

COURT PROCEDURES 1: JUVENILE COURT AND THE LAW PROCESS

Boilerplate Outline

RELEVANT CHILD WELFARE OUTCOMES

Safety 2

Children are safely maintained in their homes whenever possible and appropriate.

Permanency 1

Children have permanency and stability in their living situations without increasing reentry to foster care.

Permanency 2

The continuity of family relationships and connections is preserved for children.

Well-being 1

Families have enhanced capacity to provide for their children's needs.

LEARNING OBJECTIVES*

Knowledge:

K1. *The trainee will be able to explain the concept of due process as it applies to juvenile dependency court proceedings.*

K2. The trainee will be able to recognize the legal authority to file a petition under Welfare and Institutions Code Section 300 subdivisions (a-j).

K3. The trainee will be able to identify the purposes, timeframes and standards of evidence that pertain to the following court hearings:

- a. Detention
- b. Jurisdiction
- c. Disposition
- d. Status reviews
- e. 366.26 Permanency hearing
- f. Post permanency
- g. *Dismissal (§391 requirements)*
- h. *387 petitions*
- i. *388 petitions*

K4. The trainee will be able to recognize the following legal concepts in child welfare:

- a. the best interest of the child;
- b. parental rights;

* Normal font represents primary objectives. *Italicized font represents secondary objectives.*

- c. procedural due process;
- d. warrants and exigent circumstances;
- e. due diligence;
- f. reasonable efforts and reasonable services to prevent removal, facilitate reunification and to finalize a permanent plan;
- g. reunification timelines including conditions under which the court may decide reunification services are not legally required.

K5. The trainee will be able to describe the following legal obligations in child welfare:

- a. legal rights pertaining to confidentiality and the dissemination of court documents;
- b. identification of all fathers and all resource placement relatives;
- c. legal mandates regarding concurrent planning;
- d. possible ICWA application;
- e. notice requirements;
- f. performing reasonable efforts to prevent removal;
- g. providing access to mental health assessment and services, providing services to all parents including incarcerated parents, and
- h. performing reasonable efforts to facilitate reunification or to finalize the permanent plan, including concurrent planning.

K6. The trainee will be able to describe the following permanency options for dependent children:

- a. reunification,
- b. adoption,
- c. voluntary relinquishment,
- d. legal guardianship,
- e. permanent placement with a fit and willing relative, and
- f. identified placement with a specific goal.

K7. The trainee will be able to recognize the respective roles of:

- a. bench officers,
- b. guardians ad litem,
- c. CASAs,
- d. county counsel,
- e. mediators,
- f. attorneys representing other parties.

Skills:

S1. Given a number of allegations, the trainee will be able to identify which Welfare and Institutions Code Section 300 subdivision (a-j) applies.

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- S2.** *Given a case scenario or a series of minute orders and a petition, the trainee will be able to identify the following information:*
- a. the next court hearing,*
 - b. decisions to address at the next court hearing,*
 - c. notice requirements.*
- S3.** *Given a role play or case scenario, the trainee will be able to demonstrate the kinds of information one can convey to the following individuals:*
- a. CASA,*
 - b. parent's attorney,*
 - c. child's attorney,*
 - d. county counsel.*

Values:

- V1.** The trainee will value acting in accordance with the legal concept of due process.
- V2.** *The trainee will value acting in accordance with the legal and ethical standards of confidentiality.*
- V3.** *The trainee will value the role of the legal system in balancing the protection of children with the constitutional right to parent.*
- V4.** *The trainee will value providing culturally relevant information to the court for dependency hearings.*
- V5.** The trainee will value the role of the social worker in preparing and informing families about legal processes and hearings.
- V6.** *The trainee will value court-ordered mediation and other out-of-court options to in-court adversarial resolutions of the legal issues in dependency proceedings.*
- V7.** *The trainee will recognize that case law and legislation affect child welfare law on an ongoing basis.*
- V8.** *The trainee will value the different perspectives of attorneys and social workers in working together effectively to secure the best outcomes for families.*
- V9.** *The trainee will value the legal obligation to engage in immediate, ongoing and culturally competent concurrent planning.*

Training Content

1. Introduction

- A. Review of course and learning objectives
- B. Brief discussion of pertinent section(s) of NASW Code of Ethics
- C. Brief historical overview
 - 1. When Juvenile court came into existence
 - 2. How it evolved into what it is now
 - 3. Impact of cultural issues in court decisions
- D. Purpose of Juvenile Court
- E. Where to find the Rules of Court – juvenile court
- F. Describe, discuss the W & I 300 Codes

2. Roles in Juvenile Court

- A. Judge
- B. Attorneys
- C. County Counsel
- D. CASA's (guardian ad litem)
- E. Defacto parents and minors
- F. Mediators
- G. Social Worker (providing information to families about legal proceedings)

3. Fundamental Concepts and Practice

- A. Due Process
- B. Standards of evidence
- C. Warrants and Exigent Circumstances
- D. Burden of proof
- E. Best Interest of the Child
- F. Legal Standing
- G. Legal rights of Confidentiality
- H. Legal mandates (Concurrent Planning, AB 490)
- I. Due diligence
- J. Reasonable efforts

4. Filing a Petition in Juvenile Court

- A. Basic Requirements
 - 1. Timeline: must be filed w/in 48 hours of removal
 - 2. Cover requirements re: contents, concise statement of facts, etc
- B. Legal requirements/timelines of Juvenile Court subsequent to a petition being filed

5. Detention Hearing Issues/Findings

- A. Due diligence –Social Worker locating and serving each parent
 - 1. Advisement of parents’ rights
- B. Prima Facie burden of proof, standard of evidence and other required findings:
 - 1. Substantial danger to the physical health of child, or child is suffering severe emotional damage, and removal is the only way to protect.
 - 2. Substantial evidence custodian is likely to flee
 - 3. Child has left Court ordered placement.
 - 4. Child is unwilling to return home and it is alleged that the child has been physically or sexually abused by someone in the house.
- C. Other issues:
 - 1. Reasonable PPS? If not, what was emergency crisis situation
 - 2. Relatives available for placement? Must meet licensing standards
 - 3. Can we place with non-custodial parent?
 - 4. Non relative extended family member
 - 5. Can siblings be placed together?
 - 6. Concurrent planning
 - 7. TRO?
 - 8. Visitation
 - 9. *Review ICWA requirements and notice*
 - 10. Will child need to testify?
 - 11. Family Court vs. JC authority

6. Determining Paternity

- A. Discuss/describe the legal definitions and rights of each:
 - 1. Alleged – someone says so
 - 2. Presumed – marriage/access/ability or hold child out to the world
 - 3. Biological – sperm donor (doesn’t automatically give right to services)
 - 4. Adjudicated – some judge says this
 - 5. Declared – Hospital Declarations under Family Code 7570 et. seq.
- B. Describe order of importance, in a court proceeding, of each of above

7. Determining Kin

- A. Go over the legal definition of kin- adult related by blood adoption or affinity to the 5th degree (W & I 319) (Step parents etc)
 - 1. *If child is American Indian – ICWA definition of kin*

8. Notice

- A. Cover who gets noticed, timelines, types of notices, regular notices, notice for 366.26 hearing

9. Jurisdictional Hearing

- A. Discuss its purpose
- B. Grounds for Jurisdiction: detailed review: W&I 300 (a) through (j)
 - 1. Include examples of modal uses of each
 - 2. Discuss evidence required for each
 - 3. Import/ramifications of use, different sections of the 300 Code
 - 4. "Failure to Protect" - consideration
- C. Timeframes: Jurisdictional hearing must take place within 3 weeks if child is detained; and within 30 days if child remains with parents
 - 1. Time frames if child is Indian – right of tribe to intervene
 - 2. Addressing mental health needs and services for the minor
- D. Burden of proof:
 - 1. Define preponderance, clear and convincing, beyond a reasonable doubt of the evidence

10. Disposition Hearing

- A. Discuss its purpose
- B. Review the court's legal options
 - 1. Dismiss case
 - 2. Order (360) informal services but not make minor a Dependent
 - 3. Dependency
 - 4. Guardianship
- C. Reunification services – legal parameters
 - 1. When parents should not be offered reunification services
 - a. *If child is American Indian – ICWA supercedes*
 - 2. Stipulations when parent is incarcerated
 - 3. Cover who by law is entitled to reunification services, once a reunification finding has been made
 - 4. When parent is mentally ill – legal requirements for opting out of reunification services
 - 5. Sibling relationships – how will they be maintained?
 - 6. Mental Health Needs and Services for the child
 - 7. Time frames for reunification
 - 8. Disclosure to relatives

11. Trial

- A. Other contested hearings

12. Review Hearings

- A. Default position is: kids go home unless shown to be at risk
- B. Review the 366.21 (e) standards for continuing services beyond 6 months
- C. 366.21(f) Hearing
 - 1. Legal timeframe: no later than 12 months from 60 days after removal
 - 2. Findings that must be made
- D. 366.26 Hearing (Selection and Implementation hearing)
 - 1. Imposes the duty to select and implement a permanent plan of adoption, legal guardianship or long term foster care
 - 2. Discuss court's requirements re: compelling reasons to not have adoption, and variables to be considered
 - 3. Legal order of preference for permanent plan if Adoption is not option: Guardianship, Alternate Permanent Planned Living Arrangement (APPLA)
 - 4. *If child is American Indian: ICWA*
 - 5. If appropriate, progress on mental health services

13. Dismissal (Section 391 requirements)

14. Other Hearings

- A. 387 Petition
 - 1. Raise the level of out-of-home care
 - 2. Required findings
- B. 388 Petition
 - 1. Change or modify a current Court order due to a change in circumstances and/or new evidence
 - 2. Any Party can file

15. Placement Issues

- A. Research re: reunification rates when child placed with relative/foster parents
- B. Review the legal parameters to be considered re: which relative to place child with (e.g. best interest of child; parents' request; proximity to placement; etc. – Most important consideration: be a potential permanent placement (adoption) resource
- C. Placement of siblings and interaction between siblings
- D. Confidentiality related to the placement of children

16. Special Issues

- A. Cultural considerations and the law
 - 1. When is it abuse? Provide examples of religious/medical practices
 - 2. ICWA – legal obligations of the court, CWS
- B. Family law - custody fights
 - 1. Can over-ride family court orders if child is in need of protection
 - 2. Juvenile court orders take precedence over other courts
 - 3. When jurisdiction is terminated Family Court becomes involved, however to change a court order made in Juvenile Court, the matter must be brought back to Juvenile Court– importance of Custody Orders
- C. Voluntary Relinquishments

17. Evaluation and Closure