



## Dependency System Legal Process

(Updated July 2024)

### *Role of the Juvenile Court*

As a TERM provider, there may be contact with the juvenile court. When CFWB files a petition pursuant to Welfare & Institutions Code (WIC) section 300, juvenile dependency judicial officers (e.g. judges, referees, and commissioners) determine whether the allegations of abuse and/or neglect in the petition are true (true findings) by a preponderance of evidence. If the juvenile court makes a true finding at the jurisdiction hearing, it normally declares the child a dependent of the juvenile court. At the next phase of the case, the disposition hearing, the juvenile court will review and approve the case plan developed by the PSW which includes the services to be offered to the family. As the case progresses to pre-permanency review hearings (6, 12, 18 and, rarely, 24 months after disposition or initial removal), the PSW's subsequent reports to the juvenile court may include attachments such as progress reports by service providers that describe the parents' progress, or lack thereof, in completing their case plan and ability to meet the needs of their child(ren), and treatment reports that document the child's progress in healing from the abuse and/or neglect, and ongoing mental health needs.

The primary function of the juvenile court (a division of the Superior Court of the State of California) is to protect children who have been abused and/or neglected by a parent or guardian, or who are at risk for abuse or neglect. Juvenile dependency proceedings are confidential by law and closed to the general public.

The persons who are commonly present in the courtroom at hearings include the parent(s), the parties' attorneys, the court officer (a CFWB employee), the judicial officer, the bailiff, the court reporter, the court clerk, and occasionally the child. The PSW also typically attends the hearings. Only the petitioner Health and Human Services Agency (HHSA), the child, and the parent(s) or guardian(s) are considered parties to the proceedings. A caregiver who has earned "de facto parent" status has some of the rights enjoyed by those with "party" status. Other people, such as substitute care providers or relatives, may be allowed to attend, subject to approval by the juvenile court. Ordinarily, the mental health provider is not present at the hearing. At times, participants may attend by phone or virtual platform.

### *Juvenile Court Proceedings Detention/Initial Hearing*

Once a child is taken into protective custody, the PSW must file a petition within 48 hours. A detention hearing is then held before the end of the next court day after the petition has been filed. If the child is not taken into protective custody but a petition is filed, an initial hearing must begin within 15 days after the filing of the petition.

At the detention or initial hearing, the court appoints attorneys for the parents and child(ren). The parents are informed of their rights and shown the allegations in the petition. The juvenile court makes a decision regarding the temporary placement of the child(ren) and issues orders regarding recommended voluntary services and visitation.



### *Jurisdiction Hearing*

The jurisdiction hearing is held within 15 court days of an order directing detention. If the juvenile court did not order detention, the jurisdiction hearing begins within 30 calendar days after the filing of the petition. The juvenile court decides whether the allegations in the petition are true, based on the Welfare & Institutions Code. The parents may admit the allegations, plead no contest, or submit the matter on the basis of the reports. If they deny the allegations, the hearing will be considered as contested (i.e. a trial). Once a true finding is made, the child comes within the jurisdiction of the juvenile court.

### *Significance of True Findings*

When the juvenile court makes a true finding, it has decided that the child comes within one or more of the descriptions in Welfare and Institutions Code section 300, subdivisions (a)-(j). HHSA (CFWB), represented by County Counsel, has the burden of proving the allegations by a preponderance of the evidence (more likely than not). It is important for mental health providers to understand that a “true finding”:

- Is a fact of the case
- Is an important issue to discuss in therapy
- Must be addressed by parents in order to demonstrate progress

### *Disposition Hearing*

The disposition hearing must be held within 10 court days of the jurisdiction hearing. It frequently is held immediately after the jurisdiction hearing. At the disposition hearing the juvenile court may decide to: dismiss the case, order voluntary services, appoint a voluntary legal guardian, or declare the child a dependent of the juvenile court. If the child becomes a dependent, the juvenile court must decide whether to remove the child from parental custody or allow the child to remain in the home. No child may be removed from parental custody unless the HHSA proves by clear and convincing evidence (higher than the preponderance standard) that one of six circumstances described in WIC section 361(c) exists. If the child is removed, the juvenile court must order reunification services for the family unless one of the 15 exceptions in WIC section 361.5(b) applies. The exceptions constitute “aggravated circumstances,” for example, a parent who “has caused the death of another child through abuse or neglect.” If the juvenile court denies services, it has discretion to set a WIC 366.26 hearing within 120 days to select a permanent plan for the child, which could include termination of parental rights.

If the child is removed and reunification services are ordered, the services are part of the case plan known as a family reunification case plan. If the child remains in parental custody, the services are part of the case plan known as a family maintenance case plan. The PSW develops the case plans with input from the families, and then submits them to the juvenile court for review and approval.



### *Review Hearings for Child in Out-of-Home Placement*

Review hearings are held 6 months and 12 months after “the date the child entered foster care” (the date of the jurisdiction hearing or the date that is 60 days after the child was initially removed from the parent, whichever is earlier). Subsequent reviews may be held 18 and/or 24 months after the child was initially removed. At each review, the juvenile court must decide whether to return the child to parental custody. The child must be returned unless HHSA proves by a preponderance of the evidence that doing so “would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.”

Based on the PSW’s report and any other evidence presented, the juvenile court will decide whether the parents are following the requirements of the case plan and making sufficient progress. If the parents are failing to participate and make progress in reunification services, the juvenile court may have the option of limiting reunification services to six months if the child (or one of the children in a sibling set being maintained together) was under the age of three at the time of removal. For children three years of age or older when initially removed, services are provided for the period between disposition and the 12-month review. If parents are progressing, the juvenile court has the option to extend the reunification to the 18-month review date (or in rare circumstances the 24-month review date).

### *Review Hearings for Child Placed with Parent(s)*

Review hearings are held 6 months after disposition and then every 6 months afterward until the juvenile court terminates jurisdiction. Services may be extended at each review if the juvenile court finds the conditions causing the juvenile court’s involvement are likely to exist if juvenile court supervision is withdrawn, or if the juvenile court finds that CFWB has not provided reasonable services to the client. If at any time the juvenile court must remove the child (for example, after the filing of a subsequent or supplemental petition), the case leaves the “Family Maintenance track” and enters the “Reunification track.”

### *Selection and Implementation Hearing*

(Also known as a WIC section 366.26 hearing or a “.26 hearing”): At the disposition hearing or any subsequent review hearings, the juvenile court may deny or terminate reunification services and set a .26 hearing to select and implement a permanent plan for the child. The permanent plans available are, in order of preference: [1] return home; [2] adoption, which requires termination of parental rights; [3] legal guardianship, [4] placement with a relative; [5] other long-term foster care (nonrelative extended family member, resource home, Short Term Residential Treatment Facility), also known as “Another Planned Permanent Living Arrangement” or “APPLA.” (APPLA is only available for ages 16+) In cases where the Indian Child Welfare Act applies, a Tribal Customary Adoption, where parental rights remain intact, is also an option.

The juvenile court may set a .26 hearing at disposition if the juvenile court denies services (unless the other parent is still receiving services). Alternatively, a .26 hearing may be set at a review hearing if the



juvenile court finds [1] there is no substantial probability of return to the parent within 18 months of the date the child was initially removed and [2] reasonable services have been offered or provided to the parent.

*Welfare and Institutions Code (“WIC”) Section 300*

WIC § 300 sets forth the purpose, goals, and parameters of the juvenile court.

The purpose of the juvenile court’s involvement with a family is “to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection and physical and emotional well-being of children who are at risk of that harm. This safety, protection, and physical and emotional well-being may include provision of a full array of social and health services to help the child and family to prevent re-abuse of children.” (WIC section 300.2) The focus shall be on the preservation of the family whenever it can be safely maintained.

A petition filed by a PSW with the juvenile court documents information that the child has suffered, or there is a substantial risk the child will suffer abuse and/or neglect, meeting the criteria for one or more of the categories below. The juvenile court makes a true finding if a preponderance of the evidence supports the allegation. Specific subdivisions of WIC § 300 are as follows:

- **WIC § 300(a):** The child has suffered or is at substantial risk of suffering serious physical harm inflicted non-accidentally upon the child by the child’s parent or guardian.
- **WIC § 300(b):** The child has suffered or is at substantial risk of suffering serious physical harm or illness as a result of (1) the failure or inability of the parent or guardian to adequately supervise or protect the child; or (2) the willful or negligent failure of the parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or (3) the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or (4) the inability to provide regular care due to the parent’s or guardian’s mental illness, developmental disability, or substance abuse. Commercially sexually exploited youth may fall under this subdivision. [Homelessness, poverty, or indigence may not be the sole basis for a jurisdictional finding.]
- **WIC § 300(c):** The child is suffering or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as result of the conduct of the parent or guardian, or who has no parent or guardian capable of providing appropriate care.
- **WIC § 300(d):** The child has been sexually abused or is at substantial risk of being sexually abused by a parent, guardian, or member of the household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known the child was in danger of sexual abuse.



- **WIC § 300(e):** The child is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known the person was physically abusing the child.
- **WIC § 300(f):** The child's parent or guardian caused the death of another child through abuse or neglect.
- **WIC § 300(g):** The child has been left without any provision for support; the parent has been incarcerated or institutionalized and cannot arrange for the care of the child; the child has been voluntarily surrendered pursuant to Health & Safety Code 1255.7 (Safe Surrender of Newborns) and has not been reclaimed within 14 days; or a relative or adult caregiver with whom the child has been left is unwilling or unable to provide care and support for the child and the child's parent cannot be located.
- **WIC § 300(h):** The child has been freed for adoption by one or both parents for 12 months, or an adoption petition has not been granted.
- **WIC § 300(i):** The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of the household, or the parent or guardian has failed to adequately protect the child from cruelty when the parent or guardian should know or reasonably should have known the child was in danger.
- **WIC § 300(j):** The child's sibling has been abused/ or neglected as defined in subdivision (a), (b), (d), (e), or (i), and the child is at substantial risk of similar abuse or neglect.

### *The Role of Attorneys*

In working with CFWB clients, providers will encounter a variety of attorneys who have different roles and functions in the juvenile court system.

### *County Counsel*

Attorneys at the office of county counsel represent the Health and Human Services Agency (HHS). County counsel assists the PSW in drafting and filing the petition that brings a child into the juvenile court dependency system. Once the child's case enters this system, county counsel advocates for, and articulates to the juvenile court the recommendations and position of CFWB at each hearing throughout the dependency process. In most cases set for trial, the Agency has the burden of proving to the juvenile court why the recommendations of CFWB should be followed. Therefore, county counsel has the responsibility of presenting evidence to the juvenile court that supports the Agency's recommendations.

### *Dependency Legal Services San Diego (DLSSD)*

Dependency Legal Services San Diego is the San Diego arm of the non-profit corporation, Los Angeles Dependency Lawyers, Inc. LADL/DLSSD lawyers exclusively represent parents and guardians in juvenile dependency proceedings.



DLSSD is divided into five (5) separate law firms in order to accommodate conflicts among the parties. Unless a parent or guardian retains private counsel, the court appoints counsel from DLSSD at the parent's initial appearance. DLSSD also reaches out to those parents in the community, out of state, or in custody who may have difficulty attending court, to determine whether they would like representation.

Unless a party has retained private counsel, the juvenile court will appoint an attorney from DLSSD to represent the parties in the cases that come into the juvenile court dependency system. The juvenile court typically appoints attorneys for the minors at the detention hearing. It typically appoints attorneys for parents when a parent first makes an appearance at court and requests that an attorney be appointed to represent them. The court-appointed attorney then represents the parent at all proceedings throughout the juvenile dependency process. The attorney for the parent provides legal advice to the parent, advocates to the juvenile court concerning the parent's position on a particular issue or case, and presents to the juvenile court evidence to support the parent's position.

#### *Children's Legal Services of San Diego (CLSSD)*

Children's Legal Services of San Diego is the law office appointed by the juvenile court to represent any child or non-minor dependent involved in a San Diego dependency case (ages 0-21). CLSSD represents parents only when the parent is a dependent youth whose child is also the subject of a dependency case. CLSSD is comprised of four separate law offices in order to accommodate conflicts of interest. Additionally, CLSSD contracts with a small number of independent contractors in order to provide legal representation to youth who have a conflict of interest and cannot be represented by one of the CLSSD firms.