

# CWLA 2016 NATIONAL CONFERENCE

*Advancing Excellence in Practice and Policy: What  
Works for Families Affected by Substance Use*

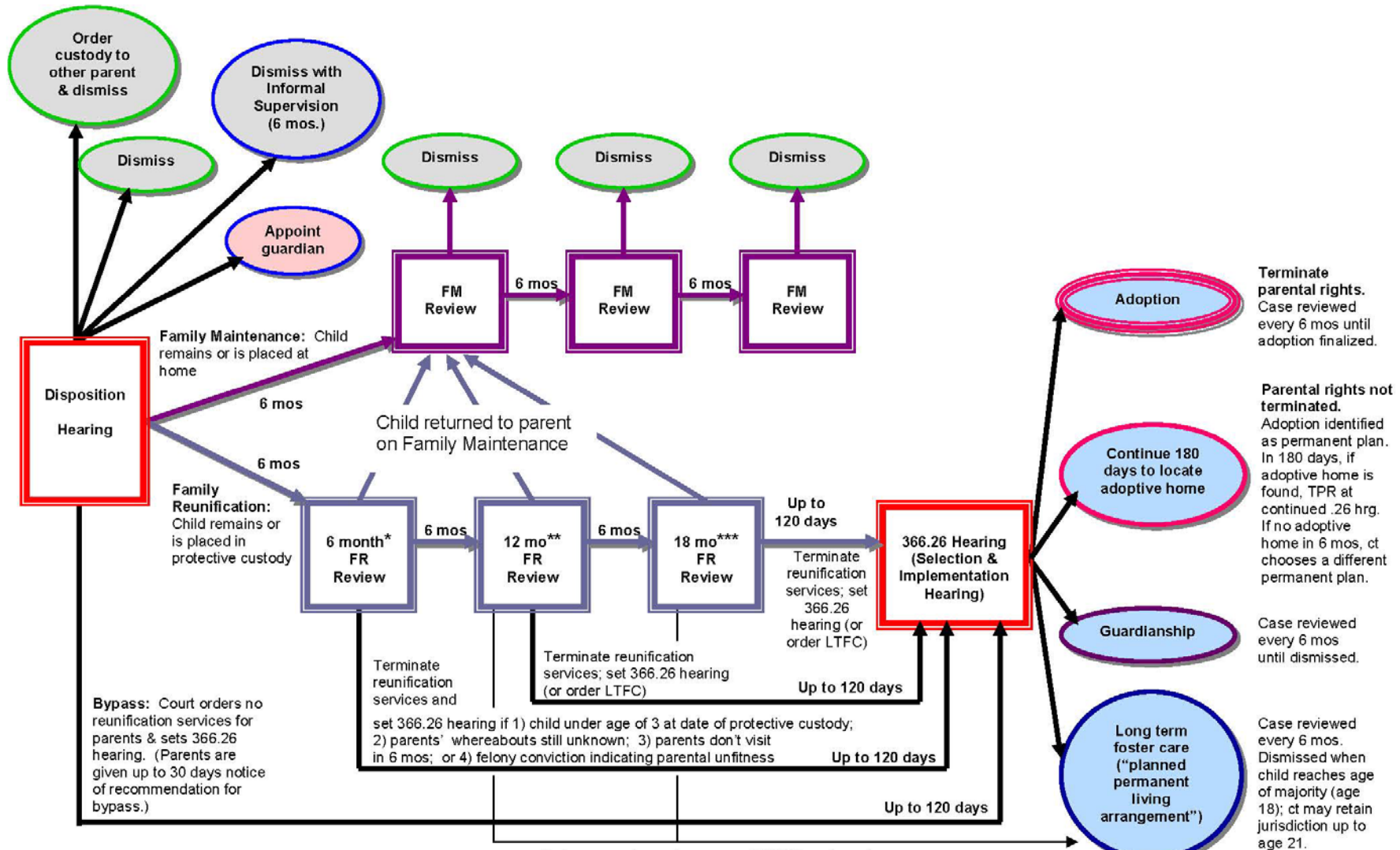
*Hyatt Regency, Orange County, California*

*August 1-3, 2016*

# A VIEW FROM THE BENCH: DEPENDENCY COURT PROCESS- WHAT JUVENILE COURT JUDGES WANT TO KNOW TO REUNIFY FAMILIES WHEN SUBSTANCE ABUSE IS A PROTECTIVE ISSUE

Presenter(s): Judge Sharon L. Kalemkarian and Judge Laura Birkmeyer, San Diego Juvenile Court, San Diego, CA; Judge Steven Bailey, Presiding Judge, El Dorado Juvenile Court, Placerville, CA; and Judge Katherine Lucero, Supervising Judge Juvenile Justice Courthouse, Santa Clara Juvenile Court, Santa Clara, CA.

# Dependency Court Process



\* 6 months from Disposition Hearing  
 \*\* 12 months from "date child entered foster care"  
 \*\*\* 18 months from "date of protective custody"; see §366.22(b) for circumstances under which Court can extend reunification services to 24 months

Under some circumstances, no 366.26 hearing set; go directly to plan of long term foster care

# CAL. WELF. & INST. CODE §300.

A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court. . .

(b)(1) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, **or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.** Notwithstanding any other provision of law, the purpose of the provisions of this chapter relating to dependent children 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. 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. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment.**

# CAL. WELF. & INST. CODE §361.5--BYPASS

... (b) Reunification services need not be provided to a parent or guardian described in this subdivision when the court finds, by clear and convincing evidence, any of the following:

**(13) That the parent or guardian of the child has a history of extensive, abusive, and chronic use of drugs or alcohol and has resisted prior court-ordered treatment for this problem during a three-year period immediately prior to the filing of the petition that brought that child to the court's attention, or has failed or refused to comply with a program of drug or alcohol treatment described in the case plan required by Section 358.1 on at least two prior occasions, even though the programs identified were available and accessible.**

(c) In deciding whether to order reunification in any case in which this section applies, the court shall hold a dispositional hearing. The social worker shall prepare a report that discusses whether reunification services shall be provided. . .

# CAL. WELF. & INST. CODE §361.5

(cont'd.)

The court shall not order reunification for a parent or guardian described in paragraph (3), (4), (6), (7), (8), (9), (10), (11), (12), (13), (14), (15), or (16) of subdivision (b) unless the court finds **by clear and convincing evidence**, that reunification is in the best interest of the child. . .

The failure of the parent to respond to previous services, **the fact that the child was abused while the parent was under the influence of drugs or alcohol**, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are **among the factors indicating that reunification services are unlikely to be successful.**

# CAL. WELF. & INST. CODE §366.21-6 MO. REVIEW

(a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar.

(e)(1) At the review hearing held six months after the initial dispositional hearing. . . the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, **by a preponderance of the evidence**, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical, or emotional well-being of the child. . . The court shall also consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent. The fact that the parent is enrolled in a certified substance abuse treatment facility shall not be, for that reason alone, **prima facie** evidence of detriment. **The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered programs shall be prima facie evidence that return would be detrimental.**

(3) If the child was under three years of age on the date of the initial removal . . . and the court finds **by clear and convincing evidence** that the parent failed to participate regularly and make substantive progress in a court-ordered treatment plan, the court may schedule a hearing pursuant to Section 366.26 within 120 days.

## CAL. WELF. & INST. CODE §366.21-12 MO. REVIEW

(f)(1) The permanency hearing shall be held no later than 12 months after the date the child entered foster care, as that date is determined pursuant to Section 361.49 . . . the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, **by a preponderance of the evidence**, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The social worker shall have the burden of establishing that detriment.

(B) The court shall also consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent. The fact that the parent is enrolled in a certified substance abuse treatment facility shall not be, for that reason alone, **prima facie evidence of detriment**. **The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental.**



# CAL. WELF. & INST. CODE §366.22-18 MO. REVIEW

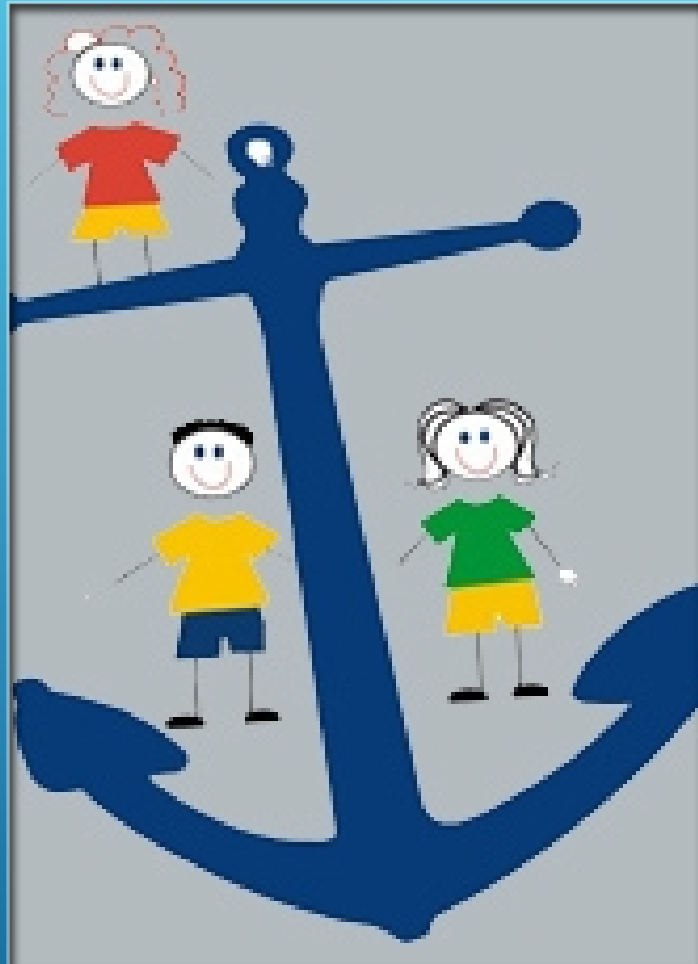
(a)(1) . . . permanency review hearing shall occur within 18 months after the date the child was originally removed from the physical custody of his or her parent or legal guardian . . . the court shall order the return of the child to the physical custody of his or her parent or legal guardian unless the court finds, by a preponderance of the evidence, that the return of the child to his or her parent or legal guardian would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. . .

The court shall also consider whether the child can be returned to the custody of his or her parent who is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent. The fact that the parent is enrolled in a certified substance abuse treatment facility shall not be, for that reason alone, prima facie evidence of detriment. **The failure of the parent or legal guardian to participate regularly and make substantive progress in court-ordered treatment programs shall be prima facie evidence that return would be detrimental.**

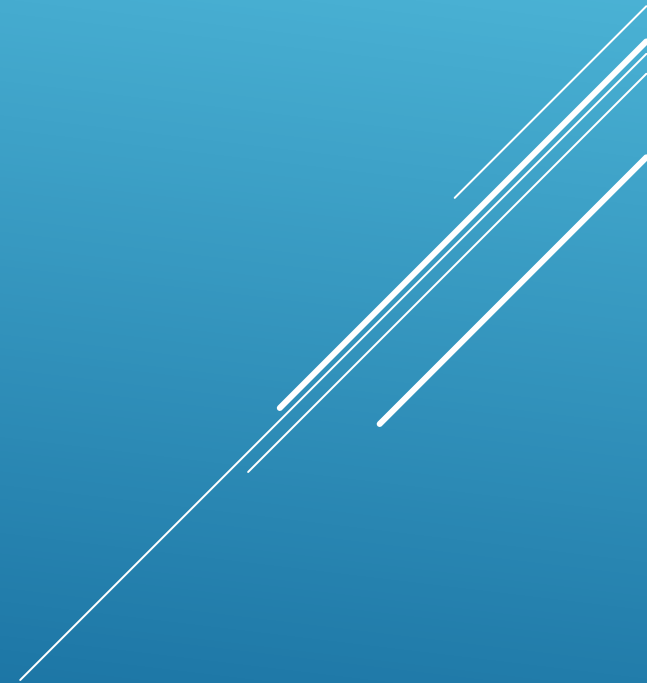
# CAL. WELF. & INST. CODE §366.22

(cont.d.)

(b) If the child is not returned to a parent or legal guardian at the permanency review hearing and the court determines by clear and convincing evidence that the best interests of the child would be met by the provision of additional reunification services to a parent or legal guardian who is **making significant and consistent progress in a court-ordered residential substance abuse treatment program** . . . the court may continue the case for up to six months for a subsequent permanency review hearing . . . The court shall continue the case only if it finds that there is a substantial probability that the child will be returned to the physical custody of his or her parent or legal guardian and safely maintained in the home within the extended period of time or that reasonable services have not been provided to the parent or legal guardian.



# SCENARIOS



# DETENTION AND JURISDICTION

Petition Count 01: On or about January 1, 2016, the child's parent left the child inadequately supervised in that the mother has exposed the child to drug sales. The child Susan (8 years old) was present when the mother sold methamphetamine to a man in a car, and the police arrested the mother. The police smelled an acrid smell in the car. The child Susan described being present for other drug sales in the car and in the home, and seeing drugs in the home. The SW found the home in a deplorable condition, with spoiled food in the sink, bags of mildewed clothing, a non-functioning bathroom sink, and animal feces on the floor. Susan has unexcused absences for 25% of the school year. There is substantial risk the child will suffer serious physical harm or illness.

Facts include the following at the jurisdictional hearing:

Mother had a voluntary case three years ago

Mom had a serious heroin habit.

Mother has a medical marijuana card, and uses the marijuana for anxiety and insomnia

Mom completed an inpatient treatment program as part of the voluntary case.

Social Worker suspects Mom is a heavy methamphetamine user.

Agency seeks by-pass of reunification services

## 6 MONTH REVIEW

1. Mother attended outpatient treatment, but missed 25% of those sessions and is dismissed.
2. Mom tested clean for meth but using Marijuana. She claims sobriety for 6 months.
3. She works 40 hour job at Walmart and claims she can't regularly attend treatment or parenting
4. She has not attended any NA meetings and claims that she doesn't have a problem
5. Random drug tests were ordered by the Court, but only 1 administered.
6. Susan is having trouble in her foster home but is making it to her school of origin every day.
7. Mom is regularly visiting Susan and visits go well. The visitation monitor reports that Mom sometimes smells of marijuana.
8. Mom plead to the criminal charge of sale of the drugs, and is on probation. Charges of possession for personal use were dropped.
9. Mom is living at a homeless shelter that allows children

# 12 MONTH REVIEW

1. Mom now has unsupervised visits; the social worker approved overnight visits with Mom.
2. Mom has continued to miss 25% of her outpatient program.
3. Mom still says she can't attend NA meetings because of work
4. After one overnight visit two weeks before the 12 month review hearing, Susan went to the front desk at the shelter asking for help. Mom was unconscious, and had suffered an overdose of some kind of drug. She had been drug testing clean up until that point.
5. At the review hearing Mom says she is sorry she relapsed. She now realizes that she has a problem. She wants to have a referral to an inpatient program, and to have Susan placed with her there. She has met with the substance abuse specialist, and there are no inpatient beds available.
6. Court Terminates services at 12 month review.
7. Mom files a 388 on eve of .26 hearing. She has continued in substance abuse services, and completed an inpatient program. She submits letters of her stellar progress since the 12 month hearing. Supervised visits have continued and go well. Susan wants to go stay with her mother. She is testing clean.

▶ RESOURCES

▶ Judges:

- ❑ Sharon.Kalemkarian@sdcourt.ca.gov
- ❑ Laura.Birkmeyer@sdcourt.ca.gov
- ❑ sbailey@eldoradocourt.org
- ❑ Klucero@scscourt.org

*"Reduce the Need for Foster Care"* --<http://www.casey.org/media/prioritizing-early-childhood.pdf>

*"Family Drug Courts: An Innovation in Transformation"* (Hon. Katherine Lucero)--The Santa Clara County experience documented--<http://bookstore.balboapress.com/Products/SKU-000540663/Family-Drug-Courts.aspx>

Article--*"Research Update on Family Drug Courts"* --

<http://www.nadcp.org/sites/default/files/nadcp/Reseach%20Update%20on%20Family%20Drug%20Courts%20-%20NADCP.pdf>

Article—*"Substance-Exposed Infants: Perplexing Social and Legal Issues"* (Hon. Leonard Edwards, Ret.);

<http://judgeleonardedwards.com>