Detention Hearing
Removal Order
Placement
Visitation
Review Hearing

DETENTION HEARING:

Detention hearings summarized. (*In re Phoenix B.* (1990) 218 Cal.App.3d 787.)

Normally, "claims of the parents in this regard for interference with the right of family association" is analyzed under the Fourteenth Amendment." (*Wallis v. Spencer* (9th Cir. 2000) 202 F.3d 1126, 1137, fn. 8.) But "[b]ecause only the children were subject to seizure, their claims should properly be assessed under the Fourth Amendment." (*Ibid.*) The same legal standard applies. (*Ibid.*) "Officials may remove a child from the custody of [the] parent without prior judicial authorization only if the information they possess at the time of the seizure is such as to provide reasonable cause to believe that the child is in imminent danger of serious bodily injury and that the scope of the intrusion is reasonably necessary to avert that specific injury." (*Id.*, at p. 1138.) "The Fourth Amendment guarantees that parents will not be separated from their children without due process of law except in emergencies." (*Mabe v. San Bernardino Co.* (9th Cir. 2001) 237 F.3d 1101, 1107.)

Further, the "Constitution assures parents that, in the absence of parental consent, [medical examinations] of their child may not be undertaken for investigative purposes at the behest of state officials unless a judicial officer has determined, upon notice to the parents, and an opportunity to be heard, that grounds for such an examination exist and that the administration of the procedure is reasonable under all the circumstances." (*Wallis, supra,* 202 F.3d at p. 1141, internal quotation marks omitted.) There are two exceptions to the requirement of receiving prior judicial or parental consent: (1) "a reasonable concern that material physical evidence might dissipate" or (2) "that some urgent medical problem exists requiring immediate attention." (*Ibid.*)

CPS can detain a minor in the hospital without a warrant due to the mother's drug use. (*M.L. v. Superior Court* (2009) 172 Cal.App.4th 520, 527.)

"The child has a genetic bond with its natural parents that is unique among all relationships the child will have throughout its life. 'The intangible fibers that connect parent and child have infinite variety. They are woven throughout the fabric of our society, providing it with strength, beauty, and flexibility.' " (*Adoption of Kelsey S.*

(1992) 1 Cal.4th 816, 848, quoting *Lehr v. Robertson* (1983) 463 U.S. 248, 256.)

Appealability: Detention hearing is not appealable. (*In re Richard D.* (1972) 23 Cal.App.3d 592, 595; see *In re Candida S.* (1992) 7 Cal.App.4th 1240, 1248-1249.)

Failure to file petition within 48 hours did not compel releasing the child from pre-detention custody. (*L.A. Co. DCS v. Superior Court (Jorge N.)* (1988) 200 Cal.App.3d 505, 508-509) The holding of the minor without prior judicial approval is legally authorized if the Department files a dependency petition within 48 hours. (Welf. & Inst. Code, § 313; *Jenkins v. County of Orange* (1989) 212 Cal.App.3d 278, 285.)

The UCCJA permits emergency jurisdiction in cases involving custody matters across state or national borders. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 310-311; *In re C.T.* (2002) 100 Cal.App.4th 101, 109-112.) "One of the reasons the UCCJA was revised and the Act enacted was to clarify when a court could take emergency jurisdiction over a child. The Act made clear that emergency jurisdiction could be exercised to protect a child only on a temporary basis until the court with appropriate jurisdiction issued a permanent order." (*In re C.T.* (2002) 100 Cal.App.4th 101, 112; Fam. Code, § 3424, subd. (c).) Emergencies under the Act generally involve sexual or physical abuse. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 303, 310-311; *In re C.T.* (2002) 100 Cal.App.4th 101, 109; *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1174.) The finding of an emergency is to be made only after an evidentiary hearing, although the juvenile court can detain the child before that hearing. (*In re C.T.* (2002) 100 Cal.App.4th 101, 107, 108, fn. 3.) The jurisdictional hearing does not qualify as the hearing authorized by the Act. (*Id.* at pp. 108-109.)

REMOVAL ORDER:

"There is no national consensus on how to raise a 'healthy' adult, and a juvenile court should examine the question of parental custody from the child's view point. [Citation.] Often the harm created by removing a child from its parents may be more serious than the harm which the state intervention seeks to prevent (Wald, *State Intervention on Behalf of "Neglected" Children: A Search for Realistic Standards* (1975) 27 Stan.L.Rev. 985, 994; hereafter cited as *A Search for Realistic Standards*) because the courts lack the ability to insure that the placement is superior to the child's own home. [Footnote.] Moreover, children in foster care experience the anxiety of identity problems and conflicting loyalties caused by having three sets of adults with a stake in caring for them. (The foster parents, the natural parents, and the social workers.) (*A Search for Realistic Standards* at p. 995.) The children may also be harmed by viewing the placement as punishment for some unknown thing they have done wrong. The court should recognize that "'[the] consensus of expert opinion holds that it is most important to

avoid multiple placements for children between six months and three years of age. Each additional placement may retard the development and may impair their ability to form lasting attachments.'" (*In re David B., supra*, 91 Cal.App.3d at p. 196; citing Wald, *State Intervention on Behalf of "Neglected" Children: Standards for Removal of Children From Their Homes, Monitoring the Status of Children in Foster Care, and Termination of Parental Rights* (1976) 28 Stan.L.Rev. 625, 695.)" (*In re Jamie M.* (1982) 134 Cal.App.3d 530, 541.)

"[O]ut-of-home placement is not proper means of hedging against the possibility of failed reunification efforts, or of securing parental co-operation with those efforts." (*In re Henry V.* (2004) 119 Cal.App.4th 522, 525.)

"The governing statute, section 361, subdivision (c), is clear and specific: Even though children may be dependents of the juvenile court, they shall not be removed from the home in which they are residing at the time of the petition unless there is clear and convincing evidence of a substantial danger to the child's physical health, safety, protection, or physical or emotional well-being and there are no 'reasonable means' by which the child can be protected without removal." (*In re Jasmine G.* (2000) 82 Cal.App.4th 282, 288.) "Even when one so seriously violates parental responsibilities, however, the strong countervailing interests unique to the status of parents must still be considered. A mere finding of parental abuse does not sever the legal and familial bond between parent and child. The Juvenile Court Law restricts judicial power to remove a child from the care and society of even an abusive or abuse-tolerant parent. (§§ 319, subd. (d), 360, 361, subd. [(c)].)" (*In re Kieshia E.* (1993) 6 Cal.4th 68, 76-77.) A mere risk of emotional well-being was insufficient for removal. (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 698-699.) This statute applies only at the dispositional hearing. *In re Javier G.* (2006) 137 Cal.App.4th 453, 460-461 [can remove the minor under § 387 at subsequent hearing simply to "rehabilitate" the child].)

Joint physical custody exists where "each of the parents . . . have significant periods of physical custody." (Fam. Code, § 3004.) But for certain exceptions, joint physical custody must be "shared by the parents in such a way so as to assure a child of frequent and continuing contact with both parents. (*Ibid.*) Courts "look[ ] at the existing de facto arrangements between the parties to decide whether physical custody is truly joint or whether one parent has sole physical custody with visitation rights accorded the other parent." (*In re Marriage of Biallas* (1998) 65 Cal.App.4th 755, 759-760 [one day per week and alternate weekends constitute liberal visitation only]; *In re Marriage of Whealon* (1997) Cal.App.4th 132, 142 [one day per week and alternate weekends constitute liberal visitation only]; *In re Marriage of Lasich* (2002) 99 Cal.App.4th 702 [see the child five times per week].)

" 'A parent's right to care, custody and management of a child is a fundamental liberty interest protected by the federal Constitution that will not be disturbed except in extreme cases where a parent acts in a manner incompatible with parenthood. [Citations.]' (*In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1828.) '[F]reedom of personal choice in matters of family life is a fundamental liberty interest protected by the Fourteenth Amendment. [Citations.]' (*Santosky v. Kramer* (1982) 455 U.S. 475, 753.) Thus, the constitutional right of parents to make decisions regarding their children's upbringing precludes the state from intervening in the absence of clear and convincing evidence of a need to protect the child from severe neglect or physical abuse. (*Id.* at pp. 769-770; *Marquis D., supra,* 38 Cal.App.4th at pp. 1828-1829.)" (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 696.)

The "right to family association includes the right of parents to make important medical decisions for their children, and of to children to have those decisions made by their parents rather than the state" if the parents are fit to make the decisions. (*Wallis v. Spencer* (9th Cir. 2000) 202 F.3d 1126, 1141.)

"'[A] cardinal rule of our society that the custody, care, and nurture of a child resides first in the parents rather than in a public agency . . . "[T]he relationship of . . . natural parents . . . [and] . . . children is a vital human relationship which has far-reaching implications for the growth and development of the child. [Citation.] . . . [T]he involuntary termination of that relationship by state action must be viewed as a drastic remedy which should be resorted to only in the extreme cases of neglect or abandonment." [Citations.]' [Citations.]" (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438.)

The term "custody" as used in section 361.2, refers to the parent's right to make decisions pertaining to the child and to have legal possession of the child. (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1130-1131.) "Placement" refers to the address where the child shall live during the dependency proceeding. (*Id.* at p. 1131.)

The court cannot "remove" the child, and then place the child in the parent's home; the correct procedure is to not remove the child and offer family maintenance services. (*In re Savannah B.* (2000) 81 Cal.App.4th 158; *In re Andres G.* (1998) 64 Cal.App.4th 476; *In re Damonte A.* (1997) 57 Cal.App.4th 894.) There was no removal when keep minor in the same house but exclude one of the parents. (*In re N. S.* (2002) 97 Cal.App.4th 167, 172 & fn. 5.) The court can "remove" a minor and place the minor in the same home under the care of a step-parent. (*In re A.O.* (2010) 185 Cal.App.4th 103, 110-112.) Moving the minor from the custodial parent to the non-custodial parent was a removal. (*In re Miguel C.* (2011) 198 Cal.App.4th 965, 969-973.) Should not return the teenage minor to the home simply because she kept running away from placement and

would return to her mother. (*In re I.G.* (2014) 226 Cal.App.4th 380, 386-387.)

There was no removal when the minor was placed with noncustodial parent. The court can decide not to place with noncustodial parent merely if it would be detrimental; there is no need to find the noncustodial parent unfit. (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1422-1423.) The court must determine whether to place the child with the non-custodial parent under section 351.2. (*R.S. v. Superior Court* (2007) 154 Cal.App.4th 1262, 1270-1271.)

Although the mother was unfit, there was insufficient evidence the father was unfit, requiring a new dispositional hearing to consider placement with him. (*In re X.S.* (2010) 190 Cal.App.4th 1154, 1159-1161.)

Due process requires CPS give notice of specific facts for alleging reasons for removal. (*In re Roger H.* (1991) 228 Cal.App.3d 1174, 1181; *In re Jeremy C.* (1980) 109 Cal.App.3d 384, 397.)

Before removal can be made, the court must consider less drastic measures. (*In re Haley T.* (2012) 212 Cal.App.4th 139, 148 [insufficient of less drastic means such as unannounced visits]; *In re James T.* (1987) 190 Cal.App.3d 58, 65; see *In re Paul E.* (1995) 39 Cal.App.4th 996, 1004.)

CPS must make reasonable efforts before the dispositional hearing to avoid removal or justify why efforts were not made. (*In re Ashley F.* (2014) 225 Cal.App.4th 803, 809-810; *In re Basilio T.* (1992) 4 Cal.App.4th 155, 171-172; *In re Michael S.* (1987) 188 Cal.App.3d 1448, 1458; *In re Jeannette S.* (1979) 94 Cal.App.3d 52, 60; but see *In re H.E.* (2008) 169 Cal.App.4th 710, 725-726 [reasonable efforts can include independent efforts by someone else to address the problem].)

It is not necessary for the child to suffer harm before removal so long as the child is at risk of suffering harm. (*In re B.G.* (1974) 11 Cal.App.3d 679, 699; *In re Jamie M.* (1982) 134 Cal.App.3d 530, 536.)

With evidence mother cannot protect the child, can remove child from mother because father abused a half-sibling. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1163 [permitted father to see the minor]; *In re D.G.* (2012) Aug 30 b235755) IC-II; *In re R.V.* (2012) 208 Cal.App.4th 837, 849; *In re Aaron S.* (1991) 228 Cal.App.3d 202, 211; *In re Steve W.* (1990) 217 Cal.App.3d 10, 21-23; see *In re Andy G.* (2010) 183 Cal.App.4th 1405, 1410-1415 [14 year old boy at risk after parent molested pre-teen half-sisters]; *In re Ana C.* (2012) 204 Cal.App.4th 1317, 1330-1332 [can remove all minors because of molestation of one of them, but cannot "remove" a 19 year-old who did not live in the

home]; *In re P.A.* (2006) 144 Cal.App.4th 1339, 1347 [court can remove the sons after parent molested the daughter]; but see *In re Haley T.* (2012) 212 Cal.App.4th 139, 145-148 [insufficient evidence for removing toddler when the parents harmed a baby].)

" 'Because we abhor the involuntary separation of parent and child,' wrote Justice Baxter in *In re Kieshia E.* (1993) 6 Cal.4th 67, 76, 'the state may disturb an existing parent-child relationship only for strong reasons and subject to careful procedures.' Not surprisingly then, California law that there are no alternative before a child may be removed from the home of his her parent." (*In re Jasmine G.* (2000) 82 Cal.App.4th 282, 284.)

"If an incarcerated parent can make suitable arrangements for a child's care during his or her incarceration, 'the juvenile court ha[s] no basis to take jurisdiction in th[e] case, and [the social services agency] simply ha[s] no say in the matter.' [Citations.]" (*In re Isayah C.* (2004) 118 Cal.App.4th 684, 696.)

Spanking and harsh words not sufficient evidence for removal. (*In re Jasmine G.* (2000) 82 Cal.App.4th 282, 290-293; *In re Joel H.* (1993) 19 Cal.App.4th 1185.)

Insufficient evidence for removal from a single incident of physical abuse. (*In re A.E.* (2014) 228 Cal.App.4th 820, 826-827; *In re Henry V.* (2004) 119 Cal.App.4th 522, 529.)

Insufficient evidence for removal from grandparents when the minor saw the parent without authorization at a funeral. (*In re H.G.* (2006) 146 Cal.App.4th 1, 13-14.)

Insufficient evidence for removing from caretakers when the court failed to consider the minor's best interests. (*In re A.F.* (2014) 227 Cal.App.4th 692, 701-705; *In re M.V.* (2006) 146 Cal.App.4th 1048, 1059-1062 [the family dog bit the child and the caretakers were willing to get rid of the dog].)

Insufficient evidence for not placing the minor with the noncustodial father based on the minor wished to stay at the maternal grandmother's with a sibling and did not want to change schools, the father worked long hours requiring the stepmother to care for the minor, the mother claimed the father had a history of alcohol abuse, and he had a domestic violence conviction ten years ago and a dismissed misdemeanor arrest. (*In re C.M.* (2014) 232 Cal.App.4th 1394, 1402.)

Can remove the minor when the mother does not believe the boyfriend caused the minor's injuries. (*In re Levi H.* (2011) 197 Cal.App.4th 1279, 1292.)

Can remove the minor because of domestic violence because it at least endangers the emotional health of the minor. (*In re J.S.* (2014) 228 Cal.App.4th 1483, 1493-1494; but see *In re Basilio T.* (1992) 4 Cal.App.3d 155, 171.)

Suspected drug use refuted by clean urine test, and parent being late one day picking up minor from daycare was insufficient grounds for removal. (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1079.)

History of drug use justified removal. (*In re J.C.* (2014) 233 Cal.App.4th 1, 6-7.)

Can remove 13 year-old girl when the step-father entered her bed twice and touched her thigh, and the mother did not believe her. (*In re Martin T.* (2008) 159 Cal.App.4th 428, 439-441.)

Can remove the minor because the mother was making unfounded allegations of molestation against the father during a divorce proceeding. (*In re H.E.* (2008) 169 Cal.App.4th 710, 718-724.)

That the parent is unemployed does not make him unfit. "We cannot separate parents and their children merely because they are poor." (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 792.)

Not getting along with the social worker is not grounds for removal. (*In re Jasmine G.* (2000) 82 Cal.App.4th 282, 290-293; *In re Paul E.* (1995) 39 Cal.App.4th 996, 1003-1005.)

The court cannot remove minor because social worker disagrees with parent's desire to return to native war-torn country. (*Nahid H. v. Superior Court* (1997) 53 Cal.App.4th 1051, 1070-1072.)

Injuries to the child, unsafe home, and non-constructive behavior of parents justified removal. (*In re Richard H.* (1991) 234 Cal.App.3d 1351.)

Removal requires clear and convincing evidence. (*In re Marquis D.* (1995) 36 Cal.App.4th 1813, 1827-1829; *In re James F.* (1987) 190 Cal.App.3d 58, 65; *In re Bernadette C.* (1982) 127 Cal.App.3d 618; see *In re Kieshia E.* (1993) 6 Cal.4th 68, 76.)

Burden of proof: Clear and convincing evidence is a "high probability," "requiring that the evidence be so clear as to leave no substantial doubt; sufficiently strong to command the unhesitating assent of every reasonable mind." (*In re Angelia P.* (1981) 28 Cal.3d 908, 919.)

Standing: Father had standing to challenge the removal of the minor from the mother. (*In re R.V.* (2012) 208 Cal.App.4th 837, 848-849.)

Standard of review: Although removal requires clear and convincing evidence in the juvenile court; the order will be upheld on appeal if there is substantial evidence. (*In*

re Casey D. (1999) 70 Cal.App.4th 38, 52-53; *In re Kristin H.* (1996) 46 Cal.App.4th 1635, 1654; *In re Amos L.* (1981) 124 Cal.App.3d 1031, 1038.) Therefore, if there is substantial evidence for jurisdiction, there is substantial evidence for removal. (*In re E.B.* (2010) 184 Cal.App.4th 568, 578; but see *In re Haley T.* (2012) 21 Cal.App.4th 139, 145-147 [though substantial evidence for jurisdiction, there was not substantial evidence for removal].)

Waiver: Submitting to the dispositional *recommendations* waives the issue. (*In re Richard K.* (1994) 25 Cal.App.4th 580, 589-590.)

PLACEMENT:

The minor did not have a due process right to be placed with a half sibling who has no relationship with the minor. (*In re H.K.* (2013) 217 Cal.App.4th 1432, 1433-1435.)

Emergency placement is not the same as an ordered placement. (*In re M.L.* (2012) 205 Cal.App.4th 210, 224.) The statute governing the "temporary placement of the child pending the detention hearing" is Welfare and Institutions Code section 309. (*In re Miguel E.* (2004) 120 Cal.App.4th 521, 541-542.) The standard is different than for placement at the dispositional hearing, and there is not a requirement for a background check. (*In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1414-1416.|)

Under Welfare and Institutions Code section 361.2, subdivision (b), placement (and sometimes custody) means where the minor is during the dependency (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1131 & fn. 2), even if there is no detriment and the minor is "placed" with the non-offending parent (*id.*, at pp. 1133, fn. 4, 1134). "As used in section 300 proceedings, the term 'placement' connotes where the child shall live during his or her dependency." (*In re V.F.* (2007) 157 Cal.App.4th 962, 970.)

Under Welfare and Institutions Code section 361.2, subdivision (a), custody includes placing the minor with the non-offending parent and dismissing the dependency. (*In re Austin P.* (2004) 118 Cal.App.4th 1124, 1130, 1132.)

Under section 361.2, subdivision (a)(2), when the court removes the child from the offending parent, it must place with the non-custodial parent seeking custody unless it would be detrimental to the child. (*In re D'Anthony D.* (2014) 230 Cal.App.4th 292, 298-302 [even if the noncustodial parent is an 'offending' parent]; *In re Jonathan P.* (2014) 226 Cal.App.4th 1240, 1251-1256 [applied to a hearing after the dispositional hearing, at least when it was the non-offending parent's first appearance and the minor was a run-away]; *In re Abram L.* (2013) 219 Cal.App.4th 452, 460-463 [the court must make an express finding the requesting non-custodial parent is not fit]; *In re V.F.* (2007) 157 Cal.App.4th 962, 970 [this provision applies in considering the non-custodian parent even

if the parent is offending in some regards]; *In re John M.* (2006) 141 Cal.App.4th 1564, 1571 [minor's need for services and lack of close relationship with dad, lack of information about dad, did not show detriment in placing him with dad who was the non-offending parent]; *In re Catherine H.* (2002) 102 Cal.App.4th 1284, 1288, 1290, 1292 [when remove from guardian]; *Robert L. v. Superior Court* (1996) 45 Cal.App.4th 619, 626-629 [parent must seek placement to qualify]; *In re Marquis D.* (1995) 38 Cal.App.4th 1813, 1821-1825 [must make express finding by clear and convincing evidence that requesting non-custodial parent is not fit]; *In re Erika W.* (1994) 28 Cal.App.4th 470, 475; *Tara S. v. Superior Court* (1993) 13 Cal.App.4th 1834, 1837-1838 [OK to send child to Minnesota while denying contested hearing]; *In re Katrina C.* (1988) 201 Cal.App.3d 540, 550; see *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1422-1426 [detriment includes loss of seeing sibling, thus can choose not to place with noncustodial parent to maintain sibling bond]; *id.* at p. 1422-1423 [decide not to place with noncustodial parent merely if it would be detrimental; there is no need to find the noncustodial parent unfit]; but see *In re Noe F.* (2013) 213 Cal.App.4th 122, 358, 367-369 [reverse order placing the minor with the non-offending parent when the court did not make the necessary findings].) The court can "place" with the noncustodial parent who is in prison but can leave the minor with an appropriate caretaker. (*In re V.F.* (2007) 157 Cal.App.4th 962, 973.) The court must state on the record the reason for removing the minor from the custodial parent and placing the minor with the noncustodial parent. (*In re J.S.* (2011) 196 Cal.App.4th 1069, 1076-1078.) The court abused its discretion in not placing a 13 year-old minor with the non-offending father on the grounds that the minor wished not move in with the father, the minor did not know him, required continued therapeutic services, father's future military deployment, his wish to home school the minor, and the lack of child welfare services for the father; because the father was fit and willing to do what was necessary for the minor. (*In re Patrick S.* (2013) 218 Cal.App.4th 1254, 1264-1265.) The court may order a home study of the non-offending parent and hold a hearing on the appropriateness of the placement, but it is not required to do so. (*In re A.B.* (2014) 230 Cal.App.4th 1420, 1435-1436.) The statute only applies to dispositional hearings; afterwards, a section 388 petition is necessary to place with the noncustodial parent. (*In re Z.K.* (2011) 201 Cal.App.4th 51, 70-72.)

A noncustodial parent was nonetheless an offending parent when there were allegations sustained against that parent, except perhaps under subdivision (g). (*In re John M.* (2013) 217 Cal.App.4th 410, 420-425 [history of domestic violence]; *In re A.A.* (2012) 203 Cal.App.4th 597, 606-610 [child was removed from parent six months previously and there were sustained allegations in the petition about her unfitness].) "Section 361.2 comes into play *after* a child has been removed from the physical custody of his or her parents under section 361, subdivision (c). Subparagraph (1) of section 361, subdivision (c), requires the court to consider allowing a nonoffending parent to "retain physical custody" so long as that parent or guardian presents a plan acceptable to the

court demonstrating that he or she will be able to protect the child from future harm. We interpret the phrase "retain physical custody" to mean that the parent seeking temporary placement of the child under section 361.2 must not have suffered a previous loss of custody of the child by a juvenile court order of removal after a finding of detriment. [¶] Reading section 361.2 in light of section 361, subdivision (c), the parent must be *both* nonoffending *and* noncustodial parent in order to be entitled for consideration under section 361.2, that is, the parent must retain the right to physical custody, and must not have been the subject of a previous detriment finding and removal." (*In re A.A.* (2012) 203 Cal.App.4th 597, 608, disagreeing with *In re V.F.* (2007) 157 Cal.App.4th 962.)

Prejudice: Failure to state the reason for placing the minor with the noncustodial parent was harmless under *Watson*. (*In re J.S.* (2011) 196 Cal.App.4th 1069, 1078-1081.)

A mere biological father does not qualify as a parent for placement. (*In re E.T.* (2013) 217 Cal.App.4th 426, 436-439.)

" 'One of the key elements of any interstate compact is uniformity in interpretation." (*In re C.B.* (2010) 188 Cal.App.4th 1024, 1028.) But there is a conflict among the states whether the compact applies to placement with an out of state parent. (See " *In re C.B.* (2010) 188 Cal.App.4th 1024, 1031-1036.) In California, there is not a need to comply with the Interstate Compact for the Placement of Children (ICPC) [Fam. Code, §7900 et seq.] when placing the child with a parent living out of California. (*In re Z.K.* (2011) 201 Cal.App.4th 51, 69-70 [notwithstanding 2009 state regulations requiring it]; *In re C.B.* (2010) 188 Cal.App.4th 1024, 1031-1036; *In re Emmannuel R.* (2001) 94 Cal.App.4th 452, 455, 458; *In re Johnny S.* (1995) 40 Cal.App.4th 969, 979; *Tara S. v. Superior Court* (1993) 13 Cal.App.4th 1834, 1837-1838; see *In re Luke L.* (1996) 44 Cal.App.4th 670, 682 [contingent placement orders]; but see *In re Shuey G.* (2013) 221 Cal.App.4th 732, 742-743[the court has discretion to use the ICPC process]; *In re John M.* (2006) 141 Cal.App.4th 1564, 1572-1575 [court could use the ICPC study to determine whether to place with the other parent, though a favorable evaluation is not necessary] and *In re B.S.* (2012) 29 Cal.App.4th 246, 254 [court can decide it would be an undue risk to place a minor with a parent who received a poor ICPC report].)

The provision in section 361.2 concerning placement out of county applies when the minor is placed in another country. (*In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1418-1419.)

The court should not place the minor with the other parent in another country and continue the dependency unless it can be assured its orders will be followed. (*In re Karla C.* (2010) 186 Cal.App.4th 1236, 1261-1270.) When the minor is placed outside of the country, the minor is not eligible to receive AFDC. (*In re Joshua S.* (2007) 41 Cal.4th 261, 277-278.)

The court and CPS have an obligation to consider family placement. Request for placement with the grandparents required an investigation of the appropriateness of placement with them. (Welf. & Inst. Code, § 361.3; *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1068; *In re Roger H.* (1991) 228 Cal.App.3d 1174, 1185; see *In re N.V.* (2010) 189 Cal.App.4th 25, 31 [though relative's administrative grievance against CPS was still pending]; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023 [a prior child protective history did not bar placement with a relative]; *In re Andrea G.* (1990) 221 Cal.App.3d 547.) The relative placement preference established by section 361.3 does not constitute a relative placement guarantee. (*In re Joseph T.* (2008) 163 Cal.App.4th 787, 798.) Nor does section 361.3 create an evidentiary presumption that relative placement is in a child's best interests. (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 855.) A step-father is a relative for placement under Welfare and Institutions Code sections 319, 361.3, and 366.22 and California Rules of Court, rule 5.502. (*In re Silva R.* (2008) 159 Cal.App.4th 337, 349, fn. 4.) The court can consider relative placement, even if the minor was removed from the relative under section 387 because the relative is not necessarily "unsuitable." (*In re Antonio G.* (2008) 159 Cal.App.4th 369, 377.)

The preference for relative placement under section 361.3 continues as long as reunification services are being offered or before a permanent placement is found. (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 854-855; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1032; *In re Joseph T.* (2008) 163 Cal.App.4th 787, 793-798 [the preference applies even if the minor's placement is not changed]; *In re Sarah S.* (1996) 43 Cal.App.4th 274, 285; *In re Robert L.* (1993) 21 Cal.App.4th 1057, 1064.) Though there were family members able to care for the minor, the minor's best interest was adoption by the caretaker. (*In re Lauren Z.* (2008) 158 Cal.App.4th 1102, 1112; see *In re Stephanie M.* (1994) 7 Cal.4th 295, 321.)

The minor can be removed from relatives when it appears the caretakers lied about the parents' access to the minor. (*Los Angeles County Dept. of Children and Fam. Services v. Superior Court (Deshawn W.)* (2008) 158 Cal.App.4th 1562, 1565-1566, 1569.)

"[R]egardless of the relative placement preference, the fundamental duty of the court is to assure the best interests of the child, whose bond with a foster parent may require that the placement with a relative be rejected." (*In re Stephanie M.* (1994) 7 Cal.4th 295, 321.) "The linchpin of placement of dependent children is their best interests." (*In re Antonio G.* (2008) 159 Cal.App.4th 369, 378.) Section 361.3 does not create an evidentiary presumption that relative placement is in the minor's best interest. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 320.)

Non-related extended family member (NRERM) under Welfare and Institutions Code section 362.7 must have a "familial or mentoring relationship" with the minor. (*In re Michael E.* (2013) 213 Cal.App.4th 670, 675-676 [where minor has a relationship with a child in the home]; *Samantha T. v. Superior Court* (2011) 197 Cal.App.4th 94, 109-110.) Placement with a NREFM must be in the minor's best interests under Welfare and Institutions Code section 361.3, subdivision (a)(1). (*In re Michael E.* (2013) 213 Cal.App.4th 670, 676-677; *Samantha T. v. Superior Court* (2011) 197 Cal.App.4th 94, 111-112 [not in minor's best interest to remove her from an adoptive home].)

There is not substantial evidence that placement fails when CPS withdraws approval of the foster parents. (*In re Manuel E.* (2004) 120 Cal.App.4th 521, 547.)

An allegation in a petition or evidence simply that there was a prior allegation of unfitness is not substantial evidence without evidence the allegation was substantiated. (*In re Manuel E.* (2004) 120 Cal.App.4th 521, 547.)

The court may make general placement orders and delegate to CPS discretion as to where to actually place the child. When the court makes a general placement order, CPS may change placement without prior court approval. (*In re Cynthia C.* (1997) 58 Cal.App.4th 1479, 1489-1491; *In re Robert A.* (1992) 4 Cal.App.4th 175, 189-190.)

Court must give reasons for not placing siblings together. (*Abraham L. v. Superior Court* (2003) 1112 Cal.App.4th 9, 13-14; see, e.g., *In re A.S.* (2012) 205 Cal.App.4th 1332, 1340-1342 [court can place minors apart when a common placement for them could not be found for eight months].)

Sibling's rights under Welfare and Institutions Code sections 362.1 and 16002 limited to those defined by statute. It means one with a common parent and does not include a foster sibling. (*In re Tanyann W.* (2002) 97 Cal.App.4th 675, 679.)

The court cannot place a minor in a home of an adult with a criminal record (Health & Saf. Code, § 1522) and should not place in the home if a juvenile ward resides there (Welf. & Inst. Code, § 16514, subd. (c).) (*T.W. v. Superior Court* (2012) 203 Cal.App.4th 30, 43-45; *In re S.W.* (2005) 131 Cal.App.4th 838, 847-851.) Unless this provision is waived by the county, section 361.4 prohibits placement of the child with a non-licensed foster parent if the child would have access to anyone with a criminal conviction, except a minor traffic offense. (*Los Angeles County DCFS v. Superior Court* (2001) 87 Cal.App.4th 1161, 1168.) The court cannot place a minor with relatives without first everyone in the household passing a background check. (*In re N.V.* (2010) 189 Cal.App.4th 25, 31; *Los Angeles County Dept. of Children & Family Services v. Superior Court (Sencere P.)* (2005) 126 Cal.App.4th 144, 152.) CPS, but not the court, can make an emergency placement with one where there is a someone with a criminal

record in the household. (*In re M.L.* (2012) 205 Cal.App.4th 210, 225-226.) The court cannot officially sanction the placement, but it need not remove the minor from there unless CPS abused its discretion. (*In re M.L.* (2012) 205 Cal.App.4th 210, 226-228.) The court need not remove a minor from a caretaker who is convicted of a felony while caring for the minor. (*Los Angeles County Dept. of Children and Family Services v. Superior Court (Cheryl M.)* (2003) 112 Cal.App.4th 509, 519-520.) The statute does not limit choosing a guardian at the dispositional hearing because this is not considered to be a placement. (*In re Summer H.* (2006) 139 Cal.App.4th 1315, 13285-1334.) This statute applies when the court places the minor in a foreign country. (*In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1418.)

For a discussion of an applicant's due process right to challenge administratively the denial of a waiver, see *Gersher v. Anderson* (2005) 127 Cal.App.4th 88, 105-110. The court can review the denial of the director's waiver for abuse of discretion when the parent brings a section 388 petition. (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1058-1060.) There is no due process liberty right to contest being listed in child abuse database thus preventing placement with the person. (*Miller v. Cal. Dept. of Social Services* (9th Cir 2004) 355 F.3d 1172, 1178.) Penal Code section 272 is a non-exemptible offense only if it involves lewd conduct with the minor. (*In re Autumn K.* (2013) 221 Cal.App.4th 674, 709-710.)

Bar on placing children in home where someone with a criminal record lives does not apply to placement or return of the minor to the parent. (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 797.)

Bar on placing children in home where someone has a violent felony does not violate a due process right to be with a relative. (*In re H.K.* (2013) 217 Cal.App.4th 1432, 1435-1436.)

Welfare and Institutions Code section 361.4, subdivision (d)(2) permits an exemption for a non-exemptible offense when the potential caretaker is an Indian custodian. (*In re Autumn K.* (2013) 221 Cal.App.4th 674, 710-712.)

When considering the minor's placement, the primary consideration in determining his best interests is stability and continuity. (*In re Angel B.* (2002) 97 Cal.App.4th 454, 464; *In re P.L.* (2005) 134 Cal.App.4th 1357, 1362 [caretaker's equivocation about adoption was sufficient reason for removal from the person's home]; *In re Aaron R.* (2005) 130 Cal.App.4th 697, 706 [it was not in the minor's best interest to move placement to a relative]; see *In re H.G.* (2006) 146 Cal.App.4th 1, 14-15.)

Caretakers have right to present evidence at section 366.26 hearing whether to become prospective adoptive parents. (*Wayne F. v. Superior Court* (2006) 145 Cal.App.4th 1331, 1336.) The court cannot designate adoptive parents except at a section 366.26 hearing. (*In re R.S.* (2009) 179 Cal.App.4th 1137, 1153.)

CPS, not the court, decides where to place a child after it terminate parental rights unless CPS abused its discretion. (*In re Harry N.* (2001) 93 Cal.App.4th 1378, 1397-1398; *Los Angeles County Department of Children and Family Services v. Superior Court* (1998) 62 Cal.App.4th 1, 9-10; *Department of Social Services v. Superior Court* (1997) 58 Cal.App.4th 721, 724-725; *id.* at p. 734 [the court only determines if CPS action was patently absurd or unquestionably not in the minor's best interests]; *In re Sarah S.* (1996) 43 Cal.App.4th 274, 284; *Theodore D.* (1997) 58 Cal.App.4th 721 [but § 361.5, subd. (e) had since been amended]; *Fresno County Dept. of Children & Family Services v. Superior Court* (2004) 122 Cal.App.4th 626, 650 [CPS abused discretion to place with Indian family after termination of parental rights when there was no change of circumstances for removing the minors and the move would split the siblings]; *In re Jacob E.* (2004) 121 Cal.App.4th 909, 923 [CPS not abuse discretion in removing minor from grandparents after termination of parental rights because they lied to social worker and resented CPS's help]; *In re Hanna S.* (2004) 118 Cal.App.4th 1087, 1092 [CPS did not abuse discretion in placing minor with relatives who had a criminal record]; see *In re Shirley K.* (2006) 140 Cal.App.4th 65, 72-73 [in reviewing whether CPS abused its discretion, the court shall consider the best interests of the minor].) When the court designates an adoptive home, CPS must show by the preponderance of the evidence that removal is in the minor's best interests. (*T.W. v. Superior Court* (2012) 203 Cal.App.4th 30, 45.)

Section 366.26, subdivision (k), specifying preference for relatives for placement at around the time of the section 366.26 hearing, applies to CPS, not the court. (*In re Lauren R.* (2007) 148 Cal.App.4th 841, 856, 859.)

There is nothing legally improper with placing a child in a fost-adopt home. (*In re Steven A.* (1993) 15 Cal.App.4th 754, 764.)

CPS must show it was appropriate to removal from a relative only by the preponderance of the evidence. (*In re A.O.* (2004) 120 Cal.App.4th 1054, 1061 [need not file supplemental petition to remove from relative after terminate parental rights].)

The court can place the minor in Mexico. (*In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1413.)

Standing: Parent has standing to challenge removal from relative placement, at least as long as reunification is still possible. (*Los Angeles County Dept. of Children and Fam. Services v. Superior Court (Deshawn W.)* (2008) 158 Cal.App.4th 1562, 1568, fn. 2; see *In re A.S.* (2012) 205 Cal.App.4th 1332, 1339-1340.)

Standing: The parent does have standing to contest on appeal the failure to place the minor according to relative placement rules, even if the relative is not a party. (*In re N.V.* (2010) 189 Cal.App.4th 25, 27, fn. 1; see *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1035 [parent can brief support for relative's position].) The parent did have standing to contest the removal of the minor from the grandparents to a nonrelative because the minor was placed in a more restrictive placement under section 361.3, subdivision (a)(2). (*In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1053; *In re H.G.* (2006) 146 Cal.App.4th 1, 9-10.)

Standing: Parent did not have standing to challenge the removal before the section 366.26 hearing of the minor from the potential prospective adoptive placement, who was a relative of the parent. (*In re Jayden M.* (2014) 228 Cal.App.4th 1452, 145-1460.)

Standing: Parent did not have standing to challenge the denial of the parent's section 388 petition to change placement at the section 366.26 hearing when he did not challenge the order terminating parental rights and did not argue how placement would have affected the order terminating parental rights. (*In re K.C.* (2011) 52 Cal.4th 231, 238-239.)

Standing: Parent did not have standing to challenge the change of placement after termination of parental rights. (*In re Devin M.* (1997) 58 Cal.App.4th 1538, 1541.)

Standing: Grandparent had standing to contest failure to place with them at the dispositional hearing or review hearing under Welfare and Institutions Code section 361.3 (*Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1034-1035.)

Relative has standing to appeal the lack of placement at the dispositional (and dependent review) hearing under Welfare and Institutions Code section 361.3 and at the permanent plan hearing under section 366.26, subdivision (k). (*In re Aaron R.* (2005) 130 Cal.App.4th 697, 702-705.)

Grandparents do not have standing to appeal removal of minor from their home upon the filing of a § 387 petition when they were not declared de facto parents. (*In re Manuel E.* (2004) 120 Cal.App.4th 521, 539.)

De facto parent did not have standing to appeal the removal of minor from his or her home. (*In re P.L.* (2005) 134 Cal.App.4th 1357, 1361-1362.)

Standing: Grandparent does not have standing to appeal the placement of the minor at the section 366.26 hearing during which the court terminated parental rights. (*In re Harmon B.* (2005) 125 Cal.App.4th 831, 838.)

Standing: Caretakers had standing to file petition for writ of mandate from the

denial of motion at section 366.26 hearing to be designated prospective adoptive parents. (*Wayne F. v. Superior Court* (2006) 145 Cal.App.4th 1331, 1336-1342.)

Appealability: Failure to appeal the dispositional hearing waives contesting placement. (*In re Casey D*. (1999) 70 Cal.App.4th 38, 53-54)

Appealability: The court's denial of a (potential) caretaker's section 388 petition after the termination of parental rights is appealable, notwithstanding Welf. & Inst. Code, § 366.28. (*In re Daniel C.* (2006) 141 Cal.App.4th 1438, 1443-1445; *In re Shirley K.* (2006) 140 Cal.App.4th 65, 71.)

Mootness: Relative's appeal for placement becomes moot after termination of parental rights. (*In re Albert G.* (2003) 113 Cal.App.4th 132, 135; but *In re Esperanza C.* (2008) 165 Cal.App.4th 1042, 1053-1055.)

Waiver: Noncustodial parent's failure to request placement forfeits the claim the child should have been placed with the him or her. (*In re John M.* (2013) 217 Cal.App.4th 410, 414-420; *In re A.A.* (2012) 203 Cal.App.4th 597, 605-606.)

Waiver: Parent objecting only to removal waives contesting placement on appeal. (*In re Daniel B.* (1994) 24 Cal.App.4th 1823, 1831, 1834.)

Waiver: Failure to object to splitting siblings waives the issue. (*In re Anthony P.* (1995) 39 Cal.App.4th 635, 641.)

Waiver: The failure to follow the requirements of section 361.2 concerning placement out of county is waived without an objection. (*In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1418.)

Standard of review: Placement decision reviewed for abuse of discretion. (*In re Robert L.* (1993) 21 Cal.App.4th 1057, 1067; *In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *Alicia B. v. Superior Court* (2004) 116 Cal.App.4th 856, 863 [court did not abuse discretion when it considered relatives]; *Cesar V. v. Superior Court* (2001) 91 Cal.App.4th 1023, 1033 [before termination of parental rights, the trial court must independently determine placement]; *Los Angeles County DCFS v. Superior Court* (1998) 62 Cal.App.4th 1, 9-10 [placement decision after TPR determined by whether CPS abused discretion].)

Standard of review: The court reviews a decision to remove a child from a relative caretaker under the substantial evidence test. (*In re A.O.* (2004) 120 Cal.App.4th 1054,

1061; *In re H.G.* (2006) 146 Cal.App.4th 1, 10.)

Prejudice: Failure to comply with the requirements of section 361.2 concerning placement out of county reviewed under *Chapman v. California* (1967) 386 U.S. 18. (*In re Sabrina H.* (2007) 149 Cal.App.4th 1403, 1419.)

Remedy: Erroneous grant of supplemental petition removing the minor from the grandparent before the section 366.26 hearing required reversal of the order terminating parental rights as well because placement with the relative could affect the parent-child bond exception. (*In re H.G.* (2006) 146 Cal.App.4th 1, 19.)

VISITATION:

Due process requires visits as often as possible unless the visits themselves are detrimental to the child. (*Hoversten v. Superior Court* (1999) 74 Cal.App.4th 636, 641; *In re David. D.* (1994) 28 Cal.App.4th 941, 953-954; *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 757.)

"Visitation rights arise from the very 'fact of parenthood' and the constitutionally protected right ' "to marry, establish a home and bring up children." ' [Citation.]" (*In re Julie M.* (1999) 69 Cal.App.4th 41, 49.)

Although a non-custodial parent has less constitutional rights to visitation in family court than in juvenile court, in family court, "noncustodial parents with court-ordered visitation rights have a liberty interest in the companionship, care, custody, and management of their children." (*Brittain v. Hansen* (9th Cir. 2006) 451 F.3d 982, 992.)

The court cannot court order grandparent visits over the objection of a fit parent. (*Troxel v. Granville* (2000) 530 U.S. 57, 72; but see *In re Marriage of Harris* (2004) 34 Cal.4th 210, 225-227; *Chalmers v. Hirschkop* (2013) 213 Cal.App.4th 289, 302, ["Appellate courts have recognized that in appropriate circumstances a court may impose a visitation order against a custodial parent's wishes, and that such orders are not per se invalid. [Citations.] A custodial parent's decisions regarding visitation are entitled to presumptive validity and must be accorded ' "special weight," ' but they are not immune from judicial review. [Citation.]"]; *Ian J. v. Peter M.* (2013) 213 Cal.App.4th 122, 189, 206-208 [requires clear and convincing evidence]; *Rich v. Thatcher* (2011) 200 Cal.App.4th 1176, 1180-1182 [requires clear and convincing evidence]; *Marriage of James & Claudine W.* (2003) 114 Cal.App.4th 68, 74 [former step-parent visitation]; *Zasueta v. Zasueta* (2002) 102 Cal.App.4th 1242, 1249; *Ponsly v. Ho* (2001) 87 Cal.App.4th 1099, 1110; but *Marriage of Ross & Kelley* (2003) 114 Cal.App.4th 130, 140 [court can order grandparent visitation when other parent agrees to it]; *Fenn v. Sheriff* (2003) 109 Cal.App.4th 1466 [the court can determine quantity of grandparent visits in action for stepparent adoption when all sides agreed to some visits]; see *Brekke v. Wills*

(2005) 125 Cal.App.4th 1400, 1410 [parents can obtain restraining order to prevent their child's boyfriend from seeing her]; *Miller v. Cal. Dept. of Social Services* (9th Cir 2004) 355 F.3d 1172, 1176-1177 [no due process right to family or association for grandparents or de facto parents]; but see *Marriage of Harris* (2004) 34 Cal.4th 210, 227 [court can order grandparent visitation over custodial parent's objection when the other parent supports it].)

"[A] noncustodial grandparent of dependents of the juvenile court . . . has no substantive due process right to free association with the minor, or to maintain a relationship with them." (*In re Brittany K.* (2005) 127 Cal.App.4th 1497, 1508; accord, *Guardianship of L.V.* (2006) 136 Cal.App.4th 481, 490 [Probate guardianship].)

The court did not have jurisdiction to order visitation for non-dependent sibling or for the parent of siblings who were not in the dependency system. (*In re Luke H.* (2013) 221 Cal.App.4th 1082, 1087-1090; *In re A.R.* (2012) 203 Cal.App.4th 1160, 1169-1171.)

"It is widely recognized that children have strong emotional ties to even the worst of parents. [Citations.] Continuity of the relationships is extremely important to children." (*Hansen v. DSS* (1987) 193 Cal.App.3d 283, 292.) Indeed, "the minor's interest in the parent-child relationship is at least as important and as worthy of protection of the parent's interest." (*In re James R.* (2007) 1523 Cal.App.4th 413, 429.)

Visitation between a parent and child should not be restricted unless it is detrimental to the child. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 581 [minor saying he feared father because of past abuse and uncomfortable around him is substantial evidence of detriment]; *In re Manolito L.* (2001) 90 Cal.App.4th 753, 759 [used preponderance of the evidence standard]; *In re Luke L.* (1996) 44 Cal.App.4th 670, 679; *In re Kristin W.* (1990) 222 Cal.App.3d 234, 256 [court failed to make visitation order]; *In re John B.* (1984) 159 Cal.App.3d 268, 276.) Visitation could not be reduced simply because the parent failed to appear at a court hearing. (*In re Elizabeth M.* (2008) 158 Cal.App.4th 1551, 1557-1558.)

Visits with parent in custody under section 361.5, subdivision (e). (*In re Dylan T.* (1998) 65 Cal.App.4th 765 [denial of visitation improper when based on the minor's age alone]; *In re Jonathan M.* (1997) 53 Cal.App.4th 1234, 1237, disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414 [arbitrary geographic limit of 50 miles insufficient reason]; *In re Precious J.* (1996) 42 Cal.App.4th 1463, 1477; *In re Monica C.* (1995) 31 Cal.App.4th 296, 307; *In re Brittany S.* (1993) 17 Cal.App.4th 1399, 1402 [denial of visitation improper when mother was incarcerated only 36 miles away]; see *Christopher D. v. Superior Court* (2012) 210 Cal.App.4th 60, 70-73 [there were reasonable services when there were no visits for ten months while father was in jail because the court's order was for visitation as long as it was not detrimental]; but see *id.*

at pp. 73-75 [no reasonable services when there were no visits for three months while at a residential program]; *In re J.N.* (2006) 138 Cal.App.4th 450, 457-459 [must terminate visits if they would be detrimental to the minor if deny services; if the court orders services, it shall order visitation unless there is evidence of detriment].)

Visitation is necessary for services to be reasonable. (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1791; *In re Brittany S.* (1993) 17 Cal.App.4th 1399, 1402; *In re David D.* (1994) 28 Cal.App.4th 941, 953 ["Due to the court's order prohibiting visitation between this mother and her children, adequate reunification services were not provided."]; *In re Dino E.* (1992) 6 Cal.App.4th 1768; *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1139 ["It is hard to imagine how the problems faced by this family could be resolved without . . . visitation. To provide the minor and/or his therapist with a veto power over this essential reunification service seems to us to undermine any hope of actual reunification."]; *In re Kristin W.* (1990) 222 Cal.App.3d 234, 256 ["section 362.1 specifically requires a visitation order when reunification services are ordered."]; but see *In re Mark L.* (2001) 94 Cal.App.4th 573, 581 [noncustodial parent and a finding of detriment].) During reunification services, "adequate visitation is a 'necessary and functional component' of that reunification" effort. (*In re James R.* (2007) 153 Cal.App.4th 413, 435.)

"Visitation is an essential component of any reunification plan. (*In re Mark L.* (2001) 94 Cal.App.4th 573, 580.) To promote reunification, visitation must be as frequent as possible. (*In re Luke L.* (1996) 44 Cal.App.4th 670, 679.) Where the minor is reluctant to visit, and family therapy is needed to promote visitation, such therapy may be critical to reunification. (See *In re Nicholas B.* (2001) 88 Cal.App.4th 1126, 1138; see also *In re Julie M.* (1999) 69 Cal.App.4th 41, 49-51.)" (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 972; see also *In re S.H.* (2003) 111 Cal.App.4th 310, 317.)

But services were reasonable when the minor was placed in Georgia and CPS would not play for plane fare for visitation. (*Los Angeles Cnty. DCFS v. Superior Court* (1988) 60 Cal.App.4th 1088, 1093.) Services were resonable when the minor was placed in Florida. (*In re Lauren Z.* (2008) 158 Cal.App.4th 1102, 1110-1111.)

Visitation during reunification must occur unless there is a risk of "physical safety" to the minor under Welfare and Institutions Code section 361.2, subdivision (a); concern over the minor's emotional health during visits was insufficient. (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1491-1493.)

Under Penal Code section 1202.05, a molester cannot be visited at prison by the victim unless a dependency court approves it under Welfare and Institutions Code section 362.6, but under 15 Code California Regulations section 3173.1, CDC bans all nonvictims from visiting. (*Robin J. v. Superior Court* (2004) 124 Cal.App.4th 414, 424.)

"No person shall be granted physical or legal custody of, or unsupervised visitation

with, a child if the person is required to register as a sex offender under Section 290 of the Penal Code where the victim was a minor; or if the person has been convicted under Section 273a, 273d, or 647.6 of the Penal Code, unless the court finds that there is no significant risk to the child." (Fam. Code, § 3030, subd. (a) [concerning child custody cases].) Also subdivision (b) prohibits visitation with a rapist who conceived the child. Subdivision (c) prohibits visits or custody with a person who killed the other parent [O.J. Simpson rule]. However, under subdivision (d), such a person may be ordered to pay child support.

The court cannot order visitation during the reunification period if it would violate the parent's condition of parole after he was convicted of child molestation. (*Kevin R. v. Superior Court* (2010) 191 Cal.App.4th 676, 684-688.)

Juvenile court can delegate to CPS how to do the visits, but the court generally must decide how frequently the visits occur. (*In re Chantal S.* (1996) 13 Cal.4th 196, 213 [exit order was adequate]; *In re E.T.* (2013) 217 Cal.App.4th 426, 436, 439 [order that the department "create a detailed visitation schedule" was insufficient]; *In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1355-1358 [an order that visitation was dependent upon conjoint therapy is permissible, though the minor was not in therapy]; *In re Kyle E.* (2010) 185 Cal.App.4th 1130, 1134-1136 ["as frequent as is consistent with the well-being of" the minor was too vague of a delegation of judicial duty]; *In re Rebecca S.* (2010) 181 Cal.App.4th 1310, 1314 [cannot delegate to guardian authority to determine frequency and duration]; *In re Julie M.* (1999) 69 Cal.App.4th 41, 48-50 [giving minor veto power during reunification was an abuse of discretion]; *In re Donnovan J.* (1997) 58 Cal.App.4th 1474, 1477 [illegal order when exit order of visitation at the discretion of the therapist]; *In re Randalynne G.* (2002) 97 Cal.App.4th 1156, 1160 [when order guardianship]; *In re Moriah T.* (1994) 23 Cal.App.4th 1367, 1374 [order for "reasonable" visitation acceptable; need not specify the frequency of visits]; *In re Shawna M.* (1993) 19 Cal.App.4th 1686; *In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 570; *In re Danielle W.* (1989) 207 Cal.App.3d 1227, 1237 [good language, bad holding: order proper when delegated all visitation at the discretion of the social worker and minor]; see *In re T.H.* (2010) 190 Cal.App.4th 1119, 1123-1124 [exit order for visitation on "agreement of the parents" illegally delegated authority to the custodial parent]; *In re Nicholas B.* (2000) 88 Cal.App.4th 1126, 1137-1139; *In re Jennifer G.* (1990) 221 Cal.App.3d 752, 755 [dictum: the right to visitation and frequency should be decided by the court; implementation and administration properly delegated to CPS]; but see *In re Grace C.* (2010) 190 Cal.App.4th 1470, 1475-1479 [despite disputes between guardian and mother about visits, the court could dismiss the dependency and grant the guardian discretion to decrease visits]; *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018 [can condition visitation on the parent not being under the influence]; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1009 [order for "reasonable" visitation acceptable]; *In re S.H.* (2003) 111 Cal.App.4th 310,

318-319 [error to permit minor to veto visits but order need not specify the length or frequency of visits].)

Supervised visits were appropriate because the parent was using drugs. (*In re R.R.* (2010) 187 Cal.App.4th 1264, 1284.)

Court can order visitation with de facto parent. (*In re Robin N.* (1992) 7 Cal.App.4th 1140, 1145-1146.)

The court cannot decrease visitation (during reunification services) without a 388 petition. (*In re Lance V.* (2001) 90 Cal.App.4th 668, 676; *In re Manolito L.* (2001) 90 Cal.App.4th 753, 759 [must still find detriment].)

The court can decrease visits to make minor adoptable. (*In re Brandon C.* (1999) 71 Cal.App.4th 1530, 1536; *In re S.J.* (2008) 167 Cal.App.4th 953,962-964 [amendment to Welf. & Inst. Code, § 366.26, subd. (c)(4)(C) requiring visits before § 366.26 hearing does not apply retroactively]; *In re Manolito L.* (2001) 90 Cal.App.4th 753, 761 [if continued visitation schedule detrimental by the preponderance of evidence (such as divided loyalty of the minor requiring severing the bond)]; *In re Julie M.* (1999) 69 Cal.App.4th 41, 50 ["virtually assured the erosion (and termination) of any meaningful relationship"]; but see *In re Valerie A.* (2007) 152 Cal.App.4th 987, 1007 [the erroneous decrease of visitation violates due process when it deprives a parent of presenting the parent-child exception to adoption]; *In re David D.* (1994) 28 Cal.App.4th 941, 953-954; *In re Josiah S.* (2002) 102 Cal.App.4th 403, 420 [visitation at periodic review hearing is a significant issue which can be determinative at a future permanent plan hearing]; *In re Hunter S.* (2006) 142 Cal.App.4th 1497, 1504-1505 [lack of visitation after termination of services without justification was error]; see *In re Mickel O.* (2011) 197 Cal.App.4th 586, 617-620 [after the termination of parental rights, CPS can limit visits with maternal grandparents to increase the stability and permanence of placement with the paternal grandparents, but the decision to abruptly end all visits was an abuse of discretion]; *In re S.M.* (2004) 118 Cal.App.4th 1108, 1122 [though cannot reduce visits to make minor adoptable, can terminate visits of minor removed at birth when terminate services if there was no relationship from start].)

The court did not need to order visitation when it orders legal guardianship. (*In re S.B.* (2004) 32 Cal.4th 1287, 1295 (overruled on another point as stated in *In re M.R.* (2005) 132 Cal.App.4th 269, 273-274), overruling *In re Randalynne G.* (2002) 97 Cal.App.4th 1156, 1163, fn. 7; *In re Jasmine P.* (2001) 91 Cal.App.4th 617, 621; see *In re S.H.* (2011) 197 Cal.App.4th 1542, 1556-1559; *Guardianship of Zachary H.* (1999) 73 Cal.App.4th 51, 61 [court has power to regulate visitation during a guardianship]; *Guardianship of Kaylee J.* (1997) 55 Cal.App.4th 1425, 1431 [court has power to regulate

visitation during a guardianship].) Amended section 366.26, subdivision (c) now requires the court to consider visitation. (*In re M.R.* (2005) 132 Cal.App.4th 269, 274.)

When a 'visit' becomes a conditional placement under ICPC. (*In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 463; *In re Luke L.* (1996) 44 Cal.App.4th 670, 682 [contingent placement orders].)

Policy: The ICPC is intended "to facilitate cooperation between participating states in the placement and monitoring of dependent children." (*Tara S. v. Superior Court* (1993) 13 Cal.App.4th 1834, 1837.) In addition to the paramount consideration of protecting children, " 'protection of the receiving state is also an important purpose, The states have agreed that their public officers (and also private individuals and agencies) placing children from or into their territory are required to follow the procedures of ICPC. This is intended as protection against receiving states having children "dumped" upon them. When children are placed without prior preparation, or when interstate placements go awry, the receiving state usually becomes responsible for rescuing the child and is thereafter usually saddled with the burden of finding suitable care and nurturing and paying for it.' " (*In re Emmanuel R.* (2001) 94 Cal.App.4th 452, 461.)

With a dependency guardianship, if there is a dispute over visitation after dismissal, the parties can return to court. (Welf. & Inst. Code, §§ 366.3, subd. (a), 388; *In re Kenneth S.* (2008) 169 Cal.App.4th 1353, 1358; *In re K.D.* (2004) 124 Cal.App.4th 1013, 1019.)

Sibling visitation is important

Policy: "Children are not community property to be divided equally for the benefit of their parents. . . . The children have not chosen to divorce each other. At a minimum, the children have a right to the society and companionship of their siblings." (*Marriage of Williams* (2001) 88 Cal.App.4th 808, 814.) "There is a "strong polic[y] in California law" in "that the sibling bond should be preserved whenever possible . . . . " (*Marriage of Heath* (2004) 124 Cal.App.4th 444, 449.) "[M]aintaining sibling relationships, under the right circumstances, is imperative for the emotional well-being of the [dependent] child now and in the future. For children who will never be returned to their parents, siblings may be the only true family they will ever have." (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1003.)

Court acted within its discretion terminating sibling visits upon allegation that the parents were following the children after visits to obtain the license plates of those who picked up the dependent children. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1005.)

The court should consider sibling visitation when terminating parental rights. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1004; *In re Hector A.* (2005) 125 Cal.App.4th 783, 799; see *In re Miguel A.* (2007) 156 Cal.App.4th 389, 393-396 [court has jurisdiction

under § 388 to order sibling visitation after termination of parental rights]; see also *In re Elizabeth M.* (1991) 232 Cal.App.3d 553, 559-560, but the judge who authored the opinion now say he has changed his mind in his conc. opn. in *In re Daniel H.* (2002) 99 Cal.4th 80, 814-815 (conc. opn. of Ramirez, J.).)

Mootness: Stipulation to visitation schedule at dependent review makes visitation order at dispositional hearing moot. (*In re Dani R.* (2001) 89 Cal.App.4th 402, 406.)

Mootness: Subsequent orders increasing visitation makes appeal concerning visits moot. (*In re Dylan T.* (1998) 65 Cal.App.4th 765.)

Mootness: Subsequent dismissal of the dependency did not render a visitation order moot because it affected the exit orders and will affect Family Court proceedings. (*In re C.C.* (2009) 172 Cal.App.4th 1481, 1488-1489.)

Standing: Parent does not have standing to contest sibling visitation. (*In re Erik P.* (2002) 104 Cal.App.4th 395, 405 [at PPH]; *In re Clifton B.* (2000) 81 Cal.App.4th 415; *In re Nachelle S.* (1996) 41 Cal.App.4th 1557, 1561 [TPR]; *In Frank L.* (2000) 81 Cal.App.4th 700 [LTFC; can't raise by alleging ineffective assistance of minor's counsel]; but see *In re Jasmine J.* (1996) 56 Cal.App.4th 1143 [same]; *In re Jasmine J.* (1996) 46 Cal.App.4th 1802, 1806-1807.)

Waiver: Objecting to supervised visits while incarcerated forfeited claim concerning no visitation while incarcerated. (*In re E.A.* (2012) 209 Cal.App.4th 787, 791.)

Waiver: Parent forfeits the claim of insufficient sibling visitation (thus dooming an argument of the sibling exception to adoption) when there was not a timely objection below. (*In re Valerie A.* (2007) 152 Cal.App.4th 987, 1001.)

Counsel's stipulation to reduced visitation when the parent was not present in court did not act as a waiver on appeal. (*In re Elizabeth M.* (2008) 158 Cal.App.4th 1551, 1559.)

Standard of review: Visitation orders reviewed for abuse of discretion. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 318; *In re James R.* (2007) 1523 Cal.App.4th 413, 435 [An "improper delegation of judicial power over visitation will necessarily be found to constitute an abuse of discretion."]; *In re J.N.* (2006) 138 Cal.App.4th 450, 459 [visitation for prisoners]; *In re Jasmine D.* (2000) 78 Cal.App.4th 1339, 1351-1352; *In re Julie M.* (1999) 69 Cal.App.4th 41, 48; *In re Sheila B.* (1993) 19 Cal.App.4th 187, 199; but see *In re Mark L.* (2001) 94 Cal.App.4th 573, 581 [substantial evidence test for

denying visitation]; *In re Joanna Y.* (1992) 8 Cal.App.4th 433, 439 [substantial evidence test]; *In re David D.* (1994) 28 Cal.App.4th 941, 954 [same].)

REVIEW HEARING:

How dispositional hearings operate. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 302-303.)

How dependent review hearings operate: "The dependency scheme sets up three distinct periods and three corresponding distinct escalating standards fro the provision of reunification services to parents of children under the age of three. During the first period, which runs from roughly the jurisdictional hearing (§ 355) to the six-month review hearing (§ 366.21, subd. (3)),[fn.] services are afforded essentially as a matter of right (§ 361.5, subd. (a)) unless the trial court makes one of a series of statutorily specified findings relating to a parental mental disability, abandonment of the child, or other specified malfeasance (§ 361.5, subd. (b)). During the second period, which runs from the six-months review hearing to the 12-month review hearing (§ 366.21, subd. (f)), a heightened showing is required to continue services. So long as reasonable services have in fact been provided, the juvenile court must find ;'a substantial probability' that the child may be safely returned to the parent within six months in order to continue services. (§ 366.21, subd. (e).) During the final period, which runs from the 12-month review hearing to the 18-month review hearing (§ 366.22), services are available only if the juvenile court finds specifically that the parent has 'consistently and regularly contacted and visited with the child,' made 'significant progress' on the problems that led to removal , and 'demonstrated the capacity and ability both to complete the objectives of his or her treatment plan and to provide for the child's safety, protection, physical, and emotional well-being, and special needs.' (§ 366.21, subd. (g)(1)(A)-(C).) The effect of these shifting standards is to make services during these three periods first presumed, then possible, then disfavored." (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 845; see also *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 303-307.)

Detriment = (An unacceptable risk that) parent would harm the minor. (*In re Rogrigo S.* (1990) 225 Cal.App.3d 1179, 1185.) "[T]he risk of detriment must be *substantial,* such that returning a child to parental custody represents some danger to the child's physical or emotional well-being." It is not the same as a best interest test. There is insufficient evidence for removal, even though there were some problems with parent and other placement might be better. (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400 [insufficient evidence not to return the minor because of poor living arrangements or not able to do a smoother transition].) "In evaluating detriment, the juvenile court must consider the extent to which the parent participated in reunification services. [Citations.] The court must also consider the efforts or progress the parent has made toward

eliminating the conditions that led to the child"s out-of-home placement. [Citations.]" (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400.) The standard for showing detriment is "a fairly high one. It cannot mean merely that the parent in question is less than ideal, did not benefit from the reunification services as much as we might have hoped, or seems less capable than an available foster parent or other family member." (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 789 [the risk of detriment must be substantial, such that returning a child to the parent represents some danger to the child's physical or emotional well-being]; see also *Rital L v. Superior Court* (2005) 128 Cal.App.4th 495, 505.) "A detriment evaluation requires that the court weigh all relevant factors to determine if the child will suffer net harm." (*In re Luke M.* (2003) 107 Cal.App.4th 1412, 1425.) Detriment "requires a finding that placement away from the parent 'is essential to avert harm to the child.' (*In re B.G.* (1974) 11 Cal.3d 679, 699 . . .)" (*In re Rodrigo S.* (1990) 225 Cal.App.3d 1179, 1185.) "What is in the best interests of the child is essentially the same as that which is not detrimental to the child" (*In re Randalynne G.* (2002) 97 Cal.App.4th 1156, 1169.) Detriment can include harm to the minor's emotional well-being. (*In re Brittany C.* (2011) 191 Cal.App.4th 1343, 1357.)

Detriment does not mean the same as unfitness. (*In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1213 [mere detriment is insufficient grounds for removal]; *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 788-789; *In re Luke M.* (2003) 107 Cal.App.4th 1412, 1422-1423; contra *In re Dakota H.* (2005) 132 Cal.App.4th 212, 224.) Unfitness means the "the parents have failed, and are likely to fail in the future, to maintain an adequate relationship with the child." (*In re Jasmon O.* (1994) 8 Cal.4th 398, 423.) The court should not have terminated services when the parent was fit but unable to care for the minor because of poverty. (*In re P.C.* (2008) 165 Cal.App.4th 98, 105-106.)

Terminating reunification services and setting a permanent plan hearing "is always a drastic remedy" which should be "reluctantly adopted." (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 772.)

At a dependent review hearing, consider the mother's or father's parenting skills in providing the minor's need for need for security, adequate nutrition and shelter, freedom from violence, proper sanitation, healthcare and education. (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 490.)

While failure to complete the case plan is prima facie evidence that return during the reunification period would be detrimental (Welf. & Inst. Code, §§ 366.21, subds. (e) & (f), 366.22, subd. (a)), evidence of the parent's fitness rebuts the presumption of detriment. (*In re Heather B.* (1992) 9 Cal.App.4th 535, 562.)

"Mother was not required to demonstrate perfect compliance" only substantial compliance with the case plan. (*Jennifer A. v. Superior Court* (2004) 117 Cal.App.4th 1322, 1342-1343 [insufficient evidence failed to comply with case plan when mother had a heated argument with boyfriend and allowed him access once, a few dirty tests when there were 84 clean tests].) Using drugs and alcohol a few times during reunification period was not detriment when there was no evidence the mother placed the minor at risk. (*Id.*, at pp. 1343-1347.) Not "all relapses are created equal." (*Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495, 505 [using a Tylenol with codeine for a headache was not a relapse serious enough to justify not returning the minor].)

The court can refuse to return the child though the parent completed the case plan. (*In re Dustin R.* (1997) 54 Cal.App.4th 1131, 1139-1140 [though completed case plan and eliminated the risk of continued physical abuse, mother failed to understand how to deal with the resulting emotional trauma to the minor]; *In re Joseph B.* (1996) 42 Cal.App.4th 890, 898-901 [minor's fear after physical abuse]; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67 [same]; *In re Brittany S.* (1993) 17 Cal.App.4th 1399, 1407 [It "appears to be a case where [the parent] was destined to lose her child no matter what she did. We cannot condone such a result."]; *In re Venita L.* (1987) 191 Cal.App.3d 1229, 1238-1239 [there must exist a continuation of the old problem or new grounds jurisdiction]; see *Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 706-708 [compliance with case plan is pertinent but not sole concern in returning the minor]; but see *Blanca P. v. Superior Court* (1996) 45 Cal.App.4th 1738, 1751 [failure to "internalize" case plan was not sufficient ground for detriment].)

"What [CPS] was required to establish was that releasing [the child] to [the parent's] custody would 'create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child.' (Welf. & Inst. Code, § 366.22, subd. (a).) That standard, while vaguely worded to be sure, must be construed as a fairly high one. It cannot mean merely that the parent in question is less than ideal, did not benefit from reunification services as much as we might have hoped, or seems less capable than an available foster parent or other family member. [¶] We do not get ideal parents in the dependency system. But the fact of the matter is that we do not get ideal parents anywhere. Even Ozzie and Harriet weren't really Ozzie and Harriet. Ideal parents are a rare – if not imaginary – breed. Some of us get luckier than others when it comes to parents, and most who work in this system are able to look back and realize how fortunate they were. But the State of California is not in the business of evaluating parents and redistributing their offspring based upon perceived merit. [¶] The parents who come through the dependency system are more in deed of help than most. If we are lucky, they are parents who can learn to overcome the problems which landed their children in the system, and who could demonstrate the dedication and ability to provide to their

children's needs in an appropriate manner. They will not turn into superstars, and they will not win the lottery and move into a beachfront condo two blocks from the perfect school. [¶] This is a hard fact to accept. We are dealing, after all, with children, and the dedicated people who work so hard to help these families are understandably desirous of providing those children the best possible circumstances in which to grow up. But there are times when we have to take a step back and make sure that we are not losing sight of our mandate. We are looking for passing grades here, not straight A's." (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 789-790.)

"If an absolute guarantee of safety were required, we have a difficult time envisioning a case in which the court could properly return a child to parental custody. Even the mythical perfect parent cannot *guarantee* anything." (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 797.)

Although illiterate, "a parent's ability to read has no demonstrated correlation to his or her parenting skills or dedication." (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 788.)

Cannot find the parent unfit on the theory that old programs may have failed. "Why are we requiring people to attend these classes and programs if we don't believe that *sometimes* they work?" (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 793.)

Poverty or poor housing alone is not detriment. (*In re G.S.R.* (2008) 159 Cal.App.4th 1202, 1213; *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 789.)

Arguably, dependency law does not establish a minimum period of reunification, but instead is "setting outside limits to the length of time a child may be kept in foster care before a permanent plan is established." (*In re David H.* (1995) 33 Cal.App.4th 368, 386, 338.) The time limits for reunification services originate from federal law. (*In re Alana A.* (2005) 135 Cal.App.4th 555, 563, fn. 6, citing 42 U.S.C. § 629A(a)(7)(B)(i)-(vi).)

The first 6 month dependent review hearing shall occur six months after the jurisdictional hearing or six months plus 60 days after first removal, whichever is first, even if this results in scheduling the hearing soon after the dispositional hearing. (*In re Christina A.* (2001) 91 Cal.App.4th 1153, 1165 & fn. 2, citing Cal. Rules of Court, rules 1401 and 1460(a); but see Welf. & Inst. Code, § 366.21, subd. (e) [6 months from dispositional hearing].) The court can terminate services after six months, even if the child is more than three years old if the parent has had no contact with the minor for six months. (Welf. & Inst. Code, § 366.21, subd. (e); *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1017; *In re David H.* (1995) 33 Cal.App.4th 368, 386, fn. 11; *In re Tameka S.* (1995) 33 Cal.App.4th 1747, 1754; *In re Monique S.* (1993) 21 Cal.App.4th 677, 682.) "For a child under three years of age at the time of removal . . . reunification services are

presumably limited to six months. (§ 361.5, subd. (a)(2).)" (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 843.) The court can terminate services for one parent while continue services for the other parent. (*In re Jesse W.* (2007) 157 Cal.App.4th 49.)

The court can terminate services after six months for a minor more than six years old without the filing of a petition for modification. (*In re Derrick S.* (2007) 156 Cal.App.4th 436, 449; *In re Aryanna C.* (2005) 132 Cal.App.4th 1234, 1241-1243.) The parent is entitled to at least six months of services if it is ordered. (*Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 546; *Daria D. v. Superior Court* (1998) 61 Cal.App.4th 606, 612.) The court can order that more than six months of services be provided for older siblings when it terminates services for the younger siblings. (*In re Kevin N.* (2007) 148 Cal.App.4th 1339, 1343.) That services would be futile because the parent is in prison is by itself insufficient reason for showing detriment for denying services after six months. (*In re Kevin N.* (2007) 148 Cal.App.4th 1339, 1344-1345.)

The standard for terminating services at the 6 month review hearing is not the same as the standard at the 12 month review hearing. First, failure to participate in services does not *require* termination of services; instead, it the court shall consider all facts. Second, the court should not set a section 366.26 hearing if there is a substantial probability the minor *may* be returned within six months whereas the 12 month review hearing requires *will* be returned within six months. (*M.V. v. Superior Court* (2008) 167 Cal.App.4th 166, 180-181.) Even if these factors are met, the court has discretion to provide six more months of services. (*S.T. v. Superior Court* (2009) 177 Cal.App.4th 1009, 1015-1016.)

The court can terminate after six months if the parent has not contacted *or* visited the minor. Thus, the court can terminate services where the father called once but did not visit. (*S.W. v. Superior Court* (2009) 174 Cal.App.4th 277, 281-282.)

The 12 month review hearing shall occur 12 months after jurisdictional hearing or 12 months and 60 days after the first removal, whichever is first, even if the 6 months review hearing was scheduled less than six months before. (Welf. & Inst. Code, § 361.5, subd. (a).) The issue at the six month review hearing is whether reunification by the 12 month review hearing is likely. (*Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 846; *Jessica A. v. Superior Court* (2004) 124 Cal.App.4th 636, 642-645.) If the parent received 12 months of services before the six months review hearing, the court can terminate reunification services unless there is cause to order up to 18 months of services. (*Dawnel D. v. Superior Court* (1999) 74 Cal.App.4th 393, 398-400, disapproved on another point in *Tonya M. v. Superior Court* (2007) 42 Cal.4th 836, 848; see *In re Brian P* (1990) 2 Cal.App.4th 904, 917-918 [contested 12 month review hearing took 8 months and so effectively became the 18 month review hearing].) The court cannot terminate services for one parent at the 12 month review hearing while continuing to provide services for the other parent. (*In re Alanna A.* (2005) 135 Cal.App.4th 555, 565.) The

court can hold only one 12 month review hearing, regardless of when each parent started reunification services. (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 202-203.)

Though Welfare and Institutions Code section 366.21, subdivision (g) applies to 12 month review hearings for incarcerated parents, the court must first consider the factors listed in subdivision (f) and then, if the minor is not returned, decide whether to extend services under subdivisions (g)(A) through (g)(C). (*A.H. v. Superior Court* (2010) 182 Cal.App.4th 1050, 1060-1063.)

The full 18 months starts when the minor is first detained. (*In re N.M.* (2003) 108 Cal.App.4th 845, 853; *Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 165, 167, fn. 11.) The time period does not change even if the minor were placed for a while with the parent. (*In re N.M.* (2003) 108 Cal.App.4th 845, 853-854 [minor was detained and then returned to one of the parents at the dispositional hearing]; *Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 166-167; *In re Steven A.* (1993) 15 Cal.App.4th 754, 765; *In re Michael S.* (1987) 188 Cal.App.3d 1448, 1459; but see *In re Joel T.* (1999) 70 Cal.App.4th 263, 268 [services provided under family maintenance (when the minor is never physically removed) does not count toward the deadline]; *In re Erika W.* (1994) 28 Cal.App.4th 470, 475 [same].) Unlike the previous review hearings, the burden of the government's proof to deny return of the child is the preponderance of the evidence. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 595.) If the 12 month review hearing is continued long enough, it becomes the 18 month review hearing. (*Danny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1509.) Unlike the previous review hearings, the court shall not return the minor unless it is in the minor's best interest, though this is the same as saying it is not detrimental to return the minor. (*In re Jacob P.* (2007) 157 Cal.App.4th 819, 829; *In re Randalynne G.* (2002) 97 Cal.App.4th 1156, 1169.)

A parent is statutorily entitled to reunification services when there is a new dependency, though she received 18 months of services before previous dependency was dismissed. (*Rosa S. v. Superior Court* (2002) 100 Cal.App.4th 1181,1188.)

The court can order family maintenance at a reunification services review hearing, even after 18 months of services. (*In re A.C.* (2008) 169 Cal.App.4th 636, 644-648; *Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 307-312.) How family maintenance hearings operate. (*Bridget A. v. Superior Court* (2007) 148 Cal.App.4th 285, 313-316.) The court can order family maintenance if there is sufficient evidence in the reports, even if CPS recommends dismissal and does not present a case. (*In re J.F.* (2014) 228 Cal.App.4th 202, 209-212.)

When the court places the minor with one parent under family maintenance, the court can terminate services for the other parent under Welfare and Institutions Code

section 364. (*In re Gabriel L.* (2009) 172 Cal.App.4th 644, 649-652.)

At the family maintenance review hearings concerning the parent who does not have custody over the minor, Welfare and Institutions Code section 361.21, subdivision (e), not section 364, applies, but the court is only required to determine whether court supervision is still necessary and whether to issue exit orders. (*In re Maya L.* (2014) 232 Cal.App.4th 81, 100-101.)

"Wraparound service program was started in 1997 to provide family-based service alternatives to group home care using intensive, individualized services . . . . The target population for the program is children in or at risk of placement in group homes . . . . [Citation.]" (*In re W.B.* (2012) 55 Cal.4th 30, 41, fn. 2, internal quotation marks omitted.)

Under certain circumstances, the statutes permits the court to order up to 24 months of services, but only if it makes certain findings. (*San Joaquin Cnty. Human Servs. Agency v. Superior Court* (2014) 227 Cal.App.4th 215, 223-225.)

That the minor is bonded with the foster parents is irrelevant when offering reunification services. (*Rita L. v. Superior Court* (2005) 128 Cal.App.4th 495, 507 [caretakers were de facto parents]; *David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 488-489; see also *In re E.D.* (2013) 217 Cal.App.4th 960, 766.)

That the parent complains a two year-old minor would not stand still and does things that frustrate him or her is normally not grounds for finding detriment. (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 790.)

Driving with expired license and bald tires is bad judgment but it does not render the parent unfit or pose a safety risk when the social worker allowed the minor in the car. (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 491.)

That the parent did not have a plan for future medical care did not make him unfit when he knew how to handle emergencies. (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 792.)

The court can terminate services for one parent and continue to offer services for others. (*In re Alana A.* (2005) 135 Cal.App.4th 555, 565.)

Review of family maintenance under sections 361.2 and 364 apply if the minor was never removed from parental custody. (*In re T.W.* (2013) 214 Cal.App.4th 1154, 1164-1170 [the clock for reunification does not start until removed from both parents]; *In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1473, disapproved of on other grounds by *In re Chantal S.* (1996) 13 Cal.4th 196, 204 and distinguished in *In re Catherine H.* (2002) 102 Cal.App.4th 1284, 1292; see *In re Esperanza G.* (1985) 173 Cal.App.3d 358; see *In re N.*

S. (2002) 97 Cal.App.4th 167,172 [if not doing a review of reunification services under Welf. & Inst. Code, § 361.21, must be doing a review of family maintenance].)

Welfare and Institutions Code sections 361.5 and 366, not section 364, apply to dependent review hearing for the parent who had custody of the minor when the minor was placed with the non-custodial parent. (*In re Janee W.* (2006) 140 Cal.App.4th 1444, 1450-1451 [need not give services to the other parent]; *In re Nicholas H.* (2003) 112 Cal.App.4th 251, 264-265; but see *In re Jaden E.* (2014) 229 Cal.App.4th 1277, 1281-1287; *In re Adrianna P.* (2008) 166 Cal.App.4th 44, 53–54; *In re Erika W.* (1994) 28 Cal.App.4th 470, 475; *In re N.S.* (2002) 97 Cal.App.4th 167, 172.) The minor is not returned merely because the offending parent becomes fit, however; the court must first determine if the non-offending parent would be able to assume custody without court jurisdiction. The court awards custody according to the best interests of the minor. (*Nicholas H., supra,* 112 Cal.App.4th at pp. 267-268.)

Family maintenance services (Welf. & Inst. Code, § 16501, subd. (g); 16506) may be limited to 12 months, but family preservation services §16501, subd. (j)) are not so limited; not clear from opinion what the difference is, but since department provided in-home services for more than 12 months, they must have been family preservation services. (*In re Joel T.* (1999) 70 Cal.App.4th 263, 268, fn. 1.)

Appealability: Cannot appeal the setting of a review hearing, only "findings." (*In re L.B.* (2009) 173 Cal.App.4th 562, 565.)

Mootness: Failure to return the minor at the 18 month review hearing is not moot, though the minor was later returned, because the parent was still receiving family maintenance services and a finding of detriment at the 18 month review hearing can be a factor in the future of the dependency. (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1403-1404.)

Standard of review: Review reasonable services for substantial evidence. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 971; *Constance K. v. Superior Court* (1998) 61 Cal.App.4th 689, 705.)

Standard of review: Review failure to return the minor for substantial evidence of detriment. (*In re Yvonne W.* (2008) 165 Cal.App.4th 1394, 1400-1401.)

Prejudice: Failure to advise parent at the dispositional hearing of deadlines for the case plan and consequences of not complying reviewed under *People v. Watson* (1956) 46 Cal.2d 818, 836-837. (*Arlene M. v. Superior Court* (2004) 121 Cal.App.4th 566, 573.)