

Guidelines

STANDARD OF PROOF IN JUVENILE DEPENDENCY EVIDENTIARY HEARINGS

BOOKS:

California Forms of Pleading & Practice, Volume 28, Chapters 327, 328: Juvenile Courts. Newark, NJ : LexisNexis/Matthew Bender, 1962-. Floor 3 .KFC1010.A65 C3.

Table of Contents : http://innopac.ocpll.org/screens/ca_forms_of_pleading_and_practice.pdf

California Juvenile Courts Practice and Procedure, 2012 (KFC1196 .C34.) Includes:

California Welfare & Institutions Code

- California Penal Code
- Miscellaneous Other California Codes
- California Rules of Court
- California Regulations
- United States Code
- Federal Rules and Regulations

Chapter 2 Dependency Proceedings

Social Worker and Social Services Agency: Section 2.63:

“The social worker has the initial responsibility of investigating abuse and neglect allegations and determining whether a child can remain or be returned to his or her home through the provision of services(Welfare & Institutions Code §306, 309).”

Discovery: Section 2.109

Access to Juvenile Records: records may be obtained by the filing of a petition with juvenile court. W& I C §827

Evidentiary & Contested Hearing Issues: Section 210

“Preponderance of the evidence standard is the standard of proof” ---“must be established to support a jurisdictional finding”: W& I Code §366.21(e), 366.22(a)

“The standard of proof for removal from a parent —is that of clear and convincing evidence”: W& I Code §361c

California Juvenile Dependency Practice. Oakland, Calif. : Continuing Education of the Bar--California, 2009-. Floor 3 KFC1196 .C348a

The California Child Abuse & Neglect Reporting Law Issues & Answers for Mandated Reporters. ((KFC1121.5.C35 2003): <http://www.dss.cahwnet.gov/Forms/English/PUB132.pdf>

BENCHGUIDES: Juvenile Dependency Proceedings

- **100 Initial or Detention Hearing** (KFC1196.Z9J8860)

- **101 Jurisdiction Hearing** (KFC1196.J887)
- **102 Disposition Hearing** (KFC1196.Z9K884)
- **103 Review Hearings** (KFC1196.Z9 J888)
- **104 Selection and Implementation Hearing** (KFC1196.Z9J8884)

Child Abuse and Neglect : Guidelines for Identification, Assessment, and Case Management. Volcano, CA : Volcano Press, 2003. Floor A, RC569.5.C55 C445

Juvenile Dependency Initial or Detention Hearing: Benchguide 100 (KFC1196.Z9 J886)

This benchguide provides a procedural overview of dependency initial or detention hearings under Welfare & Institutions Code §§290.1–324 and Cal Rules of Ct 5.480–5.482 and 5.501–5.680. The initial petition hearing or detention hearing is the first instance of judicial intervention in the Dependency process and is held whenever a petition is filed, whether or not the child is in custody. See Cal Rules of Ct 5.670(a)–(b). If the child is in custody, the initial hearing is called a detention hearing. This benchguide includes a procedural checklist, a brief summary of the applicable law, and spoken forms.

Grounds for Initial Detention:

W & I C §100.64 : By Social Worker

Under W & I C §306(a), a social worker in a county welfare department (or Indian tribe that has entered into an agreement under W & I C §10553.1) may receive and maintain temporary custody of a child in any of the following circumstances:

- The child has been delivered by a peace officer, pending investigation.
- The child has been declared a dependent child under W & I C §300.
- The social worker has reasonable cause to believe that the child comes under W & I C §300(b) (parent unable to protect child from serious physical harm) or W & I C §300(g) (child left without provision for support, or physical custody of the child has been voluntarily surrendered under Health & Safety Code §1255.7 and the child has not been reclaimed during the specified 14-day period), and that the child (1) has immediate need for medical care, (2) is in immediate danger of physical or sexual abuse, or (3) lives in a physical environment that poses an immediate threat to health or safety.

Juvenile Dependency Initial or Detention Hearing Benchguide 101 (KFC1196.Z9 J886)

This benchguide provides a procedural overview of dependency jurisdiction hearings, held generally under W & I C §§300 and 325–356 and Cal Rules of Ct 5.501–5.688. This benchguide includes two procedural checklists, a brief summary of the applicable law, and spoken and written forms. The discussion covers grounds for jurisdiction, contested and uncontested hearing procedures, and required findings and orders.

The purpose of the jurisdiction hearing is for the court to determine which of the allegations of the petition, if any, have been proved by a preponderance of evidence. See W & I C §355(a); discussion in §101.4.

W & I C §101.39: Presentation of Evidence

“At the jurisdiction hearing, any information that is relevant to the question of whether the child is a person described by W& I C §300 is admissible and may be received in evidence. W& I C §355(a). The Department of Social Services has the burden of proof on each fact necessary to sustain the petition. *In re S. D.* (2002) 99 CA4th 1068, 1077–1078, 121 CR2d 518.”

Social Worker’s Report

“Although they may contain hearsay and even multiple hearsay, social studies reports and their attachments are admissible and competent evidence on which to base findings in jurisdiction hearings if the preparer is present for cross-examination and the parent or guardian has the opportunity to subpoena and cross-examine the witnesses mentioned in the report. W & I C §§355(b), (d), 341; *In re Malinda S.* (1990) 51 C3d368, 379, 385, 272 CR 787; Cal Rules of Ct 5.684(c), 5.526(d), 5.682(b); see also W & I C §281 (court is authorized to receive and consider probation department reports on issues involving custody, status, or within a reasonable time. W & I C §355(b) (2); Cal Rules of Ct 5.684(c) (2). welfare of children). A “social study” is a written report furnished by DSS to the court, the parties, and counsel. W & I C §355(b) (1). This report must be provided to all parties or their counsel within a reasonable time before the hearing. W & I C §355(b) (3). If the report is not made available within a reasonable time before the hearing, the court may grant a continuance not to exceed ten days on request of any party. W & I C §355(b) (3). The preparer of the report must be made available for cross examination on a timely request of any party; being made available includes being on telephone standby if the person can be present in court within a reasonable time. Welfare & Institutions Code §355(b) (2); Cal Rules of Ct 5.684(c) (2).”

Findings and Orders

To support a finding that the child is described by W & I C §300, the court must find that there is proof by a preponderance of the evidence that the allegations in the petition are true. W & I C §355(a). If the court determines that the allegations of the petition have not been proved by a preponderance of the evidence, it must dismiss the petition, order that any previously ordered detention be terminated, and make the following findings W & I C §356; Cal Rules of Ct 5.684(h): •

- Notice has been given as required by law,
- The child’s birthdate and county of residence are included, and
- Allegations of the petition are not proved.

The Citebook. (Desk KF240 .D33 2008) Marriage, Divorce, Children. Cites cases.

Juvenile Dependency Disposition Hearing Benchguide 102: (KFC1196.Z9J884)

This benchguide provides a procedural overview of dependency disposition hearings, held generally under W & I C §§358–364 and Cal Rules of Ct 5.690–5.705. The benchguide covers the conduct of the hearing and possible findings and orders; it contains a procedural checklist, a brief summary of the applicable law, and spoken and written forms.

Presentation of Evidence

W * I C §102.28 Social Worker’s Report

“The DSS must prepare a social study of the child, including all factors relevant to disposition, a recommendation for disposition, and the child’s case plan developed under W & I C §16501.1, W & I C §358(b)”

“If DSS recommends removal of the child from the home, the social study must contain all the requirements listed in W & I C §§358 and 358.1”

W & I C §102.30 Right to Cross Examine Preparers

The parent must be afforded the opportunity to subpoena and cross-examine the persons whose statements are contained in the social study and attachments (W & I C §341) and must be afforded the opportunity to present rebuttal evidence

W & I C §102.112 Appeals and Reviews

“Parents generally have a right to challenge dispositional findings and orders on appeal. See W & I C §395” *In re Meranda P.* (1997), 56 CA4th 1143, 1150, 65 CR2d 913 (disposition order is the first appealable judgment in a dependency proceeding);

Juvenile Dependency Review Hearings: Benchguide 103 (KFC1196.Z9J888)

Generally, review hearings are held to ensure periodic review of the child’s status, the necessity for and appropriateness of the child’s placement, and the extent of compliance with the case plan for the child. W & I C §366(a). Review hearings in dependency proceedings are mandated by both state (W& I C §§364–366.3) and federal law (Pub Law 96–272; 42 USC §§670 et seq). This benchguide includes procedural checklists for review hearings, a brief summary of the applicable law, and spoken forms. Placement options, visitation, reunification services, and other dispositional alternatives are discussed in California Judges Benchguide 102:

Juvenile Dependency Disposition Hearing (Cal CJER). Selection and implementation hearings (.26 hearings) held under W& I C §366.26 are discussed in California Judges Benchguide 104: *Dependency Selection and Implementation Hearing* (Cal CJER).

Juvenile Dependency Selection and Implementation Hearing, Benchguide 104.(KFC1196.Z9 J8884

This benchguide provides a procedural overview of dependency hearings held generally under Welfare & Institutions Code §366.26 and Cal Rules of Ct 5.725. The benchguide covers the setting and conduct of the hearing and possible findings and orders. It contains a number of procedural checklists, a brief summary of the applicable law, and scripts. The hearing that is the subject of this benchguide is one that is designed to result in a permanent plan for a child who is a dependent of the juvenile court. Although appellate courts often refer to this hearing as a “selection and implementation” hearing (see discussion in §104.8), judicial officers typically call it a “.26 hearing,” because it is held under W & I C §366.26. Throughout this benchguide, this hearing will be referred to as a “.26 hearing.”

Juvenile Manual. California Court Association., 2008. – (Floor3 KFC1196.A6.J884)

This resource shows the juvenile dependency process from the first response to the final dismissal. Included is a Juvenile Dependency Process flowchart.

Guggenheim, Martin, author. **Representing Parents In Child Welfare Cases : Advice And Guidance For Family Defenders.** Chicago, Illinois : American Bar Association, 2015. Floor 4 KF8925.C45 G84

Macdonald, Geraldine M. **Effective Interventions for Child Abuse and Neglect: an Evidence-Based Approach to Planning and Evaluating Interventions.** 2001. Floor A HV713 .M25

Stern, Paul. **Preparing and Presenting Expert Testimony in Child Abuse Litigation : A Guide for Expert Witnesses and Attorneys.** Thousand Oaks, Calif. : Sage Publications, 1997. Floor 4 KF9323 .S83 1997

INTERNET

California Evidence –Based Clearinghouse for Child Welfare: <http://www.cebc4cw.org/>
Information and Resources for Child Welfare Professionals

Definition of Evidence-Based Practice: <http://www.cebc4cw.org/what-is-evidence-based-practice/>

The Institute of Medicine (IOM) defines "evidence-based practice" as a combination of the following three factors: (1) best research evidence, (2) best clinical experience, and (3) consistent with patient values (IOM, 2001). These three factors are also relevant for child welfare.


Members of the [CEBC Advisory Committee](#) and [Scientific Panel](#) were asked to write why evidence-based practice is important to their role in the Child Welfare field. Click the links below to see their answers in relation to these child welfare-related positions:

Juvenile Court: Dependency: Orange County Superior Court <http://www.occourts.org/self-help/juvenile/dependency.html>

This page contains information concerning:

1. Entering the Dependency Court System
2. When to Appear in Court
3. Dependency Hearings
4. Dependency Court FAQ

- Additional Resources

- [Juvenile Dependency Process Flowchart](#)
<http://www.fresno.courts.ca.gov/pdfs/Dependency%20Process.pdf>
- [The Legal Process](#) <http://www.ocsd.org/ocgov/Child%20Support%20Services/Legal>
- [Orange County Social Services Agency Dependency Court](#)
<http://www.occourts.org/directory/juvenile/video/juvenile-dependency/english/>
- ["What's Happening at Court?" \(English\)](#) – Activity book for children who are going to court in California <http://www.courts.ca.gov/documents/cab.pdf>
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- ["¿Qué Sucede en la Corte?" \(En Español\)](#) – Libro de actividades para niños que van a la corte en California <http://www.courts.ca.gov/documents/cabs.pdf>
- [Kids and the Law: An A-Z Guide for Parents](#) provided by the California Bar Association (English and Spanish versions available) <http://www.calbar.ca.gov/Public/Pamphlets/KidstheLaw.aspx>
- [When You Become 18: A Survival Guide for Teenagers](#) provided by the California Bar Association (English and Spanish versions available) <http://www.calbar.ca.gov/Portals/0/documents/publications/Turn-18.pdf>

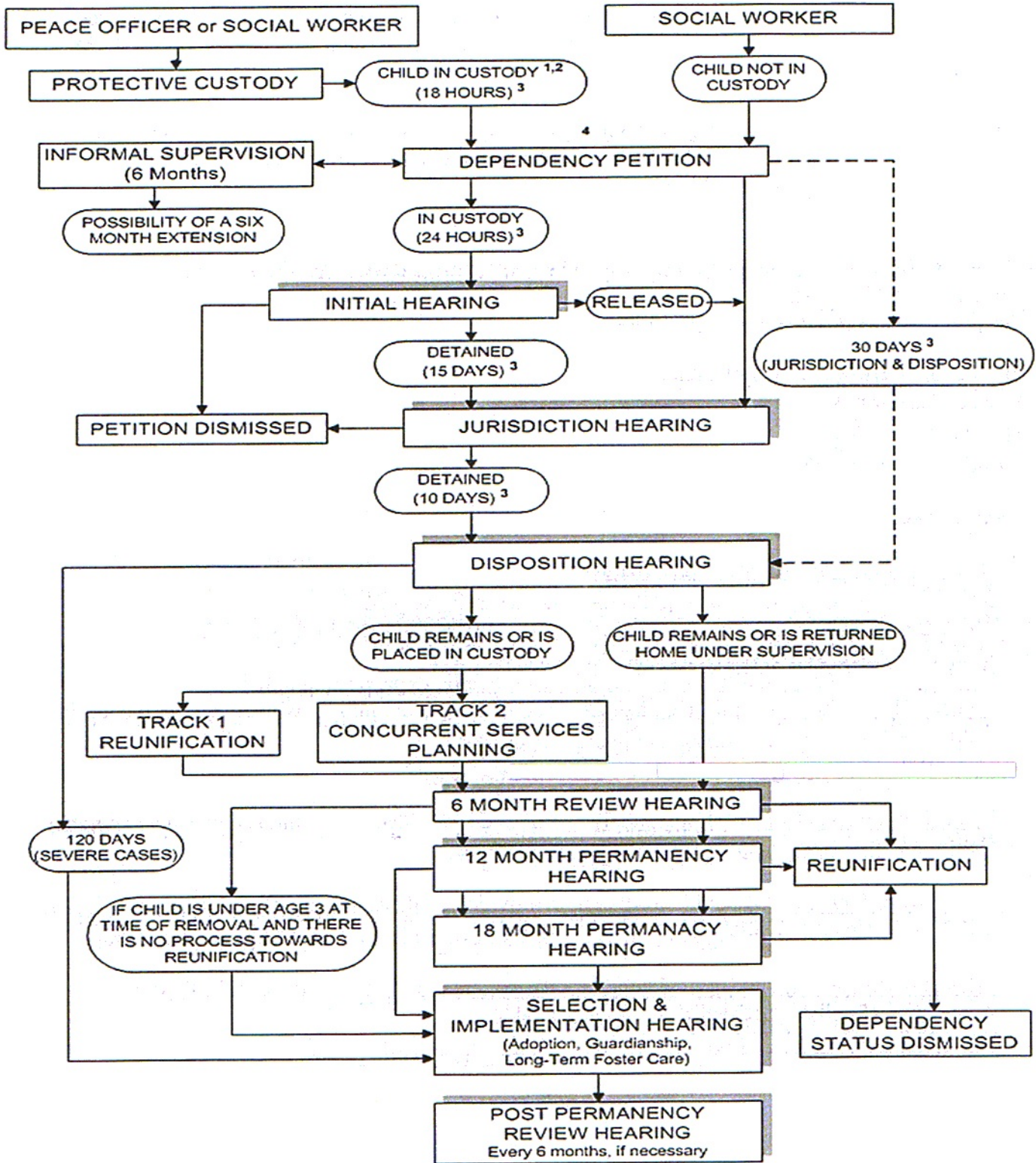
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Juvenile Dependency Proceedings

(Welfare & Institutions Code Section 300 et seq.)



¹ If a child is under the age of three at the time of removal, court ordered services shall not exceed six months. (See W & I Code section 361.5(a)(2) for exceptions.) When calculating the 6-month period, the time shall begin either 60 days after the child was placed in protective custody or from the date of the jurisdiction hearing, whichever is earlier.

² If a child is three years of age or older at the time of removal, court ordered services shall not exceed 12 months. (See W & I Code section 361.5(a)(2) for exceptions.) The twelve month time period is calculated the same as in footnote #1.

³ Judicial Days/Hours

⁴ When a minor is a dependent child of the court and remains in the home and there is a reasonable cause to believe that the minor is a person described in subdivision (a), (d) or (e) of section 300 of the Welfare and Institutions Code, court proceedings shall commence and the minor shall be committed to the care, custody and control of the probation officer.