HEARINGS

General
Notice
Social Worker's Report
Continuance

GENERAL:

Under the Fourteenth Amendment to the United States Constitution, there is a due process right to an opportunity to be heard. (*In re B. G.* (1974) 11 Cal.3d 679, 688-689; *In re Matthew P.* (1999) 71 Cal.App.4th 841, 851; *In re James Q.* (2000) 81 Cal.App.4th 255; *In re Brendian P.* (1986) 184 Cal.App.3d 910, 915, criticized on another point in *In re Travis C.* (1991) 233 Cal.App.3d 492, 500-502; see *In re Catherine H.* (2002) 102 Cal.App.4th 1284, 1292 [statutory right to offer evidence at hearing to modify or terminate guardianship in dependency court].)

There is no due process right to be present. (*In re Axsana S.* (2000) 78 Cal.App.4th 262, 270, overruled on other grounds in *In re Jesusa V.* (2004) 32 Cal.4th 588, 624; *In re Maria S.* (1997) 60 Cal.App.4th 1309, 1312; *In re Gary U.* (1982) 136 Cal.App.3d 494, 497; cf. *Kulas v. Flores* (9th Cir. 2001) 255 F.3d 780, 786 [party in civil action generally has a right to be present either personally or through an attorney]; see *In re Catherine H.* (2002) 102 Cal.App.4th 1284, 1292 [statutory right at hearing to modify or terminate guardianship in dependency court].) The court cannot hold a jurisdictional hearing after the parent failed to appear at mediation because there was no notice such a hearing could happen. (*In re Wilford J.* (2005) 131 Cal.App.4th 742, 750-751.)

Prejudicial error: There was no prejudicial due process violation from denying the parent the right to be present when the social worker distributed written reports before the hearing, the parent's counsel had an opportunity to review the reports and to present witnesses, and there was no indication from the record of what other evidence the parent could have presented. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 625-626.)

Under the Fourteenth Amendment to the United States Constitution, there is a due process right to a contested hearing as provided by statute. (*In re J.F.* (2011) 196 Cal.App.4th 321, 331-336 [no offer of proof required for a contested hearing under § 366.3]; *In re Thomas R.* (2006) 145 Cal.App.4th 726, 731-734 [cannot deny contested § 366.26 hearing on whether the minor is adoptable]; *David B. v. Superior Court* (2006) 140 Cal.App.4th 772, 777-780 [deny contested hearing terminating parental rights]; *In re Clifton V.* (2001) 93 Cal.App.4th 1400, 1405 [§ 388 petition which states prima facie case and there is a factual dispute]; *In re Josiah S.* (2002) 102 Cal.App.4th 403, 418 [periodic review where there is no recommendation to set a § 366.26 hearing]; *In re Kelly D.*

(2000) 82 Cal.App.4th 433, 439 [§ 366.3 hearing where there is no recommendation to set a § 366.26 hearing]; *In re Matthew P.* (1999) 71 Cal.App.4th 841, 851 [§ 388 petition by de facto parents]; *In re James Q.* (2000) 81 Cal.App.4th 255, 267 [termination of services]; *In re Crystal J.* (1993) 12 Cal.App.4th 407, 412; *Ingrid E. v. Superior Court* (1999) 75 Cal.App.4th 751 [contested dependent review with an offer of proof]; *In re Kelly D.* (2000) 82 Cal.App.4th 733 [periodic review]; *In re Sara D.* (2001) 87 Cal.App.4th 661, 671 [guardian ad litem appointment when not a minor and without consent]; *In re Rubin P.* (1991) 2 Cal.App.4th 306; *In re Johnny M.* (1991) 229 Cal.App.3d 181.) Even if a parent is in contempt, the court lacked authority to impose the evidentiary sanction of striking the parent's testimony. (*In re Mark A.* (2007) 156 Cal.App.4th 1124, 1142-1144.)

But *In re E.S.* (2011) 196 Cal.App.4th 1329, 1339-1340 [a sibling did not have a due process right to a contested hearing on the sibling's modification petition]; *M.T. v. Superior Court* (2009) 178 Cal.App.4th 1170, 1177-1179 [no due process right to a contested hearing without an adequate offer of proof at a § 366.3 hearing to set a § 366.26 hearing because the parent has the burden of proof]; *Sheri T. v. Superior Court* (2008) 166 Cal.App.4th 334, 340-341 [no due process right to a contested hearing at a § 366.3 hearing whether to set a § 366.26 hearing]; *In re R.J.* (2008) 164 Cal.App.4th 219, 223-224 [no right to a hearing on a de facto parent application]; *In re Earl L.* (2004) 121 Cal.App.4th 1050, 1053 [permanent plan hearing when the issue is the (c)(1) exception]; *Maricela C. v. Superior Court* (1998) 66 Cal.App.4th 1138, 1141-1143 [periodic review with permanent plan hearing scheduled]; *In re Andrea L.* (1998) 64 Cal.App.4th 1377 [same]; *In re Lance V.* (2001) 90 Cal.App.4th 668, 676-677 [decreased visitation, even if went to mediation]; *In re Jeanette V.* (1998) 68 Cal.App.4th 811, 816-817 [permanent plan hearing when issue is (c)(1) exception]; *In re Tamika T.* (2002) 97 Cal.App.4th 1114, 1120-1121 [can require offer of proof at permanent plan hearing and deny contested hearing if believe no reasonable chance of victory when issue is (c)(1) exception]; *id.* at p. 1124 [offer of proof must be specific to preserve the issue for appeal].) Due process requires "only" scheduling a contested hearing, notice, and an opportunity to attend. It did not violate due process to cancel the hearing when the parent failed to appear. (*In re Elizabeth M.* (2008) 158 Cal.App.4th 1551, 1556.)

Under the Fourteenth Amendment to the United States Constitution, there is a due process right to cross-examination. (*In re Malinda S.* (1990) 51 Cal.3d 368, 381, fn. 16; *In re Lucero L.* (2000) 22 Cal.4th 1227 [but can admit hearsay statement made by incompetent witness if there is sufficient indicia of reliability]; *In re Matthew P.* (1999) 71 Cal.App.4th 841, 851; *In re James Q.* (2000) 81 Cal.App.4th 255; *In re Nemis M.* (1996) 50 Cal.App.4th 1334; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1660; *In re Crystal J.* (1993) 12 Cal.App.4th 407, 412; *In re Arturo A.* (1992) 8 Cal.App.4th 229, 238; *In re Brendian P.* (1986) 184 Cal.App.3d 910, 915, criticized on another point in *In*

re Travis C. (1991) 233 Cal.App.3d 492, 500-502; but see *In re Andrew L.* (2004) 122 Cal.App.4th 178, 193-194 [no due process violation when not permitted to cross-examine social worker on hearsay statements in the report because the social worker would not know about the statements' accuracy].)

"As in other civil cases, parties to a dependency proceeding have a statutory due process right to cross-examine and confront witnesses. (*In re Malinda S.* (1990) 51 Cal.3d 368, 381, fn. 16; *In re Cory A.* (1991) 227 Cal.App.3d 339, 346; *In re Kerry O.* [1989] 210 Cal.App.3d [326,] 333-334; *In re Mary S.* [1986] 186 Cal.App.3d [414,] 418-419; §§ 311, subd. (b), 341, 353; Cal. Rules of Court, rule 1449(b)(3), (4).)" (*In re Amy M.* (1991) 232 Cal.App.3d 849, 864.)

Under the Fourteenth Amendment to the United States Constitution, there is a due process right to call witnesses. (*In re James Q.* (2000) 81 Cal.App.4th 255; *In re Matthew P.* (1999) 71 Cal.App.4th 841, 851; *In re Amy M.* (1991) 232 Cal.App.3d 847, 864 [to call the minor at the jurisdictional hearing]; see also *In re Vanessa M.* (2006) 138 Cal.App.4th 1121, 1130-1131 [parent's right to be heard means the court cannot prohibit a parent from testifying simply because he or she failed to appear to court one day]; but see *In re A.G.* (2008) 161 Cal.App.4th 664, 670-671 [not violate due process to prohibit parent to testify about fitness at § 366.26 hearing]; *In re Andrea R.* (1999) 75 Cal.App.4th 1093 [enough information in the social worker's report]; *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1176 [no due process violation to prevent witness from out of country to testify by telephone or to prohibit a cultural defense].) But the court can find a minor "unavailable" if it finds that testifying would be harmful. (*In re Jennifer J.* (1992) 8 Cal.App.4th 1080, 1086, 1089.)

Giving a parent only 48 hours to oppose forced medication of the minor does not violate due process. (*In re A.S.* (2012) 205 Cal.App.4th 1332, 1342-1344.)

The juvenile court is a special department of the superior court and has powers limited to those granted by and incidental to the Juvenile Court Law, Welfare and Institutions Code section 200 et seq. (*In re Ashley M.* (2003) 114 Cal.App.4th 1, 6.) "Under the Juvenile Court Law, the juvenile court is authorized to make orders pertaining to abused or neglected children who come within the court's jurisdiction." (*Id.* at p. 7.)

"In dependency proceedings, ' "[a] superior court convened as and exercising the special powers of a juvenile court is vested with jurisdiction to make only those limited determinations authorized by the legislative grant of those special powers." [Citations.] In the absence of such specific statutory authorization, a juvenile court is vested with authority to make only those determinations which are "incidentally necessary to the performance of those functions demanded of it by the Legislature pursuant to the Juvenile Court Law." [Citation.]' [Citation.]" (*In re Silvia R.* (2008) 159 Cal.App.4th 337, 345-

346.)

The juvenile court has subject matter jurisdiction if there is a prima facie showing of meeting the requirements of Welfare and Institutions Code section 300, even if there has been no assumption of jurisdiction under section 300, even if no petition has been filed. (*In re Elijah S.* (2005) 125 Cal.App.4th 1532, 1544.)

An order removing a child from the parent's custody and any order requiring the approval of the presiding judge of the juvenile court must be approved by the juvenile court judge within two court days for the referee's order to become effective. (Cal. Rules of Court, former rule 1417(b); see also *In re Clifford C.* (1997) 15 Cal.4th 1085; but see *In re I. S.* (2002) 103 Cal.App.4th 1193, 1197-1198 [order of removal at dispositional hearing effective immediately because the initial removal order was at the detention hearing].)

The social worker is an expert on the risk and placement of minors even if there is no formal process of establishing the expertise. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1427.)

With a stipulation from the parties, the referee acts as a judge; without a stipulation, the actions of the referee is subject to approval of a judge. (*In re Roderick U.* (1993) 14 Cal.App.4th 1543, 1551-1553.)

Failure to object to referee or to a commissioner acting as a judge under court order amounts to stipulation. (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1503; *In re Brittany K.* (2002) 96 Cal.App.4th 805, 813.)

A referee can order sanctions. (*In re Mark B.* (2007) 148 Cal.App.4th 61, 80-81.)

The court can reject an agreed settlement by the parents and the Department. (See *In re Jason E.* (1997) 53 Cal.App.4th 1540, 1547.)

No equitable estoppel when CPS recommends legal guardianship but presents evidence for terminating parental rights. (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 195-197.)

Plea of no contest is the same as admitting the petition. (*In re Troy Z.* (1992) 3 Cal.4th 1170, 1181; *In re Tommy E.* (1992) 7 Cal.App.4th 1234, 1237.)

The court must advise parents of due process rights before a dependency petition is admitted or submitted without a contested hearing; however, error leads to reversal only if prejudicial. (*In re Monique T.* (1992) 2 Cal.App.4th 1372, 1377 [but harmless error].)

The court need not provide any advisement to a parent when he or she agrees not

to contest the termination of parental rights. (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 200.)

Upon a showing of good cause, the child can testify in chambers with attorneys present, but not the parents. (*In re Laura H.* (1992) 8 Cal.App.4th 1689, 1695-1696 [even without objection from counsel at the PPH, acknowledging *Giberto M.*]; *id.* at p. 1693 [minor was an accomplished liar and would have testified differently if confronted by the parties]; see *In re S.C.* (2006) 138 Cal.App.4th 396, 426 [the court could rely on information in the social worker report and an offer of proof from minor's counsel when there was no objection]; *In re Giberto M.* (1992) 6 Cal.App.4th 1194, 1200 [pro se parent waives issue when not object as minor testifies in chambers]; *In re Jaime R.* (2001) 90 Cal.App.4th 766, 771 [attorney's failure to object waives issue that not present]; but see *Gonzalez v. Santa Clara Cnty. Dept. of Socl. Servs.* (2014) 223 Cal.App.4th 72, 97-98 [insufficient evidence 13 year old girl would be harmed from testifying at an administrative hearing when she said she wanted to].)

Child victim of molest can testify via closed circuit television. (*In re Amber S.* (1993) 15 Cal.App.4th 1260)

The court can exclude the minor from testifying at the permanent plan hearing when there is evidence it would be detrimental to the minor. (*In re Amber M.* (2002) 103 Cal.App.4th 681, 688.)

The parent is entitled to receive social worker report before the hearing. (*In re Matthew P.* (1999) 71 Cal.App.4th 841, 851, citing *In re Crystal J.* (1993) 12 Cal.App.4th 407, 412-413.)

The parent's statements made in court, to the social worker, or in court-ordered programs cannot be admitted in criminal prosecutions. (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 440-441; *In re Lamonica H.* (1990) 220 Cal.App.3d 634, 649-650; *In re Katrina L.* (1988) 200 Cal.App.3d 1288, 1296.)

Penal Code section 2625 requires the court to transport the parent who is in prison if it is a permanent plan hearing where termination of parental rights will be considered (*In re Jesusa V.* (2004) 32 Cal.4th 588, 599) or at any other hearing upon request of the prisoner (*id.*, at p. 623). A parent in prison does not have the right to be in court at a jurisdictional hearing alleging failure to provide under subdivision (g). (*In re Iris R.* (2005) 131 Cal.App.4th 337, 341-342.)

Courts can increase access to prisoners by (1) continuance; (2) appoint counsel; (3) transport the prisoner to court; (4) deposition; (5) holding court at the prison; (6) have the prisoner appear by telephone; (7) written discovery; (8) closed circuit television; and (9) other innovations. (*Wantuch v. Davis* (1995) 32 Cal.App.4th 786, 792-793; see *In re Iris*

R. (2005) 131 Cal.App.4th 337, 342-343 [there is no violation of the due process right to be present for failing to transport a prisoner when appointed counsel had an opportunity to review the social worker report ahead of the hearing and there was no indication the parent would have presented any material evidence].)

See generally also *Quiglino v. Quiglino* (1979) 88 Cal.App.3d 542, 549 [appoint counsel]; *In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1120-1123 [failure to send JV-505 notice to alleged father in prison violated due process right to notice]; *In re Dolly D.* (1995) 41 Cal.App.4th 440, 445-446; *Hoverston v. Superior Court* (2000) 74 Cal.App.4th 630; *Yarbrough v. Superior Court* (1985) 39 Cal.3d 197, 200 [if no right to counsel, appoint counsel as a last resort, at the litigant's cost].

Can issue a protective order under Welfare and Institutions Code section 213.5, though there has been no violence, because the parent was "molesting" (harassing) the social worker. (*In re Cassandra B.* (2004) 125 Cal.App.4th 199, 210-213; see also *In re M.B.* (2011) 201 Cal.App.4th 1057, 1063-1064 [the court has inherent power to issue an injunction to protect a social worker]; *In re B.S.* (2009) 172 Cal.App.4th 183, 190-193 [dependency court can issue a protective order though the criminal court already issued one]; *In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1511-1512 [protective order appropriate against one who made unauthorized contact with the minor, hired an investigator to spy and videotape caretakers, went to the school unannounced, and spread defamatory rumors about the caretakers].)

"Issuance of a restraining order under section 213.5 does not require 'evidence that the restrained person has previously molested, attacked, struck, sexually assaulted, stalked, or battered the child.' (*In re B.S.* (2009) 172 Cal.App.4th 183, 193.) Nor does it require evidence of a reasonable apprehension of future abuse. (*Ibid*.) In *In re B.S.*, *supra*, 172 Cal.App.4th at page 194, the Court of Appeal concluded section 213.5 is analogous 'to Family Code section 6340, which permits the issuance of a protective order under the Domestic Violence Prevention Act . . . if "failure to make [the order] may jeopardize the safety of the petitioner . . . ." ' [Citations.]" (*In re C.Q.* (2013) 219 Cal.App.4th 355, 363-364 [though the court did not err in issuing a restraining order against the father for the mother, there was insufficient evidence he was a danger to the children].)

Confidentiality. (*T.N.G. v. Superior Court* (1971) 4 Cal.3d 767, 778; *McClatchy Newspaper v. Fresno County DSS* (1992) 8 Cal.App.4th 805; *In re Kieshia T.* (1995) 38 Cal.App.4th 220, 225 [notice and good cause required]; *In re A.L.* (2014) 224 Cal.App.4th 354, 364-369 [local court order opening dependency court was unauthorized]; *People v. Superior Court* (2003) 107 Cal.App.4th 488, 491-493 [grand jury does not have access without good cause]; *In re R. G.* (2000) 79 Cal.App.4th 1408 1417-1418; *San Bernardino County DSS v. Superior Court (the Sun Newspaper)* (1991) 232 Cal.App.3d 188; *In re Tiffany G.* (1994) 29 Cal.App.4th 443, 450 [court can prohibit

parent from disclosing social worker report under penalty of misdemeanor]; *Pack v. King Co. DHS* (2001) 89 Cal.App.4th 829, 842 [though minor dead, court may keep file confidential despite public interest]; *Navajo Express v. Superior Court* (1986) 186 Cal.App.3d 981, 986-987 [can release juvenile records relevant to a civil suit]; but see *Jacob B. v. County of Shasta* (2007) 40 Cal.4th 948, 957 [invading juvenile court file and putting information in a court document is protected by the litigation privilege under Civ. Code, § 47, subd. (b)].) "In determining whether to authorize inspection or release of juvenile court records, in whole or in part, the court must balance the interests of the child and other parties to the juvenile court proceedings, the interests of the petitioner, and the interests of the public. The court must permit disclosure of, discovery of, or access to juvenile court records or proceedings only insofar as is necessary, and only if there is a reasonable likelihood that the records in question will disclose information or evidence of substantial relevance to the pending litigation, investigation, or prosecution." (Cal. Rules of Court, rule 1423(c).) Lack of specificity is not fatal if the person requesting the files would not know what is available: "without possession of the . . . [material], it would be difficult to list the documents in detail of which documents would be useful or relevant . . . . " (*In re Anthony H.* (2005) 129 Cal.App.3d 495, 505.)

Welfare and Institutions Code section 827 applies to CPS records as well as the juvenile court file. (*In re Elijah S.* (2005) 125 Cal.App.4th 1532, 1551-1552 [including material considered by the social worker, regardless of who is the custodian of the information]; *Lorenza P. v. Superior Court* (1988) 197 Cal.App.3d 607, 610.) Police reports and probation officer reports concerning delinquent acts are within the scope of the statute. (*T.N.G. v. Superior Court* (1971) 4 Cal.3d 767, 780; accord, *Wescott v. County of Yuba* (1980) 104 Cal.App.3d 103, 105-110; see *People v. Espinoza* (2002) 95 Cal.App.4th 1287, 1314-1316 [foster mother could testify in criminal trial of observations made in her home]; but see *Tracy A. v. Superior Court (Pauline I.)* (2004) 117 Cal.App.4th 1309, 1317-1316 [social worker report under Prob. Code, § 1513, subd. (d) on guardianship is not confidential from the parents].)

Section 827 applies to the district attorney's office. A court order is required before the district attorney's office may copy the records contained in the juvenile court file. (62 Ops.Cal.Atty.Gen 634, 638 (1979); *In re Gina S.* (2005) 133 Cal.App.4th 1074, 1082 [the right to inspect juvenile court files does not include the right to copy them].)

Only the juvenile court can release the information. (*In re Gina S.* (2005) 133 Cal.App.4th 1074, 1086-1087 [disclosure of records to parent in order to pursue a civil rights suit is good cause]; *In re Anthony H.* (2005) 129 Cal.App.3d 495, 502-503 [only the juvenile court, not the federal district court, can disclose information from a juvenile file]; *Cimarusti v. Superior Court* (2000) 79 Cal.App.4th 799; *In re Kieshia T.* (1995) 38 Cal.App.4th 220, 225 [notice and good cause required]; *In re Tiffany G.* (1994) 29 Cal.App.4th 443, 450 [court can prohibit parent from disclosing social worker report

under penalty of misdemeanor]; *Lorenza P. v. Superior Court* (1988) 197 Cal.App.3d 607, 610; *Wescott v. County of Yuba* (1980) 104 Cal.App.3d 103, 105-110; see *In re Elijah S.* (2005) 125 Cal.App.4th 1532, 1546-1547 [the juvenile court need not have assumed jurisdiction over the minor].)

Standard of review: Review an order made under Welfare and Institutions Code section 827 for abuse of discretion. (*In re Gina S.* (2005) 133 Cal.App.4th 1074, 1082.)

Juvenile court files can be disclosed when relevant to a civil suit. (*R.S. v. Superior Court* (2009) 172 Cal.App.4th 1049, 1053-1056.)

Waiver: Admitting the allegations or pleading no contest to the petition waives claim of sufficiency of the evidence. (*In re Troy Z.* (1992) 3 Cal.4th 1170, 1181; *In re Tommy E.* (1992) 7 Cal.App.4th 1234, 1239.)

Waiver: Stipulate to the dispositional recommendations does not waive reviewing jurisdiction. (*In re Megan B.* (1991) 235 Cal.App.3d 942, 950; *In re Jennifer V.* (1988) 197 Cal.App.3d 1206, 1209-1210; but see *In re Michelle M.* (1992) 8 Cal.App.4th 236, 330.)

Prejudice: Prejudice from failure to transport parent from prison is determined under *People v. Watson* (1956) 46 Cal.2d 818, 836-837. (*In re Jesusa V.* (2004) 32 Cal.4th 588, 624.)

Prejudice: Prejudice from the court preventing a parent from testifying determined under *Chapman v. California* (1967) 386 U.S. 18, 24. (*In re Mark A.* (2007) 156 Cal.App.4th 1124, 1144-1146; *In re Vanessa M.* (2006) 138 Cal.App.4th 1121, 1132.)

Prejudice: Parent must show prejudice from failure to hold a contested hearing after an inadequate offer of proof, at least when the parent has the burden of proof. (*M.T. v. Superior Court* (2009) 178 Cal.App.4th 1170, 1182.) Prejudice was shown when there was a factual dispute. (*In re J.F.* (2011) 196 Cal.App.4th 321, 336.)

NOTICE:

In *Goss v. Lopez* (1975) 419 U.S. 565, the Supreme Court held that, at a minimum, due process requires both notice and the right to be heard before any "deprivation of the life, liberty, or property by adjudication." (*Id.*, at p. 579, quoting *Mullane v. Central Hanover Trust* (1950) 339 U.S. 306, 313 [lack of notice deprives the court of personal jurisdiction]; *Dusenbery v. United States* (2002) 534 U.S. 161, 169-170 [due process does not require actual notice but instead methods reasonably certain to inform those affected; it does not require heroic efforts]; *In re B. G.* (1974) 11 Cal.3d 679, 688-689; *In re Jasmine G.* (2005) 127 Cal.App.4th 1109, 1115 [failure to give statutory notice for

§ 366.26 hearing was a due process violation]; *In re Melinda J.* (1991) 234 Cal.App.3d 1413, 1418-1419 [no due process violation for failing to provide notice to a transient whose whereabouts were unknown when there was a good faith attempt to provide notice].)

Even if CPS technically follows the statutes, due process is violated if CPS does not follow up on methods reasonably calculated to reach the parent. (*In re B. G.* (1974) 11 Cal.3d 679, 688-689.) "The means employed to give a party notice for due process purposes must be such as one, desirous of actually informing the party, might reasonably adopt to accomplish it." (*In re Claudia S.* (2005) 131 Cal.App.4th 236, 247 [insufficient evidence of proper notice when provided only oral notice to the mother that might have a hearing and no notice to the father]; *In re P.A.* (2007) 155 Cal.App.4th 1197, 1202-1203, 1208 [no due diligence when CPS failed to follow up on leads on how to contact the father after contacting the paternal grandparents]; *In re Arlyne A.* (2000) 85 Cal.App.4th 591, 598-600 [the term "reasonable diligence" denotes a thorough, systematic investigation and an inquiry conducted in good faith, not sending service to a five year-old address]; *In re John B.* (2000) 84 Cal.App.4th 100, 110; *In re Matthew P.* (1999) 71 Cal.App.4th 841, 851; *In re Anna M.* (1997) 54 Cal.App.4th 463, 468; *David B. v. Superior Court* (1994) 21 Cal.App.4th 1010, 1016; *In re Brendan P.* (1986) 184 Cal.App.3d 910; *In re Shuey G.* (2013) 221 Cal.App.4th 732, 743-744; *In re Megan P.* (2002) 102 Cal.App.4th 480, 489-490 [CPS failed to check with family support].)

Under federal due process, notice of the jurisdictional hearing requires alleging a prima facie case in the petition and the underlying facts in the petition. (*In re Wilford J.* (2005) 131 Cal.App.4th 742, 751-752 [right to notice of the nature of the hearing as well as the allegations for the jurisdictional hearing]; *In re Alysha S.* (1996) 51 Cal.App.4th 393, 396; *In re Jeremy C.* (1980) 109 Cal.App.3d 284, 397 [under § 332, subd. (f), must give notice of specific facts supporting jurisdiction]; *In re Fred J.* (1979) 89 Cal.App.3d 138, 175.) "[N]otice of the allegations upon which the deprivation of custody is predicated is fundamental to due process, [Citations.] Accordingly, a parent must be given notice of the specific factual allegations against him or her with sufficient particularity to permit him or her to properly meet the charge." (*Fred J., supra,* at p. 175, quoting *In re J. T.* (1974) 40 Cal.App.3d 633, 639, emphasis omitted.)

More on the due process right to notice: *In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1120-1123 [failure to send JV-505 notice to alleged father in prison violated due process]; *In re Angela C.* (2002) 99 Cal.App.4th 389, 393 [CPS must provide notice of continued permanent plan hearing when parent was not present at earlier permanent plan hearing date]; *In re DeJohn B.* (2000) 84 Cal.App.4th 100, 110 [requires notice for every hearing until terminate parental rights]; *County of Orange v. Carl D.* (1999) 76

Cal.App.4th 429, 439 [before parental rights can be terminated, CPS has a constitutional obligation to exercise due diligence to notify the parent of the pending proceeding]; *In re Matthew P.* (1999) 71 Cal.App.4th 841, 851; *In re Anna M.* (1997) 54 Cal.App.4th 463, 468 [methods reasonably calculated to serve notice even if comply with the statute]; *In re Phillip P.* (2000) 78 Cal.App.4th 250 [notice was sufficient though not full compliance with the statute]; *In re James Q.* (2000) 81 Cal.App.4th 255; *In re Lance V.* (2001) 90 Cal.App.4th 668, 676-677 [must give notice that would decrease visits; even if went to mediation]; *James v. Rowland* (9th Cir. 2010) 606 F.3d 646, 654 [the Fourteenth Amendment requires notice of removal to the non-custodial parent who has joint legal custody]; but see *id.* at p. 656-657 [failure to comply with notice under Welf. & Inst. Code, § 307.4 does not in itself violate due process]; *In re Vanessa Q.* (2010) 187 Cal.App.4th 128, 134-137 [a general appearance by counsel who requests a notice provides personal jurisdiction over a parent despite lack of proper notice].)

The Hague Convention for notice to parties in other countries applies in dependency cases. (*In re Alyssa F.* (2003) 112 Cal.App.4th 846, 851-855.) But it does not apply to review hearings. (*In re Jennifer O.* (2010) 184 Cal.App.4th 539, 545-550.) It does not apply to supplemental or subsequent petitions. (*Kern Cnty. Dept. of Human Services v. Superior Court* (2010) 187 Cal.App.4th 302, 308-311.)

CPS can serve notice at last known address given in court. (*In re Phillip F.* (2000) 78 Cal.App.4th 250, 256; *In re Raymond R.* (1994) 26 Cal.App.4th 436, 441.)

A parent refusing certified mail has not waived the right to notice. (*In re Wilford J.* (2005) 131 Cal.App.4th 742, 752.)

When CPS gives notice at parent's home, and parent makes comment would not appear because of outstanding warrant, notice was adequate. (*In re William G.* (2001) 89 Cal.App.4th 423, 428.)

Lack of notice excused when the parent was in a mental institution, access to the parent was denied, and the institution refused to accept the notice. CPS should have given notice to a (temporary) conservator. (*In re Daniel S.* (2004) 115 Cal.App.4th 903, 910, 911.)

Notice to a parent who has been appointed a guardian or conservator should go to the guardian or conservator. (Code Civ. Proc, § 416.70.)

Notice must also advise of the nature of the hearing and consequences of the court's potential rulings. (*In re Jorge G.* (2008) 164 Cal.App.4th 125, 134 [actual notice does not cure inadequate notice]; *In re Anna M.* (1997) 54 Cal.App.4th 463, 468 [whether

adoption is recommended]; *In re Stacy T.* (1997) 52 Cal.App.4th 1415, 1421-1424; *In re Lance V.* (2001) 90 Cal.App.4th 668, 676 [proposed decrease in visitation].) The court could not reduce visitation simply because the parent failed to appear for a hearing when there was no evidence the visitation was detrimental. (*In re Elizabeth M.* (2008) 158 Cal.App.4th 1551, 1557-1558.)

Court can amend the petition to conform with proof as long as no due process violation to notice. (*In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1041-1042 [court abused discretion to refuse to amend petition to conform with proof when there would be no prejudice to parent but there was prejudice to minor].)

Statutory deficient notice is cured if the parent received actual notice. (*In re Phillip F.* (2000) 78 Cal.App.4th 250, 257; *In re Malcolm D.* (1996) 42 Cal.App.4th 904, 913; *In re Raymond R.* (1994) 26 Cal.App.4th 436, 441.)

Until parental rights are terminated, CPS must give notice to parent of each hearing. (*In re deJohn B.* (2000) 84 Cal.App.4th 100, 107; *In re Julian L.* (1998) 67 Cal.App.4th 204, 206-207; *In re Catherine H.* (2002) 102 Cal.App.4th 1284, 1290 [notice of modifying or terminating guardianship required under Welfare and Institutions Code section 7280, subdivision (a), and Probate Code section 1511].)

CPS need not give written notice of continued hearings if the parent were present when the hearing was continued. (*In re Phillip F.* (2000) 78 Cal.App.4th 250, 256; cf. *In re Angela C.* (2002) 99 Cal.App.4th 389, 393 [CPS must provide notice of continued permanent plan hearing when parent was not present at earlier permanent plan hearing date].)

Once a parent attends a dependency proceeding, the parent has a burden to remain in contact with the court or CPS. (*In re Larry P.* (1988) 201 Cal.App.3d 888, 895.)

A parent can file a section 388 petition in order to raise a due process claim for lack of notice at previous hearings. (*In re Justice P.* (2004) 123 Cal.App.4th 181, 189.)

Standing: Parent does not have standing to object to lack of notice to the other parent. (*In re Caitlin B.* (2000) 78 Cal.App.4th 1189, 1193-1194; *In re Janelle C.* (1987) 197 Cal.App.3d 813, 818.)

Waiver: If there is a subsequent hearing, and the parent fails to object to lack of notice, the issue is waived. (*In re B.G.* (1974) 11 Cal.3d 679, 689; *In re A.S.* (2009) 180 Cal.App.4th 351, 358; *In re P.A.* (2007) 155 Cal.App.4th 1197, 1208-1209; *In re Wilford*

J. (2005) 131 Cal.App.4th 742, 754; *In re Carrie W.* (2003) 110 Cal.App.4th 746, 755; *Marlene M. v. Superior Court* (2000) 80 Cal.App.4th 1139, 1149 [no reunification services]; *In re Lukas B.* (2000) 79 Cal.App.4th 1145, 1152 [adoption]; but see *In re Troy D.* (1989) 215 Cal.App.3d 889, 896.)

Waiver: Trial counsel stipulated that the department exercised due diligence did not bar consideration of the claim on appeal when the department did not accurately describe its efforts to give notice. (*In re Jasmine G.* (2005) 127 Cal.App.4th 1109, 1117.)

Waiver: Failure to object to amendment to the petition waives the issue of notice. (*In re Daniel C. H.* (1990) 220 Cal.App.3d 814, 836.)

Reversible error: Lack of notice in violation of due process is a structural defect and is reversible per se. (*In re Jasmine G.* (2005) 127 Cal.App.4th 1109, 1116; *Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 558 [failure to give social worker report ten days in advance]; *In re Julie U.* (1998) 64 Cal.App.4th 532, 544; *In re Anna M.* (1997) 54 Cal.App.4th 463, 469; see *In re Megan P.* (2002) 102 Cal.App.4th 480, 489-490 [reversing all orders after disposition, including the termination of parental rights]; see also *In re Desiree F.* (2000) 83 Cal.App.4th 460, 475 [ICWA]; *In re Marinna J.* (2001) 90 Cal.App.4th 731, 739-740 [ICWA]; but see *In re J.H.* (2007) 158 Cal.App.4th 174, 183 [Chapman test when failed to provide notice to prisoner]; *In re Kobe A.* (2007) 146 Cal.App.4th 1113, 1123-1124 [lack of notice to alleged father harmless if he would not have been able to established presumed paternity]; *In re Justice P.* (2004) 123 Cal.App.4th 181, 193 ["In dependency proceedings, due process violations have been held subject to the beyond the reasonable doubt standard of prejudice."]; *In re Daniel S.* (2004) 115 Cal.App.4th 903 [attempted to notify mother but failed to notify her conservator]; *In re Angela C.* (2002) 99 Cal.App.4th 389, 394 [Chapman test]; *id.* at p. 396 [harmless when no issues to dispute]; *In re Steven H.* (2001) 86 Cal.App.4th 1023, 1033 [Chapman test]; *In re John B.* (2000) 84 Cal.App.4th 100, 110 [when failed to make any attempt to provide notice]; *In re Steve W.* (1990) 217 Cal.App.3d 10, 27-28 [harmless error analysis applies]; *In re Albert B.* (1989) 215 Cal.App.3d 361, 380-381 [same].)

Notice not harmless because the parent is unfit or unworthy. (*In re DeJohn B.* (2000) 84 Cal.App.4th 100, 102.)

Defective written notice to alleged father was harmless when the father received sufficient actual notice. (*In re Marcos G.* (2010) 182 Cal.App.4th 369, 391.)

Remedy: A parent who lacked notice of previous dependency proceedings may file a section 388 petition for modification of previous orders. (*Ansley v. Superior Court* (1986) 185 Cal.App.3d 477, 481-, 487-488.)

SOCIAL WORKER'S REPORT:

A parent has a due process right to a copy of the social worker's report. (See *In re Matthew P.* (1999) 71 Cal.App.4th 841, 851.)

Failure to give social worker report at least ten days in advance requires a continuance; reversible per se. (*Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 550, 553, 558.)

Can admit in the jurisdictional hearing social worker report and hearsay statements made in the social worker report (so long as the declarant is available for cross-examination). An amendment to section 355 appears to have abolished the need that they be available for cross-examination, according to the court in *Lucero L., infra.* (*In re Malinda S.* (1990) 51 Cal.3d 368, 383; *In re Keyonie R.* (1996) 42 Cal.App.4th 1569, 1572; *In re Corey A.* (1991) 227 Cal.App.3d 339, 347; *In re Tesman B.* (1989) 210 Cal.App.3d 927, 932-936.) However, unofficial witnesses need to be corroborated; this corroboration is similar to the corroboration needed for accomplice testimony. (*In re B.D.* (2007) 156 Cal.App.4th 975, 984 [corroborated minor's claim of physical abuse when parent gave several inconsistent statements, unable to explain injuries, and minor afraid of the parent].) Medical records attached to the social worker report were admissible under section 355. (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1280-1281.)

Can admit social worker report so long as the social worker is available for cross-examination. (*In re Stacy T.* (1997) 52 Cal.App.4th 1415, 1424-1425; *In re Dolly D.* (1995) 41 Cal.App.4th 440, 446.)

Hearsay through the social worker is admissible in the dispositional hearing. (*In re Madison T.* (2013) 213 Cal.App.4th 1506, 1509-1510.)

Hearsay statement of a young child, too incompetent to testify, may be admissible through the social worker's report. (*In re Lucero L.* (2000) 22 Cal.4th 1227, 1249 (lead opn. of Mosk, J.); *In re Cindy L.* (1997) 17 Cal.4th 15, 29; *In re Carmon O.* (1994) 28 Cal.App.4th 908, 913-915; *In re Kailee B.* (1993) 18 Cal.App.4th 719; *In re Dirk S.* (1993) 14 Cal.App.4th 1037; but see *In re Nemis M.* (1996) 50 Cal.App.4th 1344, 1353-1354.)

" 'A social study prepared by the petitioning agency, and hearsay evidence contained in it, is admissible and constitutes competent evidence upon which a finding of jurisdiction pursuant to Section 300 may be based, to the extent allowed by subdivisions (c) and (d).' [Citation.] Our Supreme Court instructs that such a study 'fits within the class of "legally admissible" evidence on which a court can rely in a jurisdictional hearing, despite the fact that a social study is itself hearsay and may contain multiple

levels of hearsay.' [Citation.] Only '[i]f any party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study" may the specific hearsay evidence "be [in]sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based . . . . ' [Citation.]" (*In re E.B*. (2010) 184 Cal.App.4th 568, 577; § 355, subds. (c) and (d).) When a parent objects on hearsay grounds to evidence in the social worker report, the hearsay statements were "not render[ed] . . . inadmissible. Rather, the objection meant that uncorroborated, the hearsay statements did not constitute substantial evidence and could not be used as the exclusive basis for finding jurisdiction under section 300. [Citation.]" (*In re B.D*. (2007) 156 Cal.App.4th 975, 984.) "Corroborating evidence is '[e]vidence supplementary to that already given and tending to strengthen or confirm it. Additional evidence of a different character to the same point.' [Citation.] In this context, corroborating evidence is that which supports a logical and reasonable inference that the act described in the hearsay statement occurred. [Citation.]" (*In re B.D*., *supra*, 156 Cal.App.4th at p. 984.) This standard is analogous to the rule in criminal law requiring independent corroborative proof of accomplice testimony. (*In re B.D*., *supra*, 156 Cal.App.4th at pp. 984-985.) Thus with respect to dependency jurisdictional findings, corroborative evidence, whether direct or circumstantial, (1) is sufficient if it tends to connect the allegedly offending parent with the alleged negligent act even though it is slight and "entitled, when standing by itself, to but little consideration [citations], nor does it need to establish the precise facts" in the hearsay statements; (2) is sufficient if it tends to connect the allegedly offending parent with the alleged negligent act and the parent's "own statements and admissions, made in connection with other testimony, may afford corroboratory proof sufficient" to find jurisdiction; (3) need not "go so far as to establish by itself, and without the aid of the testimony of [the hearsay declarant], that the [allegedly offending parent] committed the [negligent act] charged[;]" (4) may include the allegedly offending parent's "own testimony and inferences therefrom, as well as the inferences from the circumstances surrounding the entire transaction[;]" and (5) may consist of "[f]alse or misleading statements to authorities . . . or as part of circumstances supportive of corroboration." (*Ibid*.) " '[W]hether the corroborating evidence is as compatible with innocence as it is with guilt is a question of weight for the trier of fact [citations].' [Citation.]" (*Ibid*.) "Using these standards, there is evidence in [the appellate] record which, if considered by the trial court, could have corroborated the statements of the [two hearsay declarants at issue]." (*Ibid*.)

"The agency has a duty to apprise the court of all relevant facts and circumstances when issuing reports." (*Nickolas F. v. Superior Court* (2006) 144 Cal.App.4th 92, 108.)

Social worker need not solicit a statement from the child if the procedure would be detrimental. (*In re Leo M.* (1993) 19 Cal.App.4th 1583, 1592.)

A social worker's bias is not ground for excluding the social worker's report; credibility is an issue of fact. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1012-1013.)

Waiver: Failing to object to receiving the social worker report ten days in advance waives the claim of lack of notice. (*In re Christopher M.* (2003) 113 Cal.App.4th 155, 161.)

Waiver: Submitting on the social worker's *recommendation* waived any claim of insufficiency of the evidence for jurisdiction or removal. (*In re Richard K.* (1994) 25 Cal.App.4th 580, 590.)

Waiver: Submitting on the social worker's *report* does *not* waive claim of insufficiency of evidence on appeal. (*In re N. S.* (2002) 97 Cal.App.4th 167, 170; *Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 812; *In re Tommy E.* (1992) 7 Cal.App.4th 1234, 1237.)

Waiver: Failure to object to inaccurate or inadequate information in the social worker report waives the issue on appeal. (*In re Brian P.* (2002) 99 Cal.App.4th 616, 623 [but does not waive sufficiency of the evidence]; *In re Urayana L.* (1999) 75 Cal.App.4th 883, 886; *In re Aaron B.* (1996) 40 Cal.App.4th 843, 846; see *In re Crystal J.* (1993) 12 Cal.App.4th 407, 411-413; but see *Katheryn S. v. Superior Court* (2000) 82 Cal.App.4th 958, 973 [no report at all]; *In re Precious J.* (1996) 42 Cal.App.4th 1463, 1475 [no information at all].)

Waiver: Failure to advise of consequences of submitting on the social worker report waived without an objection. (*In re S.G.* (2003) 112 Cal.App.4th 1254, 1259.)

Waiver: Failure to object to multiple hearsay in the social worker report forfeits the claim. (*In re E.B.* (2010) 184 Cal.App.4th 568, 577.)

Prejudice: Must show prejudice from the failure to receive the social worker report in advance of the hearing. (*In re A.D.* (2011) 196 Cal.App.4th 1319, 1325-1328.)

Prejudice: Missing material from the social worker report does not automatically require reversal. (*In re Noreen G.* (2010) 181 Cal.App.4th 1359, 1380-1381.) It must be lead to a miscarriage of justice. (*In re Michael G.* (2012) 203 Cal.App.4th 580, 591.)

CONTINUANCE:

Continuances are strongly disfavored. (*Renee S. v. Superior Court* (1999) 76 Cal.App.4th 187, 193 [remedy is writ of mandate forcing continuous hearing, not

dismissal]; *Christine M. v. Superior Court* (1999) 69 Cal.App.4th 1233 [court can deny continuance requested for father in the military to attend]; *Jeff M. v .Superior Court* (1997) 56 Cal.App.4th 1238; *In re Richard H.* (1991) 234 Cal.App.3d 1351, 1361.) "Time is of the essence in dependency matters [citations], because childhood does not wait for the parent to become adequate [citation]." (*In re Daniel S.* (2004) 115 Cal.App.4th 903, 913.) " 'A family delayed is a family denied.' " (*Arlene M. v. Superior Court* (2004) 121 Cal.App.4th 566, 572.) There is a "strong countervailing interest, expressed by the Legislature itself, that dependency actions be resolved expeditiously." (*In re Jesusa V.* (2004) 32 Cal.4th 588, 625.)

No good cause for continuance when: (*In re Elijah V.* (2005) 127 Cal.App.4th 576, 585 [parent's counsel could not explain why client failed to appear]; *In re Daniel S.* (2004) 115 Cal.App.4th 903, 913 [parent committed in mental institution and not provided notice of proceeding]; *In re J. I.* (2003) 108 Cal.App.4th 903, 912-913 [mother not present and attorney wish to speak to her, though mother was involuntarily committed]; *D.E. v. Superior Court* (2003) 111 Cal.App.4th 502, 513 [parent not transported from prison]; *In re Karla C.* (2003) 113 Cal.App.4th 166, 179-180 [not an abuse of discretion to deny a continuance for alleged father to establish paternity]; see *In re Vanessa M.* (2006) 138 Cal.App.4th 1121, 1131 [it would not be good cause to continue for the parent's testimony when the parent failed to appear in court].)

But when the minor is missing, the court should continue the matter until the minor is found; it is not in the minor's best interest to assume jurisdiction without him or her. (*In re Claudia S.* (2005) 131 Cal.App.4th 236, 249-250.)

Good cause for continuance when the ICPC study has not been completed. (*In re John M.* (2006) 141 Cal.App.4th 1564, 1571-1572.) Good cause when a psychological evaluation of the minor has not been completed before the section 366.26 hearing. (*In re Michael G.* (2012) 203 Cal.App.4th 580, 590-591.)

Good cause when the father is serving overseas and the minor is 'detained' at the mother's home. (*In re Amber M.* (2010) 184 Cal.App.4th 1223, 1231.)

Abuse of discretion not to grant a two hour continuance when the parents were in court earlier but not present when the case was called for a hearing. (*In re Hunter W.* (2011) 200 Cal.App.4th 1454, 1463-1465.)

Soldiers' and Sailors' Civil Relief Act did not apply when the father has not shown why he could not be available for so long. (*Louis J. v. Superior Court* (2002) 103 Cal.App.4th 711, 715.) In 2003, the Act was amended and renamed the Servicemembers

Civil Relief Act (SCRA) at 50 U.S.C. Appx. § 522 et seq. (*George P. v. Superior Court* (2005) 127 Cal.App.4th 216, 223.)

Under the Servicemembers Civil Relief Act (SCRA) (50 U.S.C. Appx. §§ 501-596), there is automatically a 90 day stay if the servicemember cannot appear for civil action because of military obligation requiring the person to be somewhere else. (*In re A.R.* (2009) 170 Cal.App.4th 733, 741-744 [court was required to postpone jurisdictional hearing 90 days when parent was deployed overseas]; *George P. v. Superior Court* (2005) 127 Cal.App.4th 216, 223-224; see *In re Amber M.* (2010) 184 Cal.App.4th 1223, 1226, 1230-1231.) Then, there is a discretionary 90 day stay if the soldier submits a letter from the commanding officer. (*George P. v. Superior Court* (2005) 127 Cal.App.4th 216, 223-224.) It was not an abuse of discretion to deny a second 90 day stay in a dependency case when the only issue the servicemember could have disputed was why he failed to complete reunification services while in the military. (*George P. v. Superior Court* (2005) 127 Cal.App.4th 216, 225-226.)

Waiver: Not objecting to continuance waives the issue. (*In re Richard H.* (1991) 234 Cal.App.3d 1351, 1362.)

Waiver: Not objecting to holding the dispositional hearing with the jurisdictional hearing waived the issue. (*In re A.O.* (2004) 120 Cal.App.4th 1054, 1061; *In re Manuel E.* (2004) 120 Cal.App.4th 521, 542.)

Prejudice: Any error in failing to bifurcate dispositional hearing was harmless. (*In re Manuel E.* (2004) 120 Cal.App.4th 521, 542.)

Continuances beyond the statutory limits do not divest the court of jurisdiction. (*In re Richard H.* (1991) 234 Cal.App.3d 1351, 1361.)

The court can grant request by CPS to continue the dispositional hearing in order for the court to order termination of services for the child's sibling which would make this child qualify for by-pass. (*Marlene M. v. Superior Court* (2000) 80 Cal.App.4th 1139, 1148-1149.)

Standard of review: Review for abuse of discretion the denial of a motion for continuance. (*In re Ninfa S.* (1998) 62 Cal.App.4th 808, 810-811 [no continuance of permanency plan hearing to show paternity]; *In re Gerald J.* (1991) 1 Cal.App.4th 1180, 1187.)

No remedy for failing to hold dispositional hearing within the statutory time. (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 523; *In re Richard H.* (1991) 234

Cal.App.3d 1351, 1362.)