



## Dependency System Legal Process

### *Role of the Juvenile Court*

As a TERM Provider, there may be contact with the Juvenile Court. When CWS files a petition pursuant to Welfare & Institutions Code 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 Court makes a True Finding at the jurisdiction hearing, it normally declares the child a dependent of the Court. At the next phase of the case, the disposition hearing, the 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 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 treatment reports that document the child's progress in healing from the abuse and/or neglect.

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 CWS employee), the judicial officer, the bailiff, the court reporter, the court clerk, and occasionally the child. Only the petitioner (HHS), 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 Court. If the PSW is not expected to testify, they will typically not attend the hearing. Ordinarily, the mental health provider is not present at the hearing.

### *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 fifteen (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 Court makes a decision regarding the temporary placement of the child(ren) and issues orders regarding services and visitation.

### *Jurisdiction Hearing*

The Jurisdiction Hearing is held within fifteen (15) court days of an order directing detention. If the Court did not order detention, the Jurisdiction Hearing begins with 30 calendar days after the filing of the petition. The 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 becomes within the jurisdiction of the Juvenile Court.



### *Significance of True Findings*

When the 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 (CWS), 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 ten (10) court days of the Jurisdiction Hearing. It frequently is held immediately after the Jurisdiction Hearing. At Disposition Hearing the 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 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 Welfare and Institutions Code ("WIC") section 361(c) exists. If the child is removed, the 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 Court denies services, it has discretion to set a ".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 Plan. If the child remains in parental custody, the services are part of the case plan known as a Family Maintenance Plan. The PSW develops the case plans with input from the families, and then submits them to the Court for review and approval.

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

Review hearings are held six (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 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 Court will decide whether the parents are following the requirements of the case plan and making sufficient progress. Normally, if a child is under three (3) years of age when initially removed, services are limited to the period between disposition and the six-month review. For children three (3) years of age or older when initially removed, services are limited to the period between disposition and the 12-month review.



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

Review hearings are held six (6) months after disposition and then every six (6) months afterward until the Court terminates jurisdiction. Services may be extended at each review if it can be shown that the goals of the case plan can be achieved within the extended time period. If at any time the 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 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, foster home, group home), also known as “Another Planned Permanent Living Arrangement” or “APPLA.”

The Court may set a .26 Hearing at Disposition if the Court denies services (unless the other parent is still receiving services). Alternatively, a .26 Hearing may be set at a review hearing if the 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. The PSW must recommend that the Court set a .26 Hearing if the child has been in foster care for 15 of the most recent 22 months, unless certain circumstances apply.

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

WIC § 300 sets forth the purpose, goals, and parameters of the Juvenile Court Law relating to dependent children, including the type of service array to be provided to the families in the Dependency (CWS) system.

“The purpose of the Juvenile Court Law 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. The focus shall be on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child. The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child.”

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 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.

- **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 have known 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 CWS clients, Providers will encounter a variety of attorneys who have different roles and functions in the Juvenile Court System.

### *County Counsel*

Attorneys at 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 Court the recommendations and position of the PSW at each hearing throughout the dependency process. In most cases set for trial, the Agency has the burden of providing to the Court why the PSW's recommendations should be



followed. Therefore, County Counsel has the responsibility of presenting evidence to the Court that supports the Agency's recommendations.

#### *Dependency Legal Group of San Diego (DLG)*

DLG is a non-profit public benefit corporation formed for the express purpose of representing indigent families in San Diego County's Juvenile Dependency Court. DLG has four separate divisions within the law firm: the Minor's Counsel Office (MCO), the Primary Parent Office (PPO), the Conflict Parent Office (CPO), and the Conflict's Counsel Office (CCO).

Unless a party has retained private counsel, the Court will appoint an attorney from DLG to represent the parties in the cases that come into the Juvenile Court dependency system. The Court typically appoints attorneys for the minors at the detention hearing. The Court typically appoints attorneys for parents when a parent first makes an appearance at court, requests that an attorney be appointed to represent him or her, and asserts that he/she cannot afford to hire an attorney. If the parent is in custody, out of the State of California, or out of the Country, the Court will routinely appoint counsel for them, even though they are not present to request an attorney. 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 Court concerning the parent's position on a particular issue or case, and presents to the Court evidence to support the parent's position.

#### *DLG, Minor's Counsel Office (MCO)*

Attorneys from the MCO are appointed by the Court to represent the minors in most cases that come into the Juvenile Court dependency system (see also CCO, below). These attorneys are appointed both as the minor's attorney and their Guardian ad Litem (GAL). A primary responsibility of the minor's attorney, in their role as GAL is to advocate for the protection, safety, and physical and emotional wellbeing of the child. A primary responsibility of the minor's attorney, in their role as legal counsel, is to advocate for the minor's wishes. The minor's attorney must conduct an independent investigation in order to ascertain the facts about a case. For minors four years of age or older, the attorney must determine the minor's wishes and advise the court of those wishes. As part of their responsibility as a GAL the attorney is not allowed to advocate for the return of the minor to the parent if such a return would conflict with the protection and safety of the minor. The minor and/or the attorney for the minor are the holder(s) of the physician-patient and psychotherapist-patient privilege for the release of information in dependency proceedings (WIC § 317(f).) Any request to release information for a dependent minor, must be signed by the minor's attorney, regardless of the placement of the minor.

#### *DLG, Primary Parent Office (PPO)*

The attorneys in the PPO usually represent the more "offending" parent – the parent who allegedly has committed the abuse or neglect. The parent's attorney role is to advocate for what the parent wants within the bounds of the law, not the minor's best interest.

#### *DLG, Conflict Parent Office (CPO)*

The attorneys in the CPO represent the lesser offending parent or the non-custodial or non-offending parent. The parent's attorney role is to advocate for what the parent wants within the bounds of the law, not the minor's best interest.



*DLG, Conflict's Counsel Office (CCO)*

In some cases, more attorneys are needed to represent additional parents or children. Attorneys from the CCO are appointed to represent them. CCO attorneys also take appointments to represent parties when conflicts arise from the other three (3) divisions. CCO attorneys are the only attorneys who have mixed caseloads of both minors and parents. An individual CCO attorney will never represent both a parent and a minor on the same case; however multiple CCO attorneys may be on the same case representing various parties. CCO attorneys have the same responsibilities and roles as described above for the attorneys in the other divisions, depending upon who their client is on a particular case.

*Adult Probation Services (Specialized Group Treatment Programs)*

The Probation Department certifies service providers for several court-ordered adult treatment programs, including the 52-week Domestic Violence Treatment Program, Sex Offender Group Treatment, Anger Management, and the 52-week Child Abuse Offender Group for offenders who are on probation for felony child abuse or child endangerment, pursuant to Penal Code § 273.1. In most cases, the clients are referred to these services through the criminal court process and are expected to pay for these group therapy services; however, there are occasions in which Child Welfare Services may initiate the referral. The therapist who provides these group therapy services has to be a TERM-approved therapist. Please contact Adult Probation for the Treatment Standards and qualifications to become a provider to offer these specialized groups at:

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