

LEGAL PROCEEDINGS

Criminal Court

Criminal court assumes jurisdiction over criminal violations. This court adjudicates the guilt of a person charged with a crime. If an accused is found guilty, this court determines the appropriate punishment for the crime committed.

Juvenile Court

There are two court divisions within the juvenile court

Delinquency Court

Delinquency court assumes jurisdiction over children who have committed criminal violations, infractions, or status offenses. The court adjudicates petitions pursuant to the Welfare and Institutions Code and the Penal Code. If a petition is sustained, this court determines the appropriate rehabilitative course for the minor.

Dependency Court

Dependency court assumes jurisdiction over a child based upon circumstances related to the protection of children pursuant to the Welfare and Institutions Code. This court adjudicates matters involving the protection of children who have been abused, neglected, exploited, or has no parent or guardian willing or able to provide care for them. If the court finds certain circumstances exist, the child may be declared a dependent child.

Cases within the jurisdiction of the juvenile court include both delinquency cases involving criminal violations committed by minors and dependency cases involving children who need to be protected. Few cases in the delinquency court fall within this protocol. A document entitled *Dual Supervision Cases Memorandum of Understanding Between Los Angeles County Department of Children and Family Services and Los Angeles County Probation Department* delineates responsibility for supervision of children within both the dependency and delinquency court. [See Index of Appendices.]

Family Court

Family court assumes jurisdiction over cases where parents cannot agree about issues or custody and/or visitation.

Criminal Case Presentation

When law enforcement determines, after a complete investigation, that an allegation of child abuse or maltreatment constitutes a violation of a criminal statute, the case should be expeditiously submitted to the appropriate prosecutorial agency. It is the prosecutor's responsibility to determine whether, based upon the available evidence, a criminal prosecution is warranted and feasible.

Prosecutors making a filing decision should be thoroughly familiar with the applicable criminal laws and procedures and should have advanced child abuse and maltreatment training. Prosecutors' offices are encouraged to adopt protocols for the prosecution of these cases that include mandates for specialized training, vertical prosecution by special units or assigned prosecutors, and legal policies guidelines. In prosecutors' offices with established protocols, prosecutors will be guided by their respective office's protocol.

Prosecutorial jurisdiction is as follows

City Attorney/City Prosecutor

A City Attorney's or City Prosecutor's Office assumes jurisdiction for prosecution of misdemeanors and infractions committed within the city boundaries. Some of the cities with prosecuting City Attorneys are: Hawthorne, Inglewood, Long Beach, Los Angeles, Pasadena, Redondo Beach, Santa Monica, and Torrance. The Child Abuse Unit of the Los Angeles City Attorney's Office vertically prosecutes all cases of misdemeanor physical and sexual child abuse within the City of Los Angeles.

District Attorney

The District Attorney's Office assumes jurisdiction for prosecution of all felonies committed in Los Angeles County and misdemeanors committed in cities, which do not have a criminal city attorney. In the Los Angeles County District Attorney's Office, the Sex Crimes Division vertically prosecutes child sexual abuse cases committed in the Central Judicial District. The Family Violence Division vertically prosecutes felony child physical abuse, neglect, and homicides committed in the Central Judicial District. In branch and area offices, specially trained prosecutors in the Victim Impact Program vertically prosecute these cases within their respective jurisdictions. The Child Abduction Section vertically prosecutes all child abductions committed in Los Angeles County.

Attorney General

The Attorney General's Office assumes jurisdiction for cases in which the District Attorney's Office has declared a conflict of interest or has been recused. The office also handles criminal appeals.

United States Attorney

The United States Attorney's Office assumes jurisdiction for federal offenses involving child abuse and exploitation.

Criminal Filing Guidelines

Law enforcement agencies should investigate child abuse and maltreatment cases as a high priority so that appropriate evidence is gathered and preserved for the prosecutor's filing decision. An investigative packet submitted to a prosecutor should include

- all investigative reports, including victim, witness, "fresh complaint" or reporting party interviews, suspect statements, evidence [property reports]
- suspect's criminal history [rap sheets]
- police reports or reports of past abusive or assaultive conduct by the suspect on any party
- medical reports, especially paramedic, hospital records, expert opinions, results of examinations of the victim and siblings
- forensic reports, especially blood, hair, DNA, origin of marks, etc.
- photos of body, crime scene, weapon or instruments
- all relevant documentary evidence, including, but not limited to, birth certificates, magazines, videos, tapes, consent to search, school and dependency records, DCFS records
- search warrant, search warrant return, property report
- any information about the status of an open or closed child dependency case or history of DCFS involvement
- any prior abuse reports involving the child
- whether there are any past or existing protective orders concerning the victim or other household members

In appropriate cases, after reviewing all of the materials, the prosecutor should interview the child to ensure that the child is competent to testify, can recall and recount the details of the event, determine if there is any additional evidence not

previously identified, and to establish rapport with the child. Whenever possible, a multi-disciplinary approach should be employed to minimize the number of interviews and reduce trauma to the child. Before beginning the interview the prosecutor should ensure that the police complied with the mandates of PC §679.04 regarding notification of a victim's right to advocates and/or a support person.

The prosecutor should consider the probability of conviction by an objective fact finder hearing the admissible evidence. The admissible evidence should be of such convincing force that it would warrant conviction of the crime charged by a reasonable and objective fact finder after hearing the evidence and after considering the most plausible, reasonably foreseeable defense inherent in the prosecution evidence. Therefore, if successful prosecution appears unlikely, prosecutors may decline to file charges even when a crime has been committed and the perpetrator is identified.

The prosecutor may request further investigation whenever a filing decision cannot be made based upon the information presented. The law enforcement agency should conduct the requested follow-up investigation promptly. When it is completed, the law enforcement agency should resubmit the case for filing consideration.

Prosecutors have sole discretion to decide whether to file a criminal case. Prosecutors should advise victims of their filing decisions. A victim's opinion regarding prosecution is considered but is not controlling.

The name, age, and current address of a child victim of physical or sexual abuse may be withheld at the request of the victim or the victim's parent or guardian. {Government Code [GC] §6254}. The name of the victim should not be made part of the public record and all references to the name of the victim, the victim's age, and current address should be redacted from all reports provided in the discovery process. Defense counsel may request the information be provided through a formal discovery request to insure that there is appropriate access to information necessary for the preparation of a defense. {PC §§841.5, 293, 293.5}

A decision of a prosecutor not to file a criminal case does not necessarily mean that the child was not believed. A decision not to prosecute only means that the case cannot be proven beyond a reasonable doubt in its current state. A case may be reopened and a filing decision reconsidered if additional evidence is found or circumstances change. At this stage, interaction between the criminal and child protection systems is crucial to ensure protection of the child.

Criminal Proceedings In Court

In all criminal proceedings, the following non-exclusive guidelines will govern the preparation for, and the taking of, child witness testimony

- The court and prosecutors will seek to limit the number of continuances

in each case, except for "good cause" and in compliance with PC §§1050 and 859b(b). Pursuant to PC §861.5, a preliminary hearing may be continued for one court day to accommodate the physical, mental, or emotional needs of a child witness who is 10 years of age or younger.

- The court and prosecutors shall seek a speedy trial in any case involving child witnesses. These cases shall take precedence over other criminal actions. {PC §1048}
- Prosecutors shall listen for specific concerns and fears of the child witness regarding the perpetrator and any other aspect of the case. When appropriate, prosecutors shall seek protective orders pursuant to PC §136.2. Any protective orders issued by the criminal court should be reported to DCFS, to the Dependency Court, and to the Family Court, if applicable, to avoid issuance of conflicting court orders by the dependency court. In the event of multiple protective orders, those issued by the criminal court take precedence in enforcement over any civil court order. {PC §136.2(h) and (i)}
- Pursuant to PC §1328(b), when service of a subpoena is to be made on a minor, service shall be made on the minor's parents, guardian, conservator, or similar fiduciary. If one of them cannot be located with reasonable diligence, then service shall be made on any person having the care or control of the minor or for whom the minor resides or whom the minor is employed. The parent, guardian, conservator, fiduciary, or other specified person should not be served if he or she is the defendant. Service also shall be made also on a minor who is 12 years of age or older.
- Prosecutors, with the assistance of advocates, law enforcement, and CSW shall arrange transportation and assist victims with restitution and victim/witness claims.
- The prosecutor should, as appropriate, file a trial brief to inform the court of special child witness provisions and any other issues particular to the case.
- The assigned prosecutor should arrange to meet the child witness in advance of a hearing in order to establish rapport and communication.
- Prior to a preliminary hearing or trial, prosecutors should arrange a visit to the courthouse for the child witness to familiarize the child with the courtroom environment and staff.¹⁰
- The assigned prosecutor should prepare the child for the kind of questions that may be asked during both direct and cross examination.

¹⁰ Prosecutors should be aware that the Los Angeles County Bar Association sponsors a program entitled "Kid's Court" designed to familiarize child witnesses with court procedures. For more information contact the Los Angeles County District Attorney's Sex Crimes Division at (213) 974-1611.

- If the child is a potential witness in more than one forum, especially criminal and dependency courts, the assigned prosecutor should explain the difference to the child witness and the child's parent or guardian.
- Pursuant to PC §868.8, when a crime is committed on a minor under the age of 11 years, the court shall take special precautions to provide for the comfort and support of the minor, and to protect the minor from coercion, intimidation, or undue influence as a witness, including but not limited to, any of the following
 - In the court's discretion, the child may be allowed reasonable breaks from examination during which he or she may leave the courtroom
 - The judge may remove his or her robe if the judge believes the formal attire intimidates the child
 - In the court's discretion, the judge, parties, witnesses, support persons and court personnel may be relocated within the courtroom for the child's comfort
 - In the court's discretion, the taking of the child's testimony may be limited to normal school hours if there is no good cause to take the child's testimony during other hours
- The parents' or guardian's work schedule and convenience should be considered and addressed whenever they are subpoenaed to bring the child witness to court.
- In criminal proceedings, prosecutors should request, when appropriate, a support person of the child's choice be present during testimony. {PC §868.5}
- The prosecutor may, under limited circumstances, request a hearing closed to the public when testimony is by, and/or concerns, a sex crime victim under age sixteen. {PC §§868.7(a), 859.1}
- A witness under age fourteen who was the victim of a violent felony or a sexual offense may, under limited circumstances, testify on closed circuit TV or via videotape. {PC §1347}
- The preliminary hearing testimony of a sexual assault victim who is under age sixteen, or is developmentally disabled, may, upon application and formal notice, be preserved on videotape for use at trial should the witness become statutorily unavailable. {PC §1346}
- The failure to use the CalEMA (formerly OES) sexual assault form or follow its protocol shall not be grounds to exclude evidence, nor shall the court instruct or comment that less weight may be given based on the failure to comply. {PC §13823.12}
- A child under age ten may be asked leading questions during direct examination if the charge is PC §§ 288, 288.5, 273a, or 273d. {Evidence Code [EC] §767(b)} A witness under age fourteen must be asked questions that are worded appropriately for his or her age and

- cognitive development. {EC §765(b)}
- A witness under age fourteen must be protected by the judge from undue harassment or embarrassment, and the undue repetition of questions. {EC §765(b)}
 - The prosecutor shall explain, and the court shall honor, the child victim's right to express views about the case and the perpetrator's sentence and restitution fines or reimbursement. {PC §679.02}

Dependency Case Presentation

The purpose of the juvenile dependency court system is to provide for the protection and safety of the child, the preservation of the family where possible, reunification of the family, or a safe, permanent home if family reunification is not successful. Removal of a child from parental custody is justified only when the safety and protection of the child may not be adequately safeguarded without removal.

DCFS is vested with the responsibility for investigating allegations of child abuse and neglect and for providing services to children and families within the system. The CSW has responsibility for investigating abuse and neglect allegations and determining whether a child should be detained from his or her parents or guardians. The CSW also decides if a petition alleging that the child comes within the jurisdiction of the dependency court should be filed or if a case may be supervised more informally by the CSW and without court supervision. {WIC §§301, 328}

Once a petition is filed, the court appoints an attorney to represent the child's interests in the dependency proceedings. {WIC §317(c)} County Counsel, as attorney for DCFS, assumes the burden of proof at the subsequent detention, jurisdictional, disposition, review, and selection and implementation hearings held in the dependency court.

It is the CSW's responsibility to investigate and prepare reports for the many hearings held in the dependency court. The CSW serves as an impartial arm of the court in preparing reports and in exercising limited discretion in the implementation of the court's visitation orders as well as supervising the child, providing services to the family, and assisting in carrying out the overall purpose of the dependency court law.

There is a direct calendaring system in dependency court with vertical representation of all parties. This system provides continuity and familiarity for the children and their parents throughout the court proceedings.

Dependency Proceedings In Court

Initial Hearing

If the child is detained, the parent or guardian must be advised that his/her child has been taken into protective custody and that a written statement is available that explains the parent's or guardian's procedural rights and the preliminary stages of the dependency investigation and hearing. {WIC §307.4}

A petition to declare a child a dependent must be filed within 48 hours of the child's detention, excluding non-judicial days. A detention hearing is then held before the expiration of the next judicial day. {WIC §§313, 315} The petition must contain a concise statement of facts, separately stated, to support the conclusion that the child is a person within the definition of each of the sections and subdivisions under which the proceedings are being initiated. {WIC §332(f)}

According to WIC §319, a report must be filed by the CSW addressing

- the reasons the child has been removed from the parent's custody
- a description of the services that have been provided to the family, the availability of services, and the referral methods to those services that could facilitate the return of the child
- the need, if any, for continued detention
- if continued detention is recommended, whether there is a parent with whom the child was not residing at the time of detention who could take temporary custody of the child, or if there is a relative or non-relative extended family member [a person who has an established familial or mentoring relationship with the child] able and willing to take custody of the child

Grounds for continued detention include

- a substantial danger to the physical health of the child or the child is suffering severe emotional damage, and there are no reasonable means by which the child's emotional or physical health can be protected without removing the child from the custody of the parent or guardian
- substantial evidence that a parent, guardian, or custodian of the child is likely to flee the jurisdiction of the court
- the child has left a placement in which the child was placed by the dependency court
- the child indicates an unwillingness to return home and has been physically or sexually abused by a person residing in the home {WIC §319}

In any dependency court case, the court shall appoint counsel for the child unless the court finds that the child would not benefit from the appointment of counsel. The practice in Los Angeles County is to appoint counsel for children in every case. A primary responsibility of any counsel appointed to represent a child shall be to advocate for the protection, safety, and physical and emotional well-being of the child. Counsel for the child is charged in general with the representation of the child's interests. Counsel shall make further investigations that are reasonably necessary to ascertain the facts involving the current allegations of child abuse and the interests of the child beyond the scope of juvenile proceedings. {WIC §317(c),(e)}

In any case in which the child is four years of age or older, counsel shall interview the child to determine the child's wishes and to assess the child's well-being. The child's counsel shall advise the court of the wishes of the child and shall not advocate for the return of the child to the parent or guardian if return conflicts with the protection and safety of the child. {WIC §317(e)}

Either the child or counsel for the child, with the informed consent of the child if the child is found by the court to be of sufficient age and maturity to so consent, may invoke the psychotherapist-client privilege, the physician-patient privilege, and the clergyman-penitent privilege. If the child invokes the privilege, counsel may not waive it. However, if counsel invokes the privilege on behalf of the child, the child may waive it. Counsel shall be the holder of these privileges if the child is found by the court not to be of sufficient age and maturity to consent. Counsel for the child shall be given access to all records with regard to the child maintained by a health care facility, health care providers, a physician and surgeon or other health practitioner or a child care custodian as well as access to all records relevant to the case which are maintained by state or local public agencies. {WIC §317(f)}

At any stage in the proceedings, a child advocate may be appointed by the court to represent the interests of a dependent child and shall have the same duties and responsibilities as a guardian ad litem. {WIC §§356.5, 326.5} In Los Angeles County, it is the practice of the court at the Initial Hearing to appoint the child's attorney to serve as the child's CAPTA/GAL.

Jurisdictional Hearing

The purpose of the jurisdictional hearing is to determine whether the child is a person described by §300 and may therefore be adjudged a dependent of the court. {WIC §§355, 356}

The CSW prepares a report for the court which presents all of the information gathered in the assessment and investigation of the case and outlines the

jurisdictional facts and dispositional recommendations. The report carefully weighs and incorporates all available information and sets forth reasons for the recommendations. The court is authorized to receive and consider the reports and recommendations of the CSW in determining whether the child is within the jurisdiction of the court. {WIC §§355, 358(b), 358.1}

The CSW's report should include

- interviews of all parties [including the child] and witnesses
- investigative reports
- police reports/photographs
- school reports
- criminal histories [rap sheets]
- medical records
- psychological records, if appropriate
- forensic reports
- other documentary evidence
- a plan, if appropriate, for the return of the child to his or her parents and for achieving legal permanence for the child if reunification efforts fail ["concurrent planning"]
- whether visitation of the child with his or her grandparents will be in the best interests of the child
- whether the child would be appropriate for adoptive planning
- whether the parent has been advised of his or her option to relinquish the child voluntarily, including the option to enter into a post-adoption contract agreement
- the appropriateness of any relative placement pursuant to WIC §361.3
- the appropriateness of placement with any nonrelative, extended family member as defined in WIC §362.7 {WIC §358.1}

The CSW must understand the goals of child welfare services, assessments, and service plans and use the process to attain those goals.

County Counsel maintains communication with the CSW, the child's attorney, the prosecuting attorney from criminal court, if applicable, and should assure the child's familiarity with the courtroom and the judge. County Counsel has access to a child in dependency proceedings with the consent of the child's attorney. The child's attorney generally is present during the interview. Under WIC §350(b), provision may be made to take the child's testimony in chambers and outside the presence of the child's parent(s), where the specific criteria are met.

Trial issues should be narrowed and stipulations regarding the child's testimony

agreed to where appropriate. Settlement of the case should be explored in good faith. However, the child has a legitimate interest in trying the issues of fact.

County Counsel and the child's attorney should be familiar with child development and phrase questions during testimony with sensitivity to the child's age, emotional stability, and developmental level. Objections should be made appropriately.

If the child is a potential witness in more than one forum, especially criminal and dependency courts, then the child's dependency court attorney shall explain the differences to the child. Any party to the dependency proceedings also may seek appointment of a CASA/GAL to assist with preparing the child for testimony and to accompany the child to court proceedings.

The child's attorney should seek protective orders as necessary. Any protective orders issued by the dependency court should be reported to a prosecutor handling a concurrent criminal case to assure that orders between the two courts remain consistent. County Counsel, the child's attorney, and the CSW should coordinate with prosecutors in criminal court to reduce trauma to children from repetitive interviews and court appearances and to coordinate counseling services if the child is a potential victim or witness in both criminal and dependency proceedings.

Disposition Hearing

If the court finds that the child is a person described by WIC §300, the court conducts a disposition hearing to determine the proper disposition for the case {WIC §358(a)}. The CSW must prepare a social study of the child prior to every disposition hearing which includes all relevant information about the child and family and a recommendation for disposition. The CSW may recommend that the child remain in the home of the child's parent with family maintenance services, or that the child be removed from parental custody and either

- a plan be implemented for the reunification of the family
- reunification services not be provided to the parent[s] if one or more of the grounds under WIC §361.5(b) applies

In addition, the CSW has the option to recommend a voluntary legal guardianship be ordered pursuant to WIC §360(a).

If the recommendation is to remove the child from parental custody, the report must address possible placement with a relative, provided that the placement will be in the best interest of the child and will facilitate reunification, if reunification has been recommended. {WIC §281.5}

The court may continue the disposition hearing to a date not to exceed 10 court

days if the child is detained or, if the child is not detained, to a date not to exceed 30 calendar days from the date of the jurisdictional findings pursuant to WIC §356. The court may for good cause continue the hearing for an additional 15 calendar days if the child is not detained. {WIC §358}

In any case in which DCFS will be providing services to the family, it is required that the report prepared by the CSW include a child welfare services case plan. The case plan has been found by the legislature to be the "foundation and central unifying tool in child welfare services." {WIC §16501.1} The plan is designed to assure that the child receive proper services and that the parents and other caretakers receive services as appropriate. The plan must be updated as the needs of the family require, at least every six months. {WIC §16501.1(d)}

The case plan must

- be based on an assessment of the circumstances requiring the child welfare services intervention
- identify specific goals and the appropriateness of the services planned to meet those goals
- identify the original allegations of the petition and the reasons for declaring the child a dependent
- include a schedule of the contacts the social worker has had with the child, the child's family and/or other caretakers [the frequency of the contacts are to be within state-mandated guidelines]
- if the child is in an out-of-home placement, include the frequency of contact between the child and the child's parents
- include provisions for development and maintenance of sibling relationships pursuant to WIC §16002
- if the child is in a non-relative home, foster family home, group home, or other child care institution that is either a substantial distance from the home of the parent or is out of state, specify the reasons such placement is in the child's best interest
- if the child is not placed in the home, or if parental rights have been terminated and adoption is the plan, consider the appropriateness of unsupervised sibling visitation
- if the goal is reunification and out-of-home services are used, describe the reunification services as well as the services to be provided concurrently to achieve legal permanence for the child if reunification fails
- if the child has been in out-of-home placement for at least 12 months, and the goal is not adoptive planning, document the reasons termination of parental rights is not in the child's best interest
- reflect that the parent and/or guardian has participated in the

development of the case plan, received a copy of the plan, and has signed it

- if the goal is permanent placement, document efforts to locate a permanent home {WIC §16501.1}

A copy of the case plan should be attached to each court report.

The court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the child, including medical treatment, subject to the further order of the court. {WIC §362(a)} If the court removes the child from the physical custody of the child's parent(s), it must make findings by clear and convincing evidence that there exists a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child, and there are no reasonable means by which the child may be protected without removing the child from the parent(s) physical custody. In making its determination, the court may consider the option of removing an offending parent from the home and/or a "non-offending" parent's plan to protect the child in the future. {WIC §361(c)(1)}

Periodic Review Hearings

Family Maintenance

Every case in which an order is made placing a child under the supervision of the juvenile court and in which the child is not removed from the physical custody of the parent(s) shall be continued to a specific date not to exceed six months after the date of the original disposition hearing. {WIC §364(a)} The CSW must prepare a report which addresses the services provided to the family and the progress the family has made in eliminating the conditions which initially required court supervision. The CSW must also make a recommendation regarding the necessity of continued supervision. {WIC §364(b)}

Family Reunifications/Status Reviews, and Permanency Hearing (Update Written and on Shared Drive, but awaiting Governor's signature on AB706)

Status review and permanency hearings for children who are placed out of their homes are governed by WIC §§366.21(e), (f), 366.22, and 366.3. The WIC §366.21(e) hearing is held six months from the date of the disposition hearing. For this hearing, the CSW must file a report with the court that addresses whether a child may be returned home safely.

- If return of the child would create a substantial risk of detriment to the child, the court must not return the child.
- If the court finds there is a substantial likelihood that the child who was

under the age of three years on the date of the initial removal, or was a member of a sibling group described in WIC §361.5(a)(3), may be returned in the next six months the court may continue family reunification services to the 12-month permanency hearing.

- If the child was under the age of three years on the date of the initial removal or is a member of a sibling group described in WIC §361.5(a)(3), and the parent has not complied with the case plan, the court may terminate family reunification services and set the case for a selection and implementation hearing pursuant to WIC §366.26 within 120 days.
- If the child is over the age of three years and is not returned home, reunification services are continued for six months to the permanency hearing pursuant to WIC §366.21(f).
- If the child was removed initially under WIC §300(g) and the whereabouts of the parent is still unknown, or the parent has failed to contact and visit the child for six months, or the parent has been convicted of a felony indicating parental unfitness, the court may terminate reunification services and set the case for a selection and implementation hearing within 120 days. {WIC §366.21(e)}

At the 12-month permanency hearing {WIC §366.21(f)}, the court must return the child to the physical custody of his/her parent unless, by a preponderance of the evidence, it finds that return of the child would create a substantial risk of detriment to the safety, protection, or physical or emotional well-being of the child. The failure of the parent to participate regularly and make substantive progress in court-ordered treatment programs is on its face evidence that return of the child would be detrimental. If the child cannot be returned home, the court must terminate reunification services unless it finds that there is a substantial probability that the child will be returned to his or her parent and safely maintained in the physical custody of his or her parent within the 18-month time frame or that DCFS has not provided the parent with reasonable services. If reunification services are terminated, the court sets a selection and implementation hearing within 120 days. {WIC §§366.21(e), 366.21(g)(1)}

The 18-month permanency hearing must be held within 18 months of the original removal of the child from the physical custody of the parent. The procedures at the 18-month permanency hearing are essentially the same as those at the 12-month permanency hearing. However, if the child cannot be safely returned to parental custody, the court must develop a permanent plan for the child and set a selection and implementation hearing within 120 days, unless the permanent plan is planned permanent living arrangement (PPLA). {WIC §366.22}

Selection and Implementation Hearing {WIC §366.26}

At the selection and implementation hearing, the court must do one of the

following

- terminate parental rights and order the child be placed for adoption
- without permanently terminating parental rights, identify adoption as the permanent plan and order that efforts be made to locate an appropriate adoptive family for the child and continue the case up to 180 days for further efforts to locate an adoptive home
- without permanently terminating parental rights, appoint a legal guardian for the child
- order that the child be placed in planned permanent living arrangement (PPLA), subject to regular review by the juvenile court {WIC §§366.26, 366.3}

Return of the child to the parent is not an option at this hearing.

The court terminates jurisdiction upon the adoption of the child and may continue or terminate jurisdiction following the establishment of a legal guardianship. The court must maintain jurisdiction over a child placed in planned permanent living arrangement (PPLA). When the court maintains jurisdiction over the child, it conducts a status review of the permanent plan every six months until the child achieves legal permanency, reaches the age of 18 or in some circumstances, until the age of 21 {WIC §§366.3, 303}. Before terminating jurisdiction over a child who has reached the age of majority, the court will assure the conditions set forth in WIC §391 are addressed in the court report:

- information on the child's family history including whereabouts of any siblings if appropriate
- social security card, birth certificate, health and education summary, identification card, proof of citizenship or residence
- assistance in completing application for Medi-Cal or other health insurance; referral to transitional housing or assistance in obtaining other housing; and, assistance in finding employment or other financial support
- assistance in applying for admission to college or to a vocational training program or other educational institution and assistance with financial aid where appropriate
- assistance in maintaining relationships with individuals who are important to the child.

Juvenile Dependency Mediation

Juvenile Dependency Mediation Court is an alternative dispute resolution

program within the juvenile court that provides a formal, non-adversarial process.

Early resolution of dependency cases in mediation serves to reduce stress to children and families and allows for expedient case management and significant savings of court adjudication time.

Bench officers and attorneys for the parties have the option of requesting mediation. Once ordered, court rules and policies require all parties to attend.

The goals of mediation include the following

- reach a settlement or mediated agreement designed to protect the child from future acts of abuse or neglect
- reduce trauma and promote harmony among the parties
- orient the parent and the child to ways in which the legal and mediation processes blend
- bring parties and professionals together to ensure their understanding of the issues in the case and the reasons for intervention
- seek early resolution, improved calendar management, and more effective use of agency resources and staff time to define issues and avoid trial
- commence family treatment and counseling or permanency planning as soon as possible
- clarify roles of the participants and preserve the rights of parties during the mediation process and subsequent proceedings
- file a case plan reflecting the parties' commitment to a mutually acceptable resolution
- enhance the administration of justice and relieve court congestion by making a prompt determination whether a case may be resolved by mediation or should be returned to the court

A case may be referred to mediation at any stage of the dependency proceedings. Cases referred for mediation are calendared by appointment, and all parties, attorneys, and CSW are mandated to participate in the process. The social study report prepared by the CSW for the hearing shall be utilized at the mediation.

The mediation conference is conducted in private and is a confidential proceeding. The only exceptions to the confidentiality requirement are the social study report and any information which meets the requirements of mandatory child abuse reporting.

Initially, the attorneys and CWS meet with the mediator concerning their perceptions of the issues in dispute and the areas of potential agreement. The parties are not present during this phase of the conference. Prior to finalizing the written agreement and case plan, the mediator will meet with the parties, counsel and others. The mediator has discretion to meet as a group or individually.

If the formal mediation conference does not result in an agreement, the case will be returned to the assigned court for trial setting and other necessary orders.

Family Law Proceedings in Court (Not Reviewed—should be)

One of the goals of family court is to ensure that the welfare of a child is protected in situations where the child's parents have divorced or physically separated. This includes making appropriate custody and visitation orders for children whose parents disagree as to these arrangements. These judicial orders are governed by the California Family Code, which includes provisions regarding the consideration of child abuse allegations in making child custody determinations. Allegations of child abuse trigger specific procedures that must be followed before any final custody or visitation order can be made.

Family Court Duty to Evaluate Child Abuse Allegations

The Family Code [FC] sets forth that it is the public policy of this state to assure that the health, safety, and welfare of children shall be the court's primary concern in determining the best interest of children when making any orders regarding the physical or legal custody or visitation of children. {FC §3020(a)}

Family Code §3011 provides family courts with specific instructions on when and how to consider allegations of child abuse. The court shall consider, among other things, any history of abuse by one parent or any other person seeking custody against any child to whom the child is related by blood or affinity or with whom the child has had a caretaking relationship, no matter how temporary. {FC §3011(b)(1)}

Any reference in this section to abuse against a child has the same definition as child abuse under PC §11165.6. {FC §3011(b)(3)} A court may limit consideration of child abuse allegations to those situations where substantial, independent corroboration exists. This corroboration can include written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence. {FC §3011(b)(3)}

If allegations of child sexual abuse are made during a child custody proceeding and the court has concerns regarding the child's safety, the court may take any reasonable, temporary steps as the court, in its discretion, deems appropriate under the circumstances to protect the child's safety until an investigation can be completed. {FC §3027(a)} If allegations of child sexual abuse are made during a child custody proceeding, the court may request that the local child welfare services agency conduct an investigation of the allegations pursuant to Section 328 of the Welfare and Institutions Code. {FC § 3027(b)}

Child Custody Evaluator

In order to assist in the investigation of allegations of child abuse, the court may appoint a child custody evaluator. {FC §3111} This position is also referred to in family court as a child custody investigator. The qualifications for this position are defined in FC §3110.5. The current minimum requirements for such a position involve specific domestic violence training, and education, experience, and training that includes knowledge of the psychological and developmental needs of children and parent-child relationships. {FC §3110.5(b)(2)}

The duties assigned to this position are detailed in the Family Law Rules section of the California Rules of Court [CRC]. A child custody evaluator is directed to consider the health, safety, welfare, and best interest of the child. {CRC §1257.3(d)(2)(A)} This must be done within an overall duty to maintain objectivity, provide balanced information for both parties, and control for bias. {CRC §1257.3(h)(1)}

The role of a child custody evaluator includes a specific assessment of child abuse and neglect. This assessment may include the following

- interviewing all parties
- reviewing pertinent documents, including police reports
- collecting relevant corroborating information or documents as permitted by law
- obtaining information from multiple sources when possible
- consulting with other experts to develop information that is beyond the evaluator's scope of practice or area of expertise {CRC §1257.3(e)(2)}

The position of child custody evaluator is not specifically listed as a mandated reporter pursuant to PC §11165.7. However, many evaluators will, in fact, be mandated reporters due to their background or qualifications. Recognizing this, the California Rules of Court state that child custody evaluators must inform the parties of the evaluator's reporting requirements, including, but not limited to,

suspected child abuse and neglect and threats to harm one's self or another person. {CRC §1257.3(h)(8)} Child custody evaluators are encouraged to report any known or reasonably suspected instance of child abuse or neglect to law enforcement and/or DCFS.

A child custody evaluator may examine a case that has been referred to DCFS. Within certain limitations, DCFS is allowed to release dependency case records to family court investigators. This is true whether or not such an investigation resulted in a petition being filed in dependency court. {WIC §827(k)} However, if a petition is filed in dependency court on behalf of the child, no other division of any superior court may hear custody proceedings relating to the child during pendency of the juvenile court's jurisdiction. {WIC §304}

During the evaluation process, the parties may attempt to resolve any custody dispute themselves. This is often done with the assistance of the Family Conciliation Court where the proceedings are confidential. {FC §§1830, 1831}

Once the evaluator has completed the investigation, and assuming no settlement is possible, the court may issue custody orders considering the best interests of the child. {FC §3020} The report may be received in evidence upon stipulation of all parties and is competent evidence as to all matters contained in the report. {FC§3111(c)} If the parties do not stipulate to the evaluator's report, the evaluator shall be available for cross- examination. {FC §3115}

Given the consequences of child abuse allegations in this forum, false accusations may be dealt with severely. If the court determines that a false accusation of child abuse has been deliberately made by one of the parties, the court has the authority to impose both monetary sanctions and limitations on custody. {FC §§3027, 3027.5} In addition, a motion for reconsideration of an existing custody order must be granted when the motion is based on the fact that one parent was convicted of a crime involving falsely accusing the other parent of child abuse. {FC §3022.5}