

# JUVENILE LAW UPDATE

Beyond the Bench  
December 2015

Judge Amy Pellman  
Judge Anthony Trendacosta

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## Who is here?

Judicial Officers?  
Attorneys?  
CASAs?  
Social Workers?  
Mental Health Professionals?  
Tribal Representatives?

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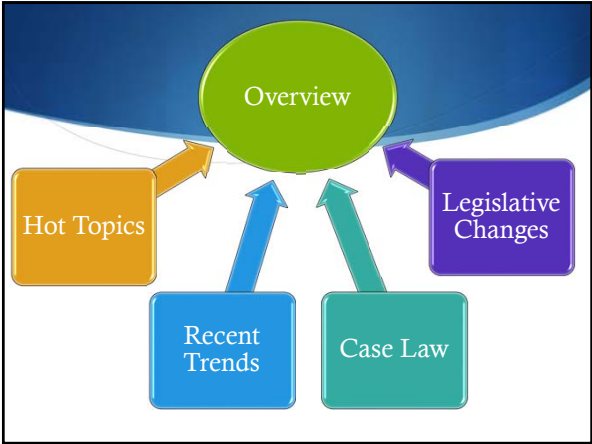
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# Hot Topics



- \*Drugs and Domestic Violence (as always)
- \* Commercially Sexually Exploited Children (CSEC)
- \*Special Juvenile Immigrant Status (SJIS)
- \*UCCJEA
- \*Placement/De Facto Parents
- \*ICWA

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## Why is Dependency Like no Other Court?




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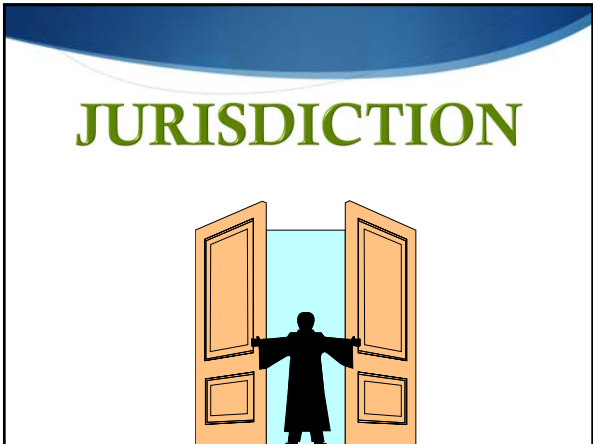
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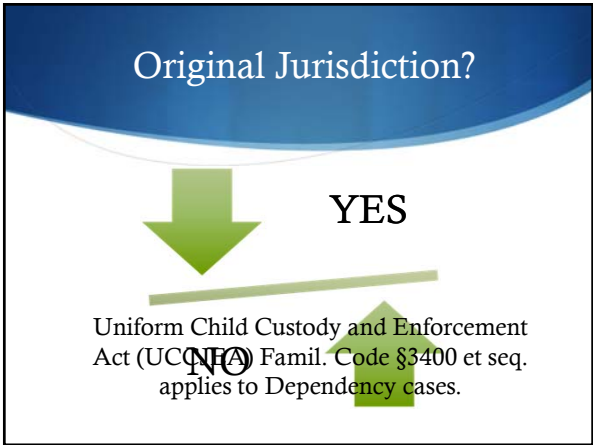
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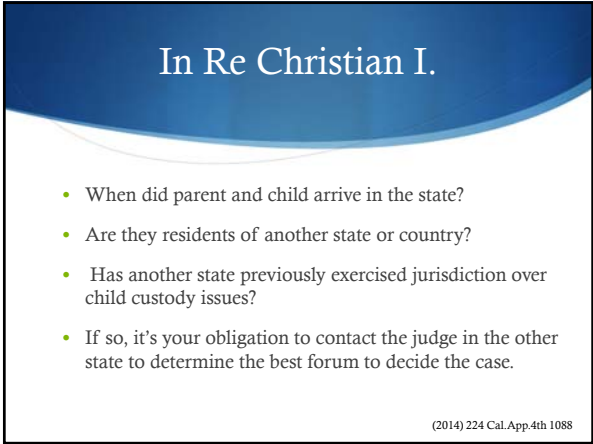
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## Does UCCJEA have International Jurisdiction?

Family Code §3405

In re A.M. 224 Cal.App.4th 593

In re Gino C 224 Cal.App.4th 959

See also Seiser and Kumli 2014 Ed.

§ 2.82[1] pg. 2-248

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## In re M.M.

- The trial court did not violate UCCJEA when proceeding to Juris after the “home State” (Japan) refused to communicate with the trial court.
- California is the more appropriate forum in any event. The parents lived here and the DV incident occurred in San Diego.
- The trial court did not have an affirmative duty to advise Mo. She could pursue custody in Japan. She had counsel and had months to seek custody in Japan if that was her desire.

(2015) 240 Cal.App.4th 703

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**SUBSTANTIAL  
RISK**

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## In re I.J.

“Some risks may be substantial even if they carry a low degree of probability because the magnitude of the harm is potentially great. . . .”



“Conversely, a relatively high probability that a very minor harm will occur probably does not involve a “substantial” risk.”

(2013) 56 Cal.4th 766

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## In re I.J.

Likelihood  
that harm will  
occur



The  
magnitude  
of potential  
harm.



Substantial risk  
of detriment

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## In re Francisco D.

- Applies the In re I.J. standards to a physical abuse case.
- There, the trial court sustained WIC §300(b) & (j) on a child who’s sibling was severely physically abused and cruelly treated by the parent.

(2014) 230 Cal.App.4th 73

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## In re D.M.

- ◆ Is striking children with a sandal “physical abuse” or “appropriate discipline?”

◆ November 23, 2015 Second Dist., Div. 2

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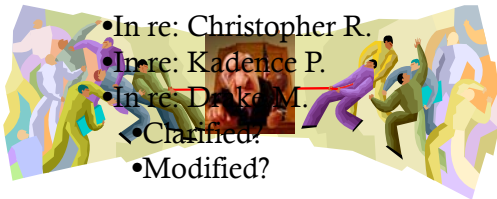
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## Substance Use and Abuse



- In re: Christopher R.
- In re: Kadence P.
- In re: D. M.
- Classified?
- Modified?

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## In re Kadence P.

“Although section 300 generally requires proof the child is subject to the defined risk of harm at the time of the jurisdiction hearing (*In re Savannah M.* (2005) 131 Cal.App.4th 1387, 1396; *In re Rocco M.* (1991) 1 Cal.App.4th 814, 824), the court need not wait until a child is seriously abused or injured to assume jurisdiction and take steps necessary to protect the child. (*In re N.M.* (2011) 197 Cal.App.4th 159, 165.)

The court may consider past events in deciding whether a child currently needs the court’s protection. (*Ibid.*) A parent’s “[p]ast conduct may be probative of current conditions’ if there is reason to believe that the conduct will continue.” (*In re S.O.* (2002) 103 Cal.App.4th 453, 461; accord, *In re Christopher R.* (2014) 225 Cal.App.4th 1210, 1216.)”

(11/9/15) WL 6859668

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## In re Drake M.

211 Cal.App.4th 754

Is the father's use of medical marijuana sufficient to sustain a §300(b) count against him?

**No!**

Such a finding must be based on evidence sufficient to



OR



Show that the parent/guardian had been diagnosed as having a current substance abuse problem by a medical professional

Establish that the parent/guardian has a current substance abuse problem as defined in the DSM-IV.

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## Christopher R. Court Explains

Drake M. is a good basis for analysis, but is not the end of the inquiry, especially since DSM IV has been replaced with DSM V

**AND**

Pursuant to WIC 300.2, the legislature has found that children are entitled to a drug free environment.

(5/12/14) 225 Cal. App. 4th 1210

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## Rebecca C .

Similar to In re Destiny S. (2013) 210 Cal.App.4th 999

The court specifically found that a diagnosis from a medical professional was not required by Drake M.

However, in this case the agency presented no evidence that the use or abuse of meth adversely impacted the child's well being.

(2014) 228 Cal.App.4th 720

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## Failure to Protect



In re A.R. (8/12/14) 228 Cal. App. 4th 1146

In re J.C. (1/14/15) 233 Cal.App.4th 1

Similar cases, one parent failed to act to protect the child from the substance abusing parent.

Mother knew the father had a history of substance abuse and was violent and physically abusive, yet she gave up trying to see the children after one unsuccessful request for help from the police, moved out of state, and started a new family.

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## HOT TOPIC



- CSEC (Commercially Sexually Exploited Children)
- **SB 855**
  - Recognition that the focus is on the minor as a victim, not a criminal; moving away from jurisdiction under the Delinquency law and providing for jurisdiction under the dependency statutes; Provides \$ for services.

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## In re R.T.



- Minor was an incorrigible teen.
- Is a Teen subject to 300(b) regardless of any finding of parental "Blameworthiness."
- **YES!**
  - Petition for review pending in SC because its holding is inconsistent with *Precious D.*

(2015) 235 Cal.App.4th 795

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## In re Roxanne B.

300(c) is the correct sub-section where parents failed to obtain psychiatric treatment for a child suffering from severe emotional or psychological issues.



(2015) 234 Cal.App.4th 916

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## In re T.V.

Exposing children to recurring domestic violence may be sufficient to establish jurisdiction under section 300(b).



(2013) 217 Cal. App. 4th 126

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## In re M.M.

Did the court err making a true finding under 300(a) where the DV between mother and father was not directed at minor?



(2015) 240 Cal.App.4th 703

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## In re D.P.

Did the juvenile court err in sustaining a petition under section 300(c) without evidence the child was suffering from serious emotional damage resulting from DV?



**NO!...**



But is this an outlier?

(2015) 237 Cal.App.4th 911

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## In re Johnathan B

HOWEVER:

Where mother immediately called the police and protected children after DV incident, court could not sustain a failure to protect allegation v. mother.

(2015) 235 Cal.App.4th 115

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## In re M.W.

The Court of Appeal struck the allegations regarding mother's failure to protect regarding the seven-year-old DV and lack of knowledge of Father's sex offense.

(2015) 238 Cal. App. 4th 1444

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## In re Jesus M.

Violations of restraining orders/threats and harassment not sufficient under 300(a) or (b) and there is not sufficient evidence of emotional harm to sustain a 300(c).

(2015) 235 Cal.App.4th 104

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## EVIDENCE

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## Duties of a Juvenile Court Judge

Unlike in any other case, a Juvenile Court Judge has broader discretion in controlling how the case is to actually proceed, including calling witnesses, allowing counsel to re-open, etc.

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## In re Emily D.



- In dependency proceedings, the welfare of the minor is the paramount concern of the court.
- The purpose of these proceedings is not to punish the parent, but to protect the child.
- The child's future is as vitally affected as is that of the parties competing for his or her custody.
- A trial court should not restrict or prevent testimony on formalistic grounds. **The court should avail itself of all evidence which might bear on the child's best interest.**

(2015) 234 Cal.App.4th 438

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## In re I.C.

Review granted by the SC, Watch For This Case

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(2015) 239 Cal. App. 4th 304

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# FAMILY LAW ISSUES



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## In re Nicholas E.

In relying on *In re A.G.*, the trial court erred in dismissing petition prior to adjudication and sending back to Family Court.

- *In re A.G.*, (2013) 220 Cal. App. 4th 675

(2015) 236 Cal. App. 4th 458

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## In re Cole Y.

- Upon termination at disposition with a custody order, Juv. Court cannot dictate terms of non-custodial parent's compliance for purposes of possible later modification.
- That is the role of the Family Court.

(2015) 233 Cal.App.4th 1444

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## In re the Marriage of Elenita L. and R. Fajota

FC section 3044 requires that a court apply a presumption that it is detrimental to the best interest of the child to award joint or sole physical or legal custody to a parent if the court has found that that parent has perpetrated any act of domestic violence against the other parent in the preceding five years.

(2015) 230 Cal. App. 4th 1487

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Disposition  
Services  
Placement  
Bypass

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§361.2

 **HOT TOPIC** 

In each of these cases, the Courts of Appeal remind us that the applicable code section for disposition for non-custodial parents is §361.2!

- D 'Anthony D. (2014) 230 Cal. App.4th
- In re A.B. (2014) 230 Cal.App.4th 1420
- In re Jaden E. (2014) 229 Cal.App.4th 1277
- In re Maya I. (2014) 232 Cal.App. 4th 81
- In re C.M. (2015) 232 Cal.App.4th 1394

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§361.2

WIC 366.21(e):

“If the child has been placed with a previously non-custodial parent pursuant to Section 361.2, the court shall determine whether supervision is still necessary.

- In re Maya I. (2014) 232 Cal.App. 4th 81

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## In re K.B.

Pursuant to 361.2(a) the court *shall* place the child with the parent *unless* it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child. It is the burden of the party opposed to such placement to prove detriment by "clear and convincing evidence."

Even though it would separate this child from ½ siblings and grandmother with whom he lived for some time.



2015 239 Cal. App. 4th 972

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## What if there was no Custodial Parent?

In re Dakota J 11/23/15 Second Dist. Div. 3

Children with step grandfather for years. Mother has severe mental and emotional problems. Can you use WIC 361.2 to remove?

Section 361(c), authorizes a child's removal "from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated." Thus, 361.2 does not apply.

361(a)(1), allows the court to "limit the control to be exercised over the dependent child by any parent or guardian . . ." (§ 361, subd. (a)(1).) Unlike section 361, subdivision (c), section 361, subdivision (a), applies to "any parent or guardian," not solely custodial parents or guardians. Similarly, section 362, subdivision (a), further authorizes the court to "make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child . . ."

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## In re D.H

### Bypass Issue

- Bypass on 361.5(b)(10) and (11) must be for similar factors as sustained in the original petition:
- Substance abuse v. Dirty Home



(2014) 230 Cal.App.4th 807

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## D.F. v. Sup. Ct. of Humboldt

Can a court bypass reunification services pursuant to 261.5(b)(1) if the parent's parental rights were terminated for another child in another state?

YES!

11/24/15 First Dist., Div. 1

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## D.T. v. Superior Court

- When a child is initially detained at the original disposition, returned home, and then removed under a 387 or 342 petition, the "clock continues to run" while the child is at home.
  - 10/28/15 First District, Div. 4
- **In re G.W.** (2009) 173 Cal.App.4th 1428 and ROC 5.565(f), provides that when a parent has already received 18 months of reunification services, the court's only option after granting a 387 petition is to set a hearing under 366.26.

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## Placement, Removal and Visitation



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## De Facto Cases

- In re R.T. (2015) 232 Cal. App. 4th 1284
- In re A.F. (2014) 227 Cal. App. 4th 692
- In re Jaden M. (2014) 228 Cal. App. 4th 1452
- In re M.M. (2015) 235 Cal.App.4th 54

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## In re F.A.

- The trial court did not abuse its discretion in refusing to return a child removed from foster parents once it was determined that they posed no risk to the child .
- The Court of Appeal declined to make advisory findings about what would or should be appropriate guidelines in these types of cases impacted the decision?

(2015) 241 Cal.App.4th 107

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## Who is a NREFM?

- In re Joshua A. 7/17/15 239 Cal. App. 4th 208
- Pursuant to recent amendments to WIC 361.3(c)(2), 362.7 and CRC 5.502(34), it is no longer necessary that the proposed NREFM have a relationship to the subject child.
- It is sufficient, as in this case, that the proposed NREFM have the requisite relationship to a relative of the child, including the parent.
- However, court did not abuse discretion by refusing to place with the proposed caretaker.



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## In re J.T.

### Visitation by Grandparent Upon Termination

Trial court can order visits with the former caretaker/PGM upon termination of jurisdiction and Troxel v. Granville, 530 U.S. 57, does not apply to Dependency cases where mother was previously found unfit, even after child returned to her.

(2014) 228 Cal.App.4th 953

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## In re A.J.

- Is a mere bio Father entitled to visitation upon granting of a LG?
- Bio father is not a "parent" for purposes of visitation pursuant to WIC 366.26(c)(4)(C) after legal guardianship is granted.



(2015) 239 Cal. App. 4th 154

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## Sibling Visits New Legislation SB1099

New subdivision (b)(2) of WIC 388 authorizes a minor or non minor dependent to petition the court to assert a sibling relationship to a child who is in the physical custody of a common parent, and may request visitation with that sibling.

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## In re Ethan J.

- The court may not terminate its jurisdiction after ordering legal guardianship with visitation for mother, knowing that the child will not visit with the mother.
- Under these circumstances the juvenile court must not terminate dependency jurisdiction b/c mother has no available remedy.
  - True for FLOs?

(2015) 236 Cal.App.4th 654

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## Parentage



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## In re Giovanni B.

Voluntary Declaration Of Paternity per FC 7570 is not a conclusive presumption in dependency actions.

(2013) 221 Cal.App.4th 1482

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## New Kelsey S. Cases

Kelsey S. explicitly requires that a father prove he “has done all that he could reasonably do under the circumstances.” Father’s own decisions (drug use and incarceration) impeded his ability to do so.



Adoption of Emilio G.  
(2015) 235 Cal.App.4th 1133

Adoption of Baby Boy W.  
(2014) 232 Cal.App.4th 438

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## Adoption of T.K.



- The trial court was correct in finding Mr. D.N. was not a *Kelsey S.* father.
- He raided the small fund the couple initially established for child expenses and never paid it back. Falsified his check book register to make it look like he had sent money to Mo. when he had not.
- D.N. engaged in a campaign of cyber-stalking Mo. “that in some instances bordered on the downright creepy (creepy is K.K.’s word, not ours, but it seems apt).”

1/4/14 (MODIFIED) Fourth District, Div. 3

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## R.M. v. T.A.

### Presumed Parent & Artificial Insemination?

Presumed parent status is afforded only to a person with a *fully developed parental relationship* with the child; hence, the presumption adds to, but does not trample upon, the constitutionally protected right to parent one's own child.



(2014) 233 Cal.App.4th 760

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## Paternity Testing

**In re Emma B.**  
(2015 Cal.App.4th 998)

In a dependency hearing to determine presumed parentage of a child, where the court has identified a presumed father based on marital status and conduct, the issue of biology is not a relevant fact and the presumed father is not entitled to a genetic test.



**In re D.P.**  
8/26/15 4th Dist. Div. 2

Taking into account D.P. was conceived after father was arrested and incarcerated, the court reasonably denied father paternity testing, since father could not have fathered D.P. while father was incarcerated. Not entitled to a paternity test.

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## ICWA



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## ICWA

- In re Francisco D. (2014) 230 Cal.App.4th 73  
ICWA doesn't apply to adopted children?
- C. F. v. S.C. of Mendocino County (2014) 230 Cal.App.4th 227  
Active efforts = Reasonable efforts?



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## In re I.B.

- There is a duty to send updated notices once the CSW received additional information (such as previously omitted birthdates, aliases, alternate spellings and/or other possible tribal affiliations).
- The CSW must provide the additional information to any tribes entitled to notice pursuant to Section 224.2(3)(a) to the tribes and the Bureau of Indian Affairs

(2015) 239 Cal.App.4th 367

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## In Re B.H.



10/22/15 4<sup>th</sup> Dist. Div. 2

- The Appellate Court held that the mere reference to a tribe triggers the obligation to notice under ICWA **AND** that notice must be in conformance with the law. Defective notice is not harmless under these circumstances.
- The ICWA notice requirements are “not onerous.” (*Dwayne P.*, *supra*, 103 Cal.App.4th at p. 254.)

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## WATCH FOR THESE



- In re Abbigail A.
- In re Isaiah W.
- New federal regulations governing ICWA are still out for comment but BIA guidelines are effective and regulations will be based on guidelines.

**Stay tuned!**

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## WIC §827 & ICWA



AB 1418, effective 1/1/15, amends §827 to include as authorized persons allowed access to appropriate representatives of a tribe, reservation or tribal court where the child is registered or eligible for registration in the tribe.

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## Tribal Customary Adoption

*In Re Sadie S.*  
10/5/15 5th Dist.



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## WIC 364

*In re Aurora P.* (October 29, 2015)

The party seeking to continue dependency jurisdiction bears the burden of proof by a preponderance of evidence to show that conditions continue to exist which justified the initial assumption of jurisdiction under WIC 300.

First Appellate District 2015 Cal. App. LEXIS 972

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In re D.B.  
8/6/15 4th Dist./Div. 3

WIC 364(c) requires that the court “shall terminate its jurisdiction unless the social worker . . . establishes by a preponderance of the evidence that the conditions still exist which would justify initial assumption of jurisdiction. The initial conditions no longer existed. Mother had made great progress in her case plan—she was healthy, employed full time, and testing drug and alcohol free.

Trial court kept juris because father was stalking. (Not in orig. petition)

**HOWEVER:** *In re J.F.* (2014) 228 Cal.App.4th 202, 210, concluded that “[t]he language of section 364 does not literally require that the precise conditions for assuming jurisdiction under section 300 in the first place still exist—rather that conditions exist that ‘would justify initial assumption of jurisdiction.’”

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# Termination of Parental Rights

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In re T.G.

- Cannot terminate parent’s parental rights without a finding of detriment at some point during the pendency of the case.
- Alleged father raised to presumed during the pendency of the case.



(2013) 215 Cal. App. 4<sup>th</sup> 1

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## In re G.P.



- Father Incarcerated until 2019
- The finding of detriment required before parental rights may be terminated may be implied.
- The nurturing required by a child must be given by someone, at the time the child needs it, not when the parent is ready to give it.

(2014) 227 Cal. App. 4th 1180

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## In re J.C.

While the record established the mother had a bond with the toddler-aged child, there was little evidence the child had a similar bond with the mother. The juvenile court reasonably concluded the child's outward affection for the mother proved loving contact on the level of a friendly visitor relationship and not necessarily a substantial positive attachment.



(2014) 226 Cal. App. 4th 503

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## Special Immigrant Juvenile Status



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## SB 873

- On September 27, 2014, California Governor Jerry Brown signed into law Senate Bill 873 (codified at Cal. Code Civ. Proc. § 155 and Cal. Evid. Code § 757)
- Provides \$3 million in legal aid to unaccompanied minors in removal proceedings
- Clarifies state court roles in considering Special Immigrant Juvenile Status (SIJS) petitions filed by immigrant children.

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## SIJS

- For SIJS petitions in state court:
  - Eliminates any ambiguity that California Superior Courts, *including family courts*, have jurisdiction to make the findings necessary for SIJS;
  - Creates an affirmative responsibility of Superior Courts to make the SIJS findings when there is evidence to support those findings;
  - Clarifies that the evidence to support the SIJS findings may consist of (but is not limited to) a declaration by the child;

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## California Appellate Law on SIJS

- B.F. v. Superior Court (2012) 207 Cal.App.4th 621
- In re Y.M. (2012) 207 Cal.App.4th 892 (CSEC youth qualify)
- Leslie H. v. Superior Court (2014) 224 Cal App 4th 340
- Eddie E. v. Superior Court (2013) 223 Cal. App. 4th 622
- Eddie E. v. Superior Court (2015) 234 Cal.App.4th 319
- In re Israel O. (2015) 233 Cal.App.4th 279

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# WIC 388

ISSUES

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# WIC §388

- In re G.B. (2014) 227 Cal.App.4th 1147
- In re L.S. Jr. (2014) 230 Cal. App. 4th 1183
- What is the standard to establish FR on a previous bypass case, preponderance or clear and convincing?
  - Depends 361.5(b)(4), (5) (6) v. 361.5(b)(10)(11) (13)

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# In re Johnathan P.

- Correct standard on granting §388 to “non-offending” parent appearing for the first time post-disposition?
- Clear and convincing per 361.2 or best interests?
  - In re Zacharia D., 6 Cal. 4th 435



(2014) 226 Cal. App. 4th 1240

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## In re Liam L.

- Welfare and Institutions Code section 361.2(a) sets forth a presumption in favor of placement with a non-offending, noncustodial parent.
- However, section 361.2(a) only applies when the child is first removed from the custodial parent, which is generally at the time of the disposition hearing.
- A noncustodial parent who seeks custody after the disposition hearing must seek modification of the juvenile court's order under Welfare and Institutions Code section 388.

(2015) 240 Cal.App.4th 1068

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## Non-Minor Dependents



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## In re A.F.

Court has residual jurisdiction pursuant to 366.3 over a guardianship terminated due to the child turning 18, for the purposes of designating a successor guardian as payee for benefits.



(2013) 219 Cal. App. 4th 161

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## In re Nadia G.

Court can only terminate for one of three reasons:

- 1) NMD does not wish to remain under court supervision;
- 2) NMD is not participating in a reasonable TILP; or
- 3) NMD cannot be located after reasonable efforts to locate.



(2013) 216 Cal. App. 4th 1110

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## In re Aaron S.

The Court did not abuse its discretion in finding that Aaron did not participate in his Transitional Independent Living Case Plan under the plain terms of section WIC 11403(b)(2),(3), and (4).



(2015) 235 Cal.App.4th 507

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## In re Andrae A.

Does a NMD under joint supervision and committed to DJJ custody qualify for AB 12 services?

**NO!**



(2015) 241 Cal.App.4th 363

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## The End

- ◆ Judge Amy Pellman  
◆ [AMPellman@LACourt.org](mailto:AMPellman@LACourt.org)
- ◆ Judge Anthony Trendacosta  
◆ [Atrendac@lacourt.org](mailto:Atrendac@lacourt.org)

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