

DEPENDENCY

101



▶ 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

Family Preservation or Restoration and Permanency

1. Kids do better at home
2. Need for family
3. Cost to the child
4. State as parent
5. \$\$\$\$\$\$\$

Important Data

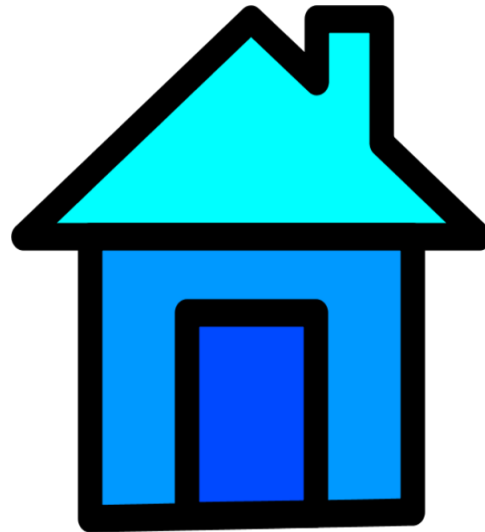
- ▶ Over $\frac{3}{4}$ of the children in care are removed due to **NEGLECT**
- ▶ Over $\frac{1}{3}$ of the referrals each year are re-referrals

More Info

- ▶ African American and American Indian children are more likely to be in foster care than white or Hispanic children
- ▶ More likely to be removed as infants & remain in care
- ▶ Less likely to receive reunification and other services and reunify with family
- ▶ Children from families with incomes below \$15,000 are 22 times more likely to be maltreated than those from families with incomes above \$30,000.

MANDATE THROUGHOUT...

- ▶ Keep the child at home
- ▶ If detained or removed, return the child to home



- ▶ **UNLESS...**

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.**

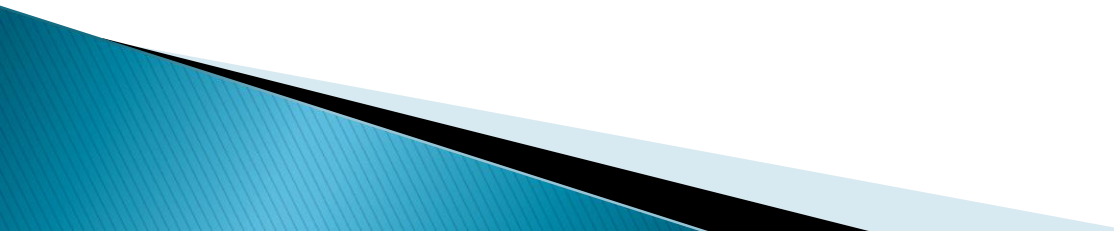
COUNSEL FOR CHILDREN

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.

COUNSEL FOR CHILD

- ▶ **Represents the child's INTERESTS**
 - ▶ **SHALL**
 - ▶ **investigate to ascertain facts,**
 - ▶ **interview witnesses,**
 - ▶ **examine and cross examine witnesses,**
 - ▶ **introduce evidence and make recommendations to the court.**
- 

COUNSEL FOR CHILD

- ▶ If the child is **FOUR YEARS** of age or older, counsel **SHALL** interview the child to ascertain the child's wishes and well being, and **SHALL** advise the court of the child's wishes.
- ▶ Counsel **SHALL NOT** advocate for the return of the child to the parents if that conflicts with the best interests of the child.

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.

INITIAL HEARINGS-- DETENTION

W&I CODE §309

- ▶ Investigate and **RELEASE** unless
 - No parent or responsible relative
 - Immediate and urgent need for protecting the child
 - Substantial evidence parent will flee with the child
 - Child has left a juvenile court placement

THE PETITION

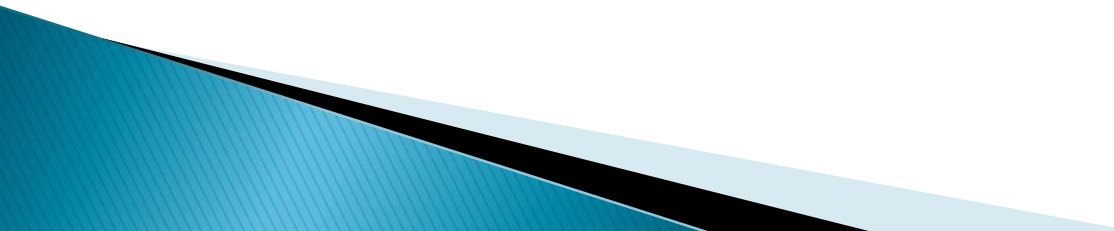
If the child is detained in custody, a petition under W&IC § 300 must be filed within:

48 HOURS

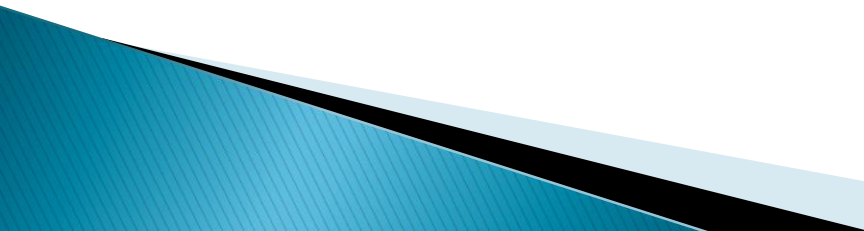
OF PROTECTIVE CUSTODY

The Court must hold a detention hearing the next judicial day after a petition is filed

PURPOSES OF THE HEARING

- ▶ **Due Process**
 - ▶ **Case Management**
 - ▶ **Representation by counsel**
 - ▶ **Information:**
 - Verify data
 - Paternity
 - Indian Child Welfare Act
 - **Relatives**
 - **Resources**
- 

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 DAMAGE*** 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;
- ▶ The petition alleges physical or sexual abuse and the child refuses to return home.

AND TITLE IV-E FINDINGS

- ▶ Continuance in the home of the parents is contrary to the child's welfare. (Title IV-E.)
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

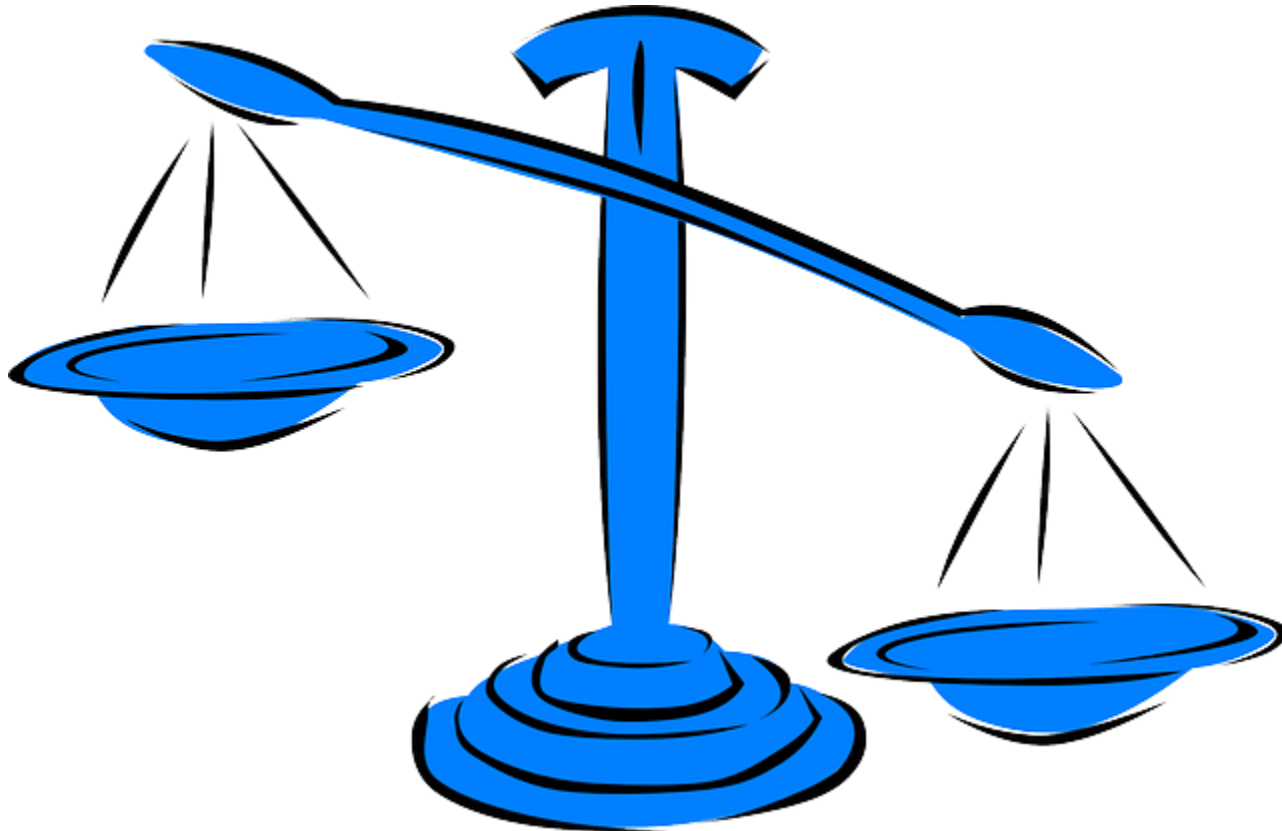
OPTIONS FOR DETENTION

- ▶ The approved home of a relative
- ▶ Emergency Shelter Care
- ▶ Licensed home or home exempt from license
- ▶ Approved home of a non relative extended family member
- ▶ Non relative Extended Family Member (NRFM)
 - any adult caretaker who has established a familial or mentoring relationship with the child

THE LAW: Court must release UNLESS...

- ▶ There is a PRIMA FACIE showing the child is described by
 - ▶ W&IC §300 (a – j)
- ▶ AND (On the facts of this case..)
- ▶ There is ***SUBSTANTIAL DANGER*** to the physical health of the child, or the child is suffering ***SEVERE EMOTIONAL DAMAGE*** and ***THERE ARE NO REASONABLE MEANS*** to protect the child's physical or emotional health without removal.

Most Important?



JURISDICTION

**If child detained: within 15 days from
detention**

**If not detained; within 30 days of
filing of petition**

PURPOSE OF THE HEARING

- ▶ **Determination of the allegations**
 - ▶ **Additional Information**
- 

THE HEARING

- ▶ **What can happen?**
- ▶ **Parent/Guardian can:**
 - **Admit**
 - **Plead No Contest**
 - **Submit on Report**
 - **Contest and request evidentiary hearing**

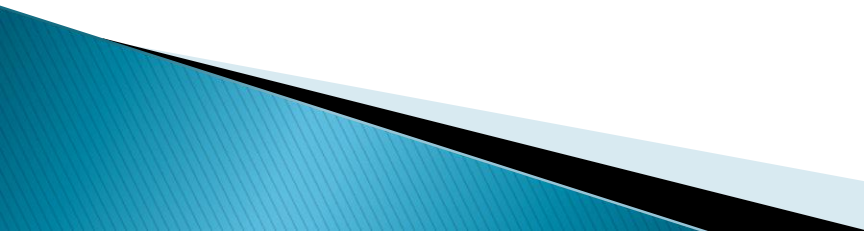
EVIDENCE

- ▶ *In re Malinda S.* (1991) 51 C 3rd 368
- ▶ Social Study: Prepared by social worker.
 - Must be provided to parties within reasonable time prior to hearing
 - Admissible under W&IC §355(b)
 - Preparer must be available for cross examination (telephonic stand-by OK)
 - FULL of HEARSAY!!!!

W&IC §355 and CRC 5.684

- ▶ **Hearsay in the report:**
- ▶ If a party objects with “reasonable specificity” and w/in a reasonable period—
- ▶ Hearsay objected to **MUST NOT** be sole basis of a true finding on the petition---

UNLESS

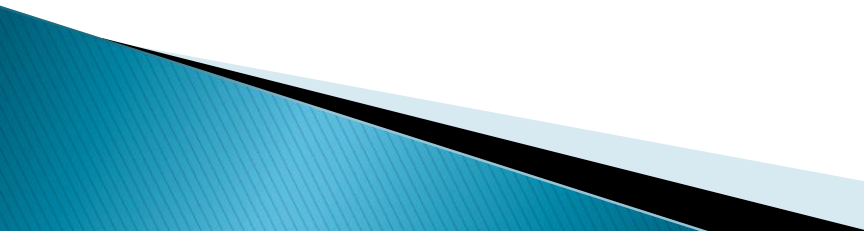
- Admissible under other exception; or
 - Declarant is under 12 and the subject of the petition unless—objector proves was by fraud, deceit or undue influence and is therefore UNRELIABLE; or
 - Declarant is a peace officer, health practitioner, s.w., or teacher AND statement would be admissible if the declarant were present in court; or
 - Declarant available for cross exam.
- 

Is child's statement in report
admissible to PROVE the
petition?



"It shouldn't
hurt to be
a child."

YES IF.....

- ▶ **Must be a demonstration of reliability --**
 - **1) Time, content & circumstances of statement (spontaneity & consistent repetition, mental state, terminology, lack of motive to fabricate)**
 - **2) Child available for x-exam OR there is corroborating evidence of child sexual abuse**
 - **3) Adequate notice of intent to introduce stmt**
- 


AND

- *Competency* as witness NOT a requirement under §355
- May be admissible under §355 even if not under the exception; BUT cannot exclusively support petition unless indicia of reliability found

Testimony of Child

- ▶ W&IC §350 and CRC 5.534
- ▶ May take testimony in chambers w/o presence of parents if court finds:
 - Necessary to ensure truthful testimony or
 - Child likely to be intimidated by courtroom setting
 - Child afraid to testify in front of parent
 - **Does this happen????**

Child testimony in Chambers

- ▶ **Court reporter and all counsel must be present**
 - ▶ **Parent may elect to have testimony read back or summarized by counsel—prior to cross exam**
 - ▶ **How establish need to use this procedure:**
 - ▶ **CRC 5.534: To determine basis, court may consider social worker's report or other offers of proof or other evidence**
 - ▶ **Competency to testify may be determined after testimony.**
- 

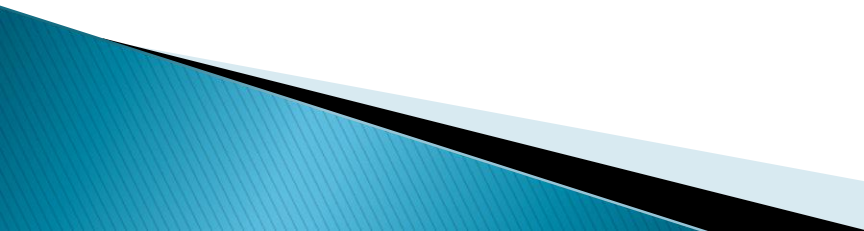
DISPOSITION HEARING



PURPOSE OF HEARING

- ▶ More information
- ▶ Determination of whether or not continued intervention is warranted
- ▶ If so.
 - Where should child reside
 - What orders should be made to further child's best interests

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 with 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 general placement order and consider reunification services and**
VISITATION

MANDATE

- ▶ If child not detained;
 - Remain at home
- ▶ If child detained;
 - RETURN

- unless



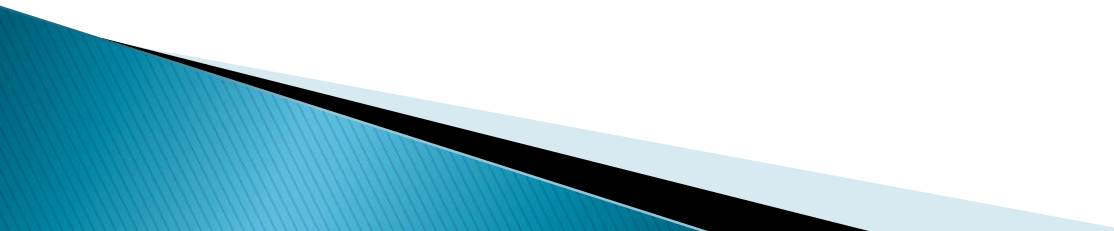
TO REMOVE—CLEAR AND CONVINCING EVIDENCE OF:

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.

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**

NO Services: W&IC §361.5(b); CRC 5.695

- ▶ **To deny—court must make findings by CLEAR & CONVINCING**
 - ▶ **Sixteen grounds**
 - ▶ **For most, burden shifts to parent (or child) to produce evidence of benefit to child.**
 - ▶ **[See chart]**
- 

Critical consideration!!!

▶ *Siblings*



SB 1099

- ▶ **W&IC 358.1**
- ▶ **Dispo reports from SW and CASA must address sibling issue: if not together, info about visitation**
 - **Supervised or unsupervised;**
 - **If supervised, why and what needs to happen to go to unsupervised;**
 - **Location and length of visits;**
 - **Plan to increase visitation.**

CONCURRENT PLANNING

- ▶ Child removed: CWS has DUAL responsibilities
- ▶ Reunification plan w/services AND plan for “achieving legal permanence” if reunification does not occur
- ▶ Requires prognosis assessment from beginning, considering strengths and weaknesses of family, needs of child and the likelihood of family meeting those needs if child goes home
- ▶ Requires frequent re-analysis of prognosis

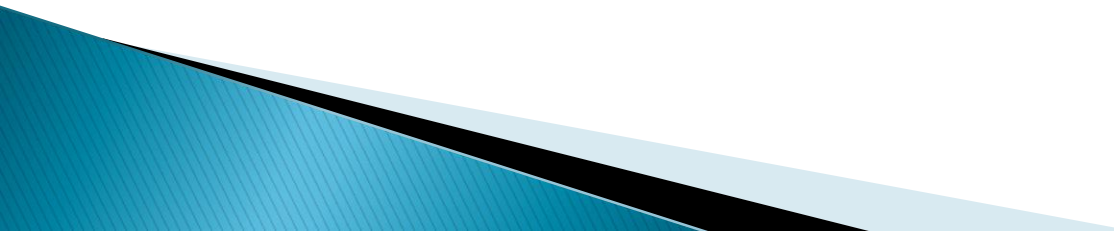
What's important?





REVIEWS

THE DATE THE CHILD ENTERS FOSTER CARE IS...

- ▶ The date of jurisdiction
 - ▶ OR
 - ▶ 60 days after the *initial removal of the child.....*
 - ▶ Whichever is earlier.
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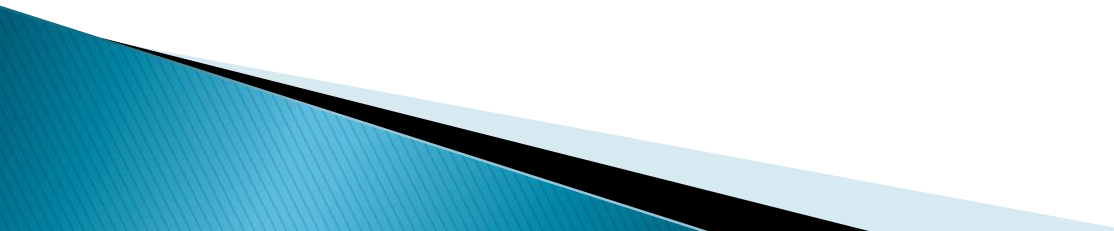
Six Month FR Reviews

W&IC § 366.21

CRC 5.710

- ▶ **When? 6 mo. from dispo**
- ▶ **BUT—no later than 12 months after the date the child entered foster care.**

PURPOSES at 6 Mo. FR Review

- ▶ **MUST return the child UNLESS—**
 - Find 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 no return, **MUST continue services and set a 12 mo. review**
 - ▶ **OR...**
- 

At 6 mo. review, may set for 366.26 hearing ONLY IF:

1. Reasonable services have been offered or provided AND
2. One of 4 factors found by clear and convincing AND
3. No services going to *either parent*
4. Factors: 300(g); felony; parent deceased; child under 3.

12 Month Review

W&IC §366.21; CRC 5.715

When?

- 12 Months from the date the child entered foster care

▶ Shall return UNLESS---

▶ In no return *SHALL* (must) terminate services UNLESS

1. Substantial probability of return w/in 18 months of “yank” OR
2. No reasonable services

18 Month Review

W&IC §366.22; CRC 5.720 [18 mo from removal]

- ▶ **Return UNLESS**
- ▶ **If no return:**
 - **Set .26 hearing OR**
 - **Find by clear and convincing evidence that child not likely to be adopted and no guardian available, and order long term foster care (Planned Permanent Living Arrangement) and set 6 mo Post Permanency Planning review (§ 366.3)**

W&IC §366.22; CRC 5.720

- ▶ **At 18 mo. may set a review at 24 mo.
IF:**
 - **Substantial probability of return in that time OR**
 - **No reasonable services**
- ▶ **AND by C and C**
- ▶ **More services in child's best interests**
- ▶ **AND**

Going to 24 Months

Parent making significant and consistent progress in substance abuse treatment OR

Parent recently released from incarceration or institutionalization and making significant and consistent progress in establishing a safe home.

Setting a 366.26 Hearing W&IC § 366.22 CRC 5.720

- ▶ **If services terminated and no order for long term foster care Court must:**
 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**
 - ▶ **May not be raised on a subsequent appeal of the .26 orders UNLESS: no writ petition or**
 - Writ petition filed AND**
 - Summarily denied or otherwise decided**
 - NOT on the merits**
- SO—failure to seek writ limits appealable issues after .26 to the findings and orders at THAT hearing only**

§366.26 Hearing

▶ **PURPOSE:**

- **To Select a permanent plan**

▶ **NOT A PURPOSE:**

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

.26 Hearing Orders

CRC 5.725 JV-320

- ▶ **For Indian child may order tribal customary adoption.**
- ▶ **For others:**
 - **SHALL terminate parental rights IF**
 - **By clear and convincing evidence court finds child likely to be adopted**

UNLESS: §366.26(c) (1)(B)

▶ **Often litigated:**

▶ ***Detrimental to child because:***

(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)

POST PERMANENCY REVIEWS

- ▶ **After .26 or hearings ordering a child into Long Term Foster Care.**

W&I CODE §366.3 RULE 5.740

- ▶ **Purpose of Permanency Review :**
- ▶ to determine whether reasonable efforts have been made to finalize a permanent plan for the child.
- ▶ Responsibility to reach permanency for each child continues until final adoption, guardianship established or child is returned home.
- ▶ Unless parental rights have been terminated, parents receive notice and may participate.

18 year old

- ▶ Continue jurisdiction if requirements not met or if there are other appropriate reasons to continue
- ▶ File must contain a completed JV-365 form before the case can be dismissed.

Extended Foster Care In California



“Emancipated” Youth

- 75% work below grade level
- 50% do not complete h.s.
- 45% are unemployed
- 33% are arrested
- 30% are on welfare
- 25% are homeless

CONCURRENT PLANNING

FUNDAMENTAL-

Applies to every dependent or ward in out-of-home placement



THROUGHOUT-

Important as the youth nears 18
Even after 18

What About Emotional Permanence?

- ▶ **Lifelong connections**
- ▶ **For a child out of home for 6 months or more: Review Hearing report MUST contain efforts made to establish and maintain relationships with person who matter TO THE CHILD!**

W&IC § 16501.1(i)

FAMILY FINDING

▶ **WHAT?**

- Search for relatives as defined in statute...

▶ **WHY?**

- Information
- Placement
- Connections

▶ **WHEN?**

- From the beginning and throughout the case

FAMILY FINDING

- ▶ **WHERE?**
 - **No limit**
- ▶ **HOW?**
 - **Diligently and repeatedly**
- ▶ **FOR HOW LONG?**
 - **As long as it takes**



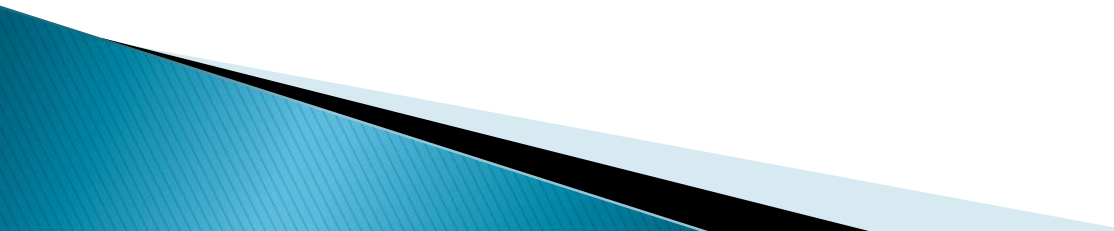
Program Eligibility

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

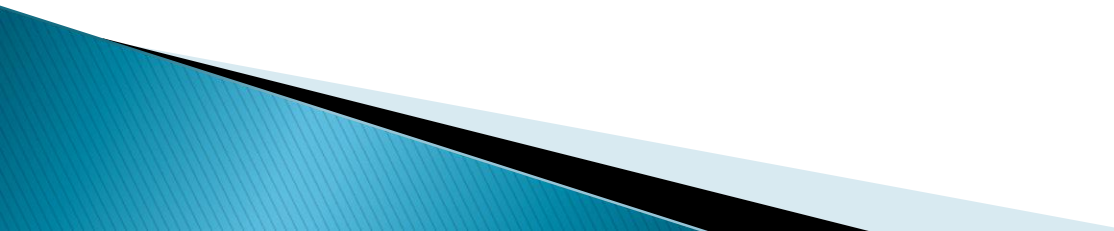
A NMD is defined as a dependent or ward who meets 3 criteria.

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

3 CRITERIA

- ▶ **1. 18 but not too OLD**
 - ▶ **2. Under FC order on 18th birthday**
 - ▶ **3. 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)**



**Agreement between the youth and
the county welfare agency...**

What does the NMD agree to?

What does the agency agree to?

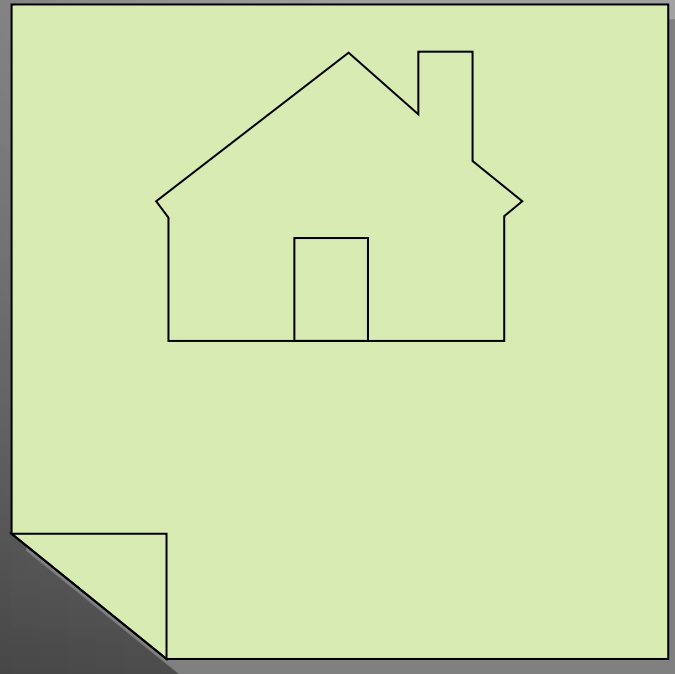
Important to Remember...

Participation in extended foster care
is voluntary

If they do not opt out, do NMD's
have the same rights as any other
adult?

Does Child Welfare/Probation “have
custody” of a NMD? *WIC 303(d)*

What Does Extended Foster Care Look Like?



Meetings With Social Workers

- ▶ Monthly, face-to-face meetings
 - ▶ Collaborative case planning
 - ▶ The Transitional Independent Living Case Plan and the TILP will be updated every 6 months.

WIC 11400 (y), 16501.1 (f) (16)

Review Hearings for Non Minor Dependents



At Each Review Hearing:

Court must address:

- Participation conditions;
 - Reasonable efforts;
 - Permanent connections;
- Right to have jurisdiction terminated

Note: if FR efforts continuing, additional findings required

NMD ADOPTION

- ▶ **Great Permanency Option!**
- ▶ **Can live separately**
- ▶ **Report required**
- ▶ **Adoption Agreement Signed**
- ▶ **W&IC 366.31(f)**



Termination Hearing Requirements

Court must continue jurisdiction unless:

- **NMD declines**
- **NMD not participating in TILCP**
- **NMD cannot be located**

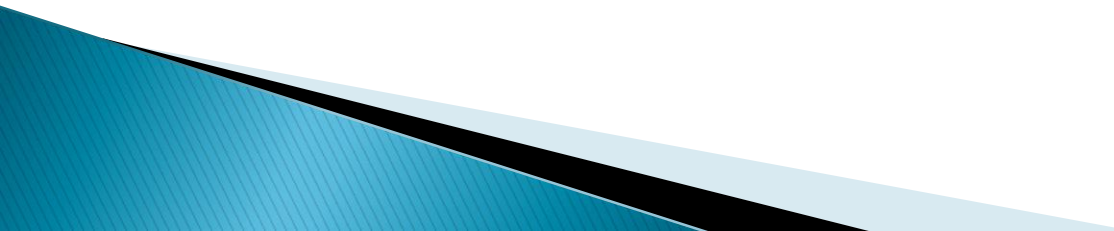
Prior to the Court terminating jurisdiction, the court must find that youth was informed of right to stay and/or reenter.

Necessary Documentation At Termination

- ▶ TILCP – *WIC 11400 (y)*;
- ▶ TILP;
- ▶ Completed 90-day Exit Transition Plan. *WIC 16501.1(f)(16)*;
- ▶ 391 (e) Documents;
- ▶ Lifelong connections!

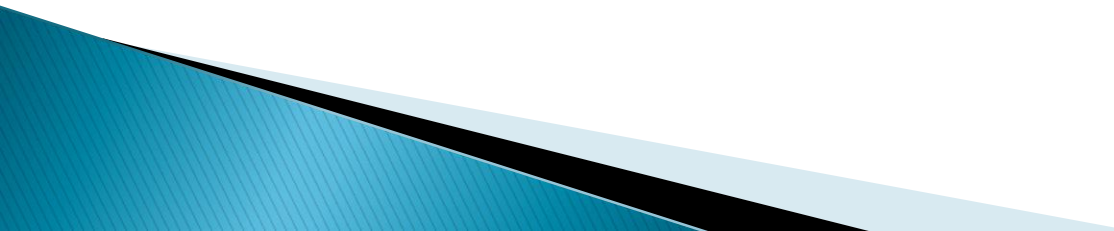


Reentry requirements

- ▶ **1. Proper form: JV-466 (WIC § 388)**
 - ▶ **2. Verified by nonminor or designee**
 - ▶ **3. Liberally construed**
- 

Prima Facie Showing

Court to review JV-466 w/in 3 court days of filing to determine prima facie showing

- 1. Nonminor had FC order at 18th b-day**
 - 2. Not too old**
 - 3. Request for assistance and agreement to VRA**
 - 4. Intent to satisfy at least one condition**
- 

Appointment

Does court appoint same attorney? CASA?

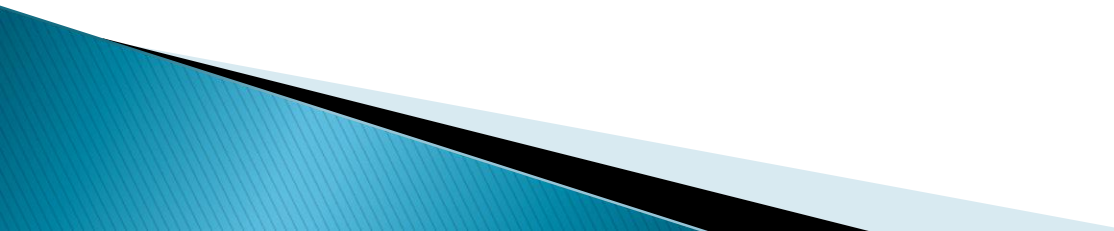
What if no request for attorney? CASA?

Timeline?

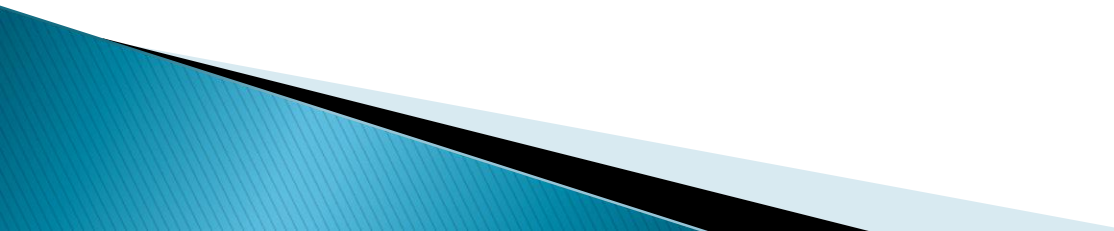
Is there a cost to nonminor?

Same standards as Rule 5.660(b.)

IMPORTANT: AB2454

- ▶ If former dependent adopted or guardian appointed after dependent's 16th birthday and aid continues and
 - ▶ Adoption or guardianship “fails”
 - ▶ NOW MAY REENTER!
- 

THE GOALS OF THE LEGISLATION

- BETTER PREPARE YOUTH FOR INDEPENDENCE
 - SUPPORT YOUTH DURING TRANSITION TO ADULTHOOD
 - ESTABLISH LIFELONG CONNECTIONS
 - PERMANENCE
- 

Studies of 23 & 24 Year Olds

- ▶ 79% of women and 75% of men had a GED or diploma
 - ▶ BUT only 7% of women and 5% of men had even an AA degree
 - ▶ At the time of the Midwest study, only 17% were still enrolled in school
 - ▶ Fewer than half had a job, and most did not earn a living wage
 - ▶ Almost 30% faced food insecurity
 - ▶ Rates of incarceration and single motherhood still high
- 