

Navigating the Court and Legal System

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1. INSERT DEPENDENCY CHEAT SHEETS AND CHARTS

2. How a Case Gets to Court

The dependency process begins when someone reports suspected child abuse or neglect. An investigation is completed by the Department of Social Services. If the social worker believes that the child's safety requires court protection, then the social worker files a petition to declare the child a dependent of the court. This petition is called a section 300-petition and alleges facts that the social worker believes are the basis of the need for protection.

3. The Initial/Detention Hearing

What- Shortly after a child is removed from a parent/guardian, the Juvenile Court holds an initial court proceeding, which is called the detention hearing. This hearing is the court's first chance to hear about the situation that brought the family to the attention of the Department of Social Services. If possible, the court writes down the names of the child's relatives and confirms who the parents are. At this hearing, the Court gives the parents a notice about the proceedings, a copy of the petition, and tells the parents what happens in a dependency case. The child may already have been removed from the home, and the Court will decide whether the removal was justified on a prima facie basis. If the child remained in the home, the judge will decide whether the child should be removed from the home for their safety until legal proceedings take place. If the Court removes the child from a parent/guardian, it can make visitation orders for them at this time. The Court will also tell the parents/guardian where they can receive help so the child can return to them, and can additionally decide if the Department of Social Services made a "reasonable effort" to keep the child with the parents.

When- It is required by law for the Detention hearing to occur within 3 days of the child being removed from the home. There are times, however, that non-detained petitions are filed wherein the child is not removed from the home.

4. Jurisdiction Hearing

What- The child's parents/guardians have a right to a trial on the allegations of abuse or neglect charged against them, so at this hearing, the court receives evidence and determines whether the allegations are true. There are three ways for the Court to do this: the parents/guardians admit the petition is true, the parents/guardians don't disagree and submit with the petition, or the parents/guardians dispute and contest the petition. Before the judge accepts an admission or submission, the Court has to be sure the parents want to waive their right to a trial. This means they give up the right to see, hear, and question witnesses, bring in their own witnesses, testify, or stay silent. Prior to the Court's decision on whether the petition is true or not true, both sides are given the opportunity to present evidence supporting their case. If the Court decides the petition is true, then the Court sustains or upholds the petition. In order to do this, the Court must determine whether the child fits one of the descriptions in Welfare and Institutions Code section 300, which authorizes the Court to intervene for the child's protection.

When- The Jurisdiction hearing must be held within 15 days of the court detaining the child, and within 30 days if the child remains home.

5. Dispositional Hearing*

What- The decisions made during the disposition hearing focus on the parents' ability to provide care for the child and on the services needed for the family to reunify as soon as possible. A Case Plan is ordered into effect specifying the goal for the family as well as what the parents are required to accomplish prior to the next court hearing. Visitation is addressed in the case plan as well as issues such as restraining orders or any other order the Judge finds is in the best interest of the child. The Concurrent Plan is also addressed in the Case Plan, and discusses where the child will have a permanent home in the event the parents fail to reunify. The Court will state in its order that the Case Plan and completion dates are to be complied with.

Essentially, if the Court decides the petition is true, it will determine what should happen with the child. The Judge can: (A) Dismiss the case. (B) Permit the child to live with the parents/guardian with "Family Maintenance," which means that a social worker and the court supervise the child. (C) Remove the child from the parents and send them to live with a relative (first placement alternative), foster parents, or group home, and offer the parents family reunification services. A reunification plan describes the responsibilities and duties of both the social services department and the parents to remedy the problems that caused the child's removal. (D) Remove the child from the parents/guardians and refuse family reunification services to the family.

There are several situations in which the Court will refuse family reunification services to the parents/guardians, including: (A) The child or the child's sibling has been seriously abused or killed (B) The parent had another child taken away by the court (C) The parents tried family reunification services and they were terminated (D) The parents have serious drug problems that aren't being treated (E) There are other reasons the Court can bypass services.

At the subsequent hearings, the needs of the child and the parent's ability to gain insight and make progress into the issues need to be closely examined, particularly at the 12 month hearing or the 6 month hearing if the child is under the age of 3 at the time of detention.

When- This hearing occurs within 10 days of the jurisdiction hearing if the child is out of home, and within 30 days if the child remains home or if the government seeks to deny reunification services. *Jurisdiction and Disposition hearings are often held on the same day.

6. The Six Month Review Hearing (366.21 (e))

What- This hearing allows the Court to see how the parents are doing with their court ordered case plan and how the child is doing in foster care. If the child lives with the parent, the Court can dismiss the case or keep supervising the child with family maintenance services. If the child is removed from the home, the Court can give the child back to a parent with family maintenance services or keep the child removed from the home and offer family reunification services. However, if the child is under three years old when removed from the home, the Court can terminate family reunification services. This will occur if the parents don't participate in their court-ordered case plan or show progress toward addressing the causes of the dependency proceedings.

Factors considered in Progression of Reunification:

I. Are parents visiting as stated in the case plan or regularly? Are they canceling visits or not showing up? Do they relate well with the child during visitation? How does the child act around their parent? Is the parent meeting the child's needs during visitation? Is the parent appropriate with the child? Does the parent call the child if permitted?

II. How are each of the parents doing on their case plan? Each item that was ordered should be completed or substantially complied with prior to the 12 month hearing. If the child is under the age of 3 at the time of detention, each item that was ordered should be completed or substantially complied with by the 6 month hearing. A lack of compliance indicates a problem and shows the parent is either unwilling or unable to reunify with the child. If the parents were ordered to drug test, for instance, the social worker should know how many times they tested in a certain period and if they tested positive, negative or failed to test. Even though parents may be working their case plan, they still may not have the ability to protect the child.

III. Does the child have needs that may create a barrier for the parent to reunify? For instance, a low functioning parent may not be able to meet the needs of a child with severe physical or mental issues.

IV. How extensive a history does the parent have? Have they had that particular problem for many years? What kind of treatment have they been offered in the past and have they availed themselves of the treatment? Have they lost other children to the Child Welfare system? (There is a law relating losing other children and its effect on ability to reunite.)

V. Are there services the parents may need to enable them to meet their child's needs that they are not being offered? If so, recommend those services be added to their case plan. (Much after the 6 month hearing it is too far along in their timeframe to expect them to complete an additional service.)

VI. How badly does the child want to reunite with the parent? Children age 10 or older are allowed to express their opinion regarding replacement preference. Most children want to reunify with their parents no matter what their history has been. However, some children decompensate quite a bit and that, too, needs to be taken into account in any recommendation for reunification. The same issues addressed above should be considered.

When- The Court must review the cases of all children placed in foster or relative care at least once every six months. The mark of six months from the "entry into foster care" is defined as the date of the Jurisdictional Hearing or 60 days after initial removal, whichever comes first.

7. The 12 Month Review/Permanency Hearing (366.21 (f))

What- At this hearing, the Court will decide if the child can safely be returned home or if efforts to reunify the child with their birth family should be ceased. If the parents are actively involved in their case plan but have not yet completed everything by the 12 month review date, the Court may grant them an additional 6 months of reunification services.

It is important to remember that terminating reunification services does not terminate parental rights. The child's parents are often able to continue visits and other involvement with the child even if the court terminates reunification services. If the child cannot return home, another permanent plan will be selected at the permanency hearing. That plan could be adoption, legal guardianship, or Planned Permanent Living Arrangement (PPLA). The preferred choice is the most permanent home possible for the child, so the court first considers adoption and then legal guardianship. If neither of those options is possible or neither is in the best interest of the child, then the judge orders PPLA.

When- A permanency hearing must be held within 12 months of the date the child entered foster care. "Entry into foster care" is defined as date of Jurisdictional Hearing or 60 days after initial removal, whichever comes first.

8. The 18 Month Review Hearing (366.22)

What- At this hearing, the Court decides if the child will return to the parents under Court Ordered Family Maintenance or if parental services will be terminated and a Selection and Implementation hearing should be set to determine a permanent placement plan for the child. If the parents have not successfully completed their Case Plan by this hearing date, the only option is to recommend the termination of parental services. This means the court will no longer pay for the parents to complete the services necessary to reunify with their child. However, in extraordinary situations, more Family Reunification Services can be ordered. This could happen if the parent(s) were incarcerated or in a residential treatment facility for a substantial length of time while the case was open or if "extenuating" circumstances exist.

When- In no event later than 18 months after the Detention Hearing.

9. The 24 Month Review Hearing

What and When- If the parent(s) have been in a residential treatment facility or have been incarcerated, the Court can allow another 6 months of services if family reunification is likely. The 24 Month Review Hearing is similar to the 18 Month Review, as this is where parental services are terminated if the Case Plan has not been successfully completed.

10. Service Review Hearing

What- This hearing is for the Court to verify the parents and other parties have had timely notice of hearings, particularly the Selection and Implementation Hearing. When parental services are terminated, this hearing must be held to verify that the parents were offered the services that they needed to comply with their case plan.

When- The Service Review Hearing is usually held prior to the 366.26 Selection and Implementation Hearing.

11. The Selection and Implementation/Permanent Plan Hearing (366.26)

What- At this hearing, the Court makes a permanent plan for the child of either Adoption (most permanent), Guardianship (second most permanent), or PPLA. If the child has so many needs that it seems highly improbable for a match to be found with a guardian or adoptive parent, Long Term Foster Care could be recommended, but all alternatives should be explored before this recommendation is made. It can also be considered when there is a likelihood that the parent will complete in the future whatever obstacles are preventing them from reunifying now, i.e. if they have a 3 year prison sentence to serve.

When- A selection and implementation hearing must be held within 120 days of termination of reunification services.

12. Post Permanency Hearing (366.3)

What & When- A hearing is held every six months to update the court on the child's progress and needs, until the case is dismissed. This continues until the child is adopted, a legal guardianship is established (which court supervision is no longer necessary), or the case is dismissed for some other reason. Foster parents and relative caregivers are given notice of the hearings in the same way they are given notice of review and permanency hearings.

13. Additional Hearing Types

3-Month Special Interim Review Hearing

What & When- When a family is under Court Ordered Family Reunification, any of the parties may request a review hearing at any time before the next regularly scheduled hearing takes place. This hearing is used in Court as a three-month hearing for children under the age of 3 to review the progress of the parent(s), as they may only have 6 months to reunify.

364 Family Maintenance Review Hearing/In Home Status Review

What & When- When the child is living in the home with the parents, the family is now in Family Maintenance. Family Maintenance Review Hearings are held usually every 6 months until the Dependency is terminated. During this time, the child remains in the parent's home unless the parent is out of compliance with their Case Plan or if other extenuating circumstances exist. If the child remains in the home, they are receiving services, even if the service is just Social Worker supervision. Generally, a family remains in Family Maintenance for 6 to 12 months, although they can remain there indefinitely.

387 Petition

What- The 387 is a supplemental petition that calls for re-detention of the minors due to additional facts after the Court has returned them. In addition to re-detaining minors, the 387 must be filed if the minor's placement is changing to a more restrictive placement. Examples of this would include the minor moving from a relative placement to stranger care, from a foster home to a group home, or sometimes from a NREFM home to a foster home.

388 Petition

What- Change of circumstances; parents often file these motions when they want the court to modify its previous orders.

AB12

What- As of January 1, 2014, a non-minor dependent up to age 21 is eligible to stay in foster care if they meet the eligibility requirements. The program is voluntary, so it is up to the youth to decide if they will remain in foster care. If the youth decide to leave foster care, they have the opportunity to return provided they meet the requirements.

In order to be considered eligible for the program, youth must be doing at least one of the following: (A) completing high school or an equivalent program, (B) being enrolled at least half-time in college, community college, or a vocational education program, (C) being employed at least 80 hours a month, (D) participating in a program/activity designed to remove barriers to employment, or (E) unable to complete any of the above because of a medical condition.

Youth must live in one of the following places to be eligible for the program: (A) in the home of a relative, non-related extended family member or legal guardian, (B) licensed or approved foster home, Foster Family Agency (FFA) certified home, Intensive Treatment Foster Care Home (ITFC), or Transitional Housing Placement Program (THPP), (C) Transitional Housing Program plus Foster Care (THP + FC), (D) Supervised Independent Living Program (SILP), or (E) Group Home [if needed to complete high school or if they have a medical condition]

To be part of the program, youth will need to: (A) meet with their social worker or probation officer each month, (B) attend a court hearing or administrative review every 6 months, (C) sign an agreement, and (D) agree to work with their social worker or probation officer to meet the goals of their Transitional Independent Living Case Plan and receive case management services.

14. How can a Case End?

1. Case is dismissed and the Court makes custody orders → If the child lives with a parent and the Court doesn't need to supervise the child anymore, it can dismiss the case. It will make Juvenile Court custody orders. These are like the custody and visitation orders from Family Court judges. If there is a disagreement about these orders later on, a parent can go to the Family Court where the order was filed and mediate the disagreement or have a Family Court judge hear your problem.

2. Adoption → Adoption hearings are in the Probate Court. They are for children whose parents lost their rights and who live in adoptive homes.

3. Concurrent Planning → This means that two plans are happening at the same time. Permanency and stability are very important for the child, so the ideal situation is for the child to be placed in the home that would adopt them if the child is unable to reunify with the parents. But often, a person is identified as the concurrent plan and the child will be living in foster care.

4. Appeals/Writs → A parent can appeal a judge's decision if they fought (or "contested") the petition.

15. Minors with Concurrent Juvenile Justice and Dependency Cases (“Dual Status”)

What- Sometimes children have court cases that fall under both Juvenile Dependency and Juvenile Justice (Welfare and Institutions Code 300 and Code 602).

Procedure- When this occurs, the Department of Family and Children’s Services and the Juvenile Probation Department make a recommendation together to Juvenile Court, saying which type of case or status would be best for the minor and for the protection of society. If the Court picks just one type of case, that case will then be heard in either Juvenile Justice or Dependency Court, and the other case will be dismissed. Sometimes a minor will have both types of cases at the same time. This is called “dual status.”

Dual Status Cases- For dual status cases, the Juvenile Justice cases take place first, and the Dependency case is put on hold (suspended). When the Juvenile Justice case is completely finished- including any confinement time (time in Juvenile Hall, etc.) or probation time, then the Dependency case will be heard.