUT—no later than 12 months after the date the child entered foster care.

MUST return the child **UNLESS**—

- The court finds by a preponderance that return would create a substantial risk of detriment to the safety, protections or physical or emotional well being of the child.

If not return, MUST continue services and set a 12 mo. review

OR...

AT 6 MO. REVIEW, MAY TRS AND SET 366.26 HEARING ONLY IF:

1. Reasonable services/Active efforts have been offered or provided
AND
2. The child/sib group under 3 **and** by clear and convincing evid, no regular participation and substantive progress **OR**
3. Petition per 300 (g) or felony conviction

12 MONTH REVIEW W&IC §366.21

When?

12 Months from the date the child entered foster care

Shall return **UNLESS**-

The court finds by a preponderance that return would create a substantial risk of detriment to the safety, protections or physical or emotional well being of the child.

If not return *SHALL* (must) terminate services **UNLESS**

1. Substantial probability of return w/in 18 months of protective custody, **OR**
2. No reasonable services/Active efforts

18 MONTH REVIEW W&IC §366.22

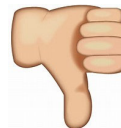
When? Within 18 mos of protective custody

SHALL Return **UNLESS**...

If not return, **MUST** terminate reunification services &

- Set .26 hearing **OR**
- ******Find by clear and convincing evidence that there is a compelling reason that a .26 is not in the child's best interest because the child is not the proper subject of adoption and no guardian available, and set 6 mo Post Permanency Planning review (§ 366.3)

▪ **OR**...



W&IC §366.22 (24 MONTH)

At 18 mo. **may** set a review w/in 24 months of PC **IF:**

- Substantial probability of return in that time OR
- No reasonable services/Active efforts

AND by Clear and Convincing evid.

More services is in child's best interests **AND**

- Parent making significant and consistent progress in residential substance abuse treatment,
- Parent was a minor or NMD and is making significant progress, OR
- Parent recently released from incarceration, institutionalization or Homeland Security and making significant and consistent progress in establishing a safe home.

SETTING A 366.26 HEARING W&IC § 366.22

If services terminated and Court must (unless 366.3 hearing):

- 1. Set .26 hearing w/in 120 days**
- 2. Order visits unless finding of detriment to the child**
- 3. Advise parent re Notice of Intent to File Writ Petition (JV-820)**
- 4. Order parent back**
- 5. Order assessment**

WRITS

W&IC § 366.26; CRC 8.450 ET SEQ

In order for Ct. of App. to review orders terminating (or not ordering) reunification services, and ENTIRE case

Must raise the issues IMMEDIATELY after .26 is set—through writ process

- Notice of Intent must be filed within **7 days** of the hearing, if present and within 12 days the notice was mailed, if not present (CRC §8.450(e)(4)(A)(B))
- The Writ petition must be served and filed within **10 days** after the record is filed in the reviewing court (CRC §8.452(c)(1))

Issues may not later be raised on a subsequent appeal of the .26 orders UNLESS a Writ was filed.

STATUTORY REVIEWS

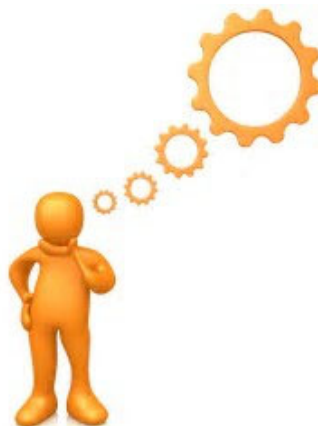
Expert Panel?

I NEED A BREAK
(15 MINUTES PLEASE...)



§366.26 |

TEST YOUR KNOWLEDGE

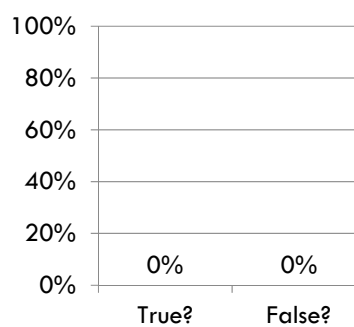


HEARING

At the WIC §366.26 hearing, the court could order return of the child to the parent if it found that it would be detrimental to the child to terminate parental rights.

1. True?

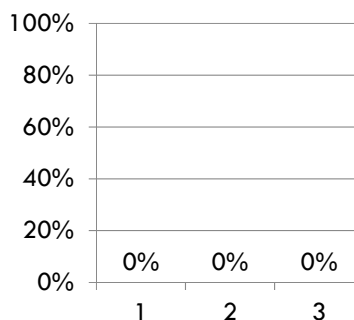
2. False?



HEARING

In order to terminate parental rights, a court must find by _____, that it is likely the child will be adopted.

1. A preponderance
2. Clear and convincing
3. Beyond a reasonable doubt



§366.26 HEARING

When? W/in 120 days of Permanency Review which term'd services

PURPOSE:

- To Select a permanent plan
- Procedural mechanism to terminate parental rights

NOT A PURPOSE:

- To consider return of the child
- To consider continuation of services

.26 HEARING ORDERS

§366.26 JV-320

- SHALL terminate parental rights IF
- By clear and convincing evidence, court finds child likely to be adopted.
- For Indian child, may order tribal customary adoption.
 - Court can only terminate parental rights if finding beyond a reasonable doubt, which is supported by an expert, that continued custody by the parent is likely to result in serious damage to the child.

UNLESS: §366.26(c)(1)(A)(B)

(A) With Relative unable or unwilling to adopt & moving would be detrimental; or

(B) TPR would be detrimental (exceptions)

Often litigated (§366.26(c)(1)(B)) circumstances:

(i) Parent(s) have visited and CHILD would benefit from continued relationship

(v) Would be a substantial interference with the child's sibling relationship

Considering nature & extent of relationship (specific factors)

OR §366.26(c)(2)(A)(B)

No reasonable efforts/active efforts found at EACH hearing at which it was required

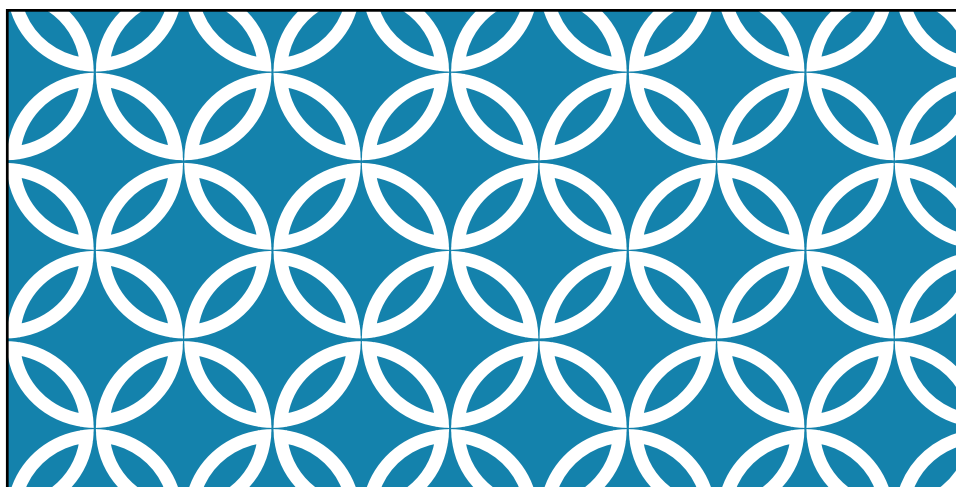
SPECIAL GUEST

Melissa Gutierrez



| §366.26

Expert Panel?



POSTPERMANENCY REVIEWS |

TEST YOUR KNOWLEDGE

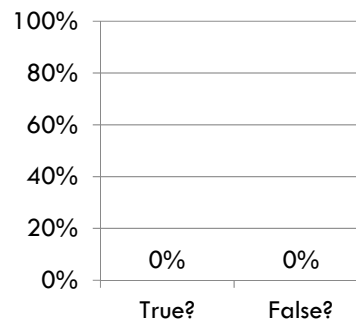


HEARING

At a postpermanence review, the court can order a plan of “placement in the Smith foster home with a goal of guardianship with the Smith caretakers.”

1. True?

2. False?

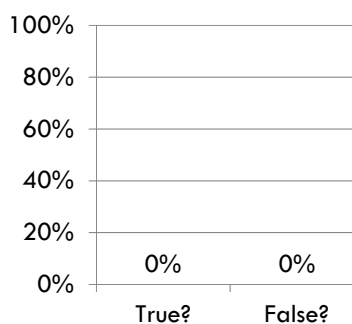


HEARING

At a postpermanency review where parental rights are still in tact, because reunification has ended, a parent need not be noticed to participate and plays no real role in the hearing

1.True?

2.False?



POST PERMANENCY REVIEWS

When? –Always within 6 months of the last review hearing

-After .26 or hearings ordering a child remain in foster care

(**WIC 366.3)

W&I CODE §366.3

Purpose of Permanency Review :

To determine whether reasonable efforts have been made to finalize a permanent plan for the child.

Must order a Permanent Plan*:

- Adoption/TCA
- Guardianship
- Placement with a fit and willing relative
- APPLA **ONLY** for 16 + in limited circumstance
- Reunification (§366.3(f))

Responsibility to reach permanency for each child continues until final adoption, guardianship established or child is returned home.

Identify any barriers to achieving the permanent plan and steps to address the barriers.

Unless parental rights have been terminated, parents receive notice and may participate.

16 + YEAR OLD (APPLA)

For a child 16+ years of age, Another Planned Permanent Living Arrangement (APPLA) can be ordered as a permanent plan only if there is a compelling reason that setting a .26 hearing is not in the child's best interest as the child is not the proper subject for adoption and there is no available guardian. The court must make factual findings as to the barriers to achieve a permanent plan

AND

16 + YEAR OLD (APPLA)

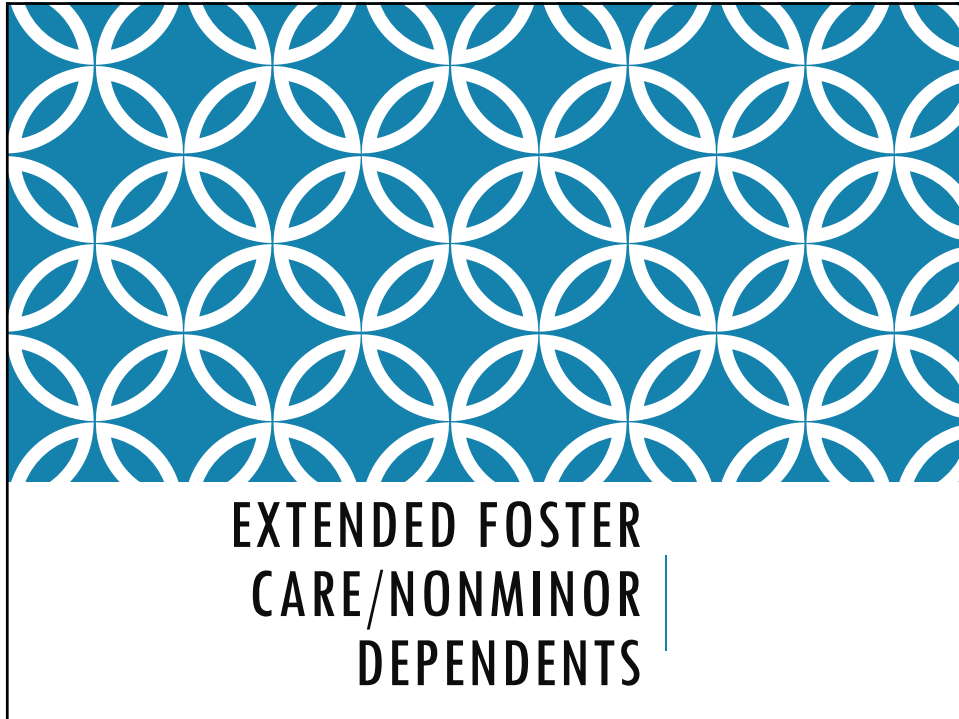
State for the record the **ONGOING AND INTENSIVE EFFORTS** to return the child to the home of the parent, place the child for adoption, or establish a legal guardianship, as appropriate.

A NOTE ON CCR (CONTINUUM OF CARE REFORM)

Intended to create more permanency and connectedness and reduce a youth's time in care without a family like setting and/or an actual permanent plan

Can be difficult to implement in all cases particularly with older youth and youth in higher level placements

But hang in there...



PROGRAM ELIGIBILITY

Extended foster care applies to Non-Minor Dependents (NMDs)

A NMD is defined as a dependent or ward who meets 3 criteria.

****Youth must also agree to placement in a supervised placement in an eligible facility.***

3 CRITERIA (WIC 11400(V))

1. 18 TO 21

2. Under FC order on 18th birthday

- Or was in a juvenile court established adoption or guardianship at 18 (For Reentry)

3. Has a TILCP & participating in 1 of the 5 eligibility conditions

ELIGIBLE IF...

- 1. In high school or seeking GED**
- 2. In post-secondary school or vocational school**
- 3. Working 80 hours a month or more**
- 4. Working to resolve obstacles to participating in one of the above three requirements**
- 5. Unable to participate due to mental or physical limitations.**

**MUTUAL AGREEMENT
(SOC 162)
WIC 303(D), 11400(U)**



Voluntary Agreement between the youth and the county welfare agency regarding criteria, services & case planning, placement, meetings with social worker, etc.

HEARINGS

Review Hearings: Eligibility, placements, services, plan etc.

Termination Hearings: Information to youth? All documentation to youth?

Reentry Hearings: Construed liberally-

1. **Nonminor had FC order at 18th b-day or** was in a juvenile court established adoption or guardianship at 18 that has failed
2. **Not too old**
3. **Request for assistance and agreement to VRA**
4. **Intent to satisfy at least one condition**

POST PERMANENCY AND NMD REVIEWS

Expert Panel?