

# JUVENILE DEPENDENCY

## Detention Hearing

### I II. [§100.2] PROCEDURAL CHECKLIST

(1) *Attorneys serving as temporary judges should obtain a stipulation from the parties under Cal Rules of Ct 2.816.* If desired, referees should also obtain a written stipulation from the parties to serve as a temporary judge. See discussion in §100.15.

(2) *Call the case.* In many counties, the social worker, the social worker assigned to the court as a court officer, or a deputy county counsel calls the case. See the sample script in §100.58 for the conduct of the detention hearing.

(3) *Determine who are present and their interest in the case before the court.* Welf & I C §§290.1(a), 346, 349; Cal Rules of Ct 5.530(b).

- *Ask each parent or guardian to designate for the court his or her permanent mailing address.*
- *Advise each parent or guardian that the designated mailing address will be used by the court and the social services agency for notification purposes until the parent or guardian provides a new address in writing to the court or social services agency and make sure that Judicial Council form Notification of Mailing Address (JV-140) is completed and filed.* Welf & I C §316.1(a); Cal Rules of Ct 5.534(m). See form in §100.58.

*If the child is present, permit his or her participation if he or she desires it.* Welf & I C §349(a), (c); Cal Rules of Ct 5.534(p)(1). *If the child is 10 years old or older and is not present, determine whether he or she was properly notified of his or her right to attend the hearing, inquire whether the child was given an opportunity to attend.* See Welf & I C §349(a), (d); Cal Rules of Ct 5.534(p)(2). If the child was not properly notified or if he or she wished to be present and was not given an opportunity to be present, continue the hearing only for that period of time necessary to provide notice and secure the child's presence, unless the court finds that it is in the best interest of the child not to grant a continuance. Welf & I C §349(d); Cal Rules of Ct 5.534(p)(2).

- **JUDICIAL TIP:** Judges should ensure that the clerk places the addresses and the advisement into the minute order and that the DSS gets the order. Judges should also advise the parents that they may change the addresses by written notice as often as necessary.

(4) *If no parent or guardian is present:*

- *Determine whether they received notice.*
- *If not, determine whether due diligence efforts to notify them were made, and, if so, conduct the hearing.*
- *If the parents or guardians can be easily located (e.g., if they are incarcerated in the local county jail), continue the case for one day to permit due diligence efforts to be used*

*to locate and serve them.* Most judges will hold the detention hearing even if due diligence efforts to serve were not made, subject to the holding of a rehearing once the parents or guardians are served. See §100.44 for a discussion of continuances.

- **JUDICIAL TIP:** If friends, relatives, and/or the child are present in the court, they should be questioned for information that may lead to the parents' whereabouts.

(5) *If a parent or other relative is present, inquire whether the child has possible American Indian heritage and, if so, take steps to ensure that proper notice is given.* Ensure that the Indian Child Inquiry Attachment (form ICWA-010(A)) is attached to the petition and order the parents or guardians to complete the Parental Notification of Indian Status (form ICWA-020). See discussion in §§100.49–100.57.

(6) *Make a finding whether notice has been given or attempted as required by law.* See Cal Rules of Ct 5.534(l).

(7) *Inquire whether the factual information (names, dates, addresses, ages, etc.) on the petition is correct.* The judge should order that the petition be corrected by interlineation if, on inquiry, any of the participants provide corrections to the names, addresses, ages, or other factual information in the petition.

(8) *Advise the parents and guardians of their right to counsel.* If counsel has been retained or appointed to represent more than one parent or guardian, the judge should obtain a personal waiver of conflict of interest from each concerned participant. The judge should appoint counsel for the parents or guardians as warranted, including any incarcerated parents or Indian custodian. Welf & I C §317(a); Cal Rules of Ct 5.534(g)–(h). See discussion in §100.17.

- **JUDICIAL TIP:** In some courts, an unrepresented parent or guardian is “counseled” by an attorney before the hearing. That attorney then accompanies the parent or guardian to the hearing and is available for appointment.

(9) *Review any reports and receive comments from the parties as to whether the child would benefit from appointed counsel.* Welf & I C §317; Cal Rules of Ct 5.534(h)(1)(A). See discussion in §§100.18–100.21.

- *Appoint counsel for the child, unless there is a finding that the child would not benefit from the representation by counsel, as required in Cal Rules of Ct 5.660(b), and designate the attorney as the child's Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem under Cal Rules of Ct 5.662.*
- *If an attorney is not appointed for the child, appoint a court-appointed special advocate (CASA) as the child's CAPTA guardian ad litem under Cal Rules of Ct 5.662.*

(10) *Unless waived by counsel, tell the parties what to expect of this and of other juvenile court proceedings and their rights at each stage of the proceedings.* Welf & I C §§311(b), 316; Cal Rules of Ct 5.534(g), (k), 5.668(a). See form in §100.58 (conduct of initial or detention hearing).

- *Read the substance of the allegations in the petition to the parties, or*
- *Obtain a waiver of this reading requirement. Confirm that the parties have read the petition or that their attorneys have read it to them and that they understood it.*
- *If the child was detained, inform the parties of the reason for the detention.*

(11) *Review the documentary evidence and, if necessary, receive testimony from the parents, guardians, or others with pertinent knowledge, as well as from the social worker.* See Welf & I C §319(a); Cal Rules of Ct 5.660(g), 5.674(b)–(c). In making the findings necessary to an order of detention, the court may rely solely on documentary evidence. Cal Rules of Ct 5.676(b).

(12) *Plan to facilitate child’s testimony if appropriate.* See Welf & I C §350(b); Cal Rules of Ct 5.534(c).

(13) *Initiate an inquiry as to the parentage of the child and take steps to make a determination regarding parentage if appropriate.* See Cal Rules of Ct 5.668(b), and discussion in §§100.32–100.33.

(14) *If the child has been detained, order his or her release unless a prima facie case has been made that: the child comes within Welf & I C §300, continuing in the home of the parent or guardian is contrary to the child’s welfare, and one or more of the circumstances specified in Welf & I C §319(b)(1)–(4) and Cal Rules of Ct 5.678 exist.* Welf & I C §319(b); Cal Rules of Ct 5.676(a).

➡ JUDICIAL TIPS:

- If the child has been removed, it is essential to make the “contrary to the child’s welfare” finding the first time the court considers the case, even if the court is just granting a short continuance. See Welf & I C §319(c); Cal Rules of Ct 5.550(c)(2), 5.676(a)(2). This finding may be made on a temporary basis without prejudice. See Cal Rules of Ct 5.672(a) and discussion in §100.11. Failure to make this finding may result in permanent loss of foster care federal funding.
- If, after a detention hearing, the child is first ordered to remain in the home and then later removed, a new detention hearing must be held and the “contrary to the child’s welfare” finding must be made at that time, even if it had been previously made. For Title IV-E purposes, this finding must be made each time the child is ordered physically removed from the parents’ home.

(15) *If a prima facie case has been made that the child comes within Welf & I C §300 and that continuing in the home of the parent or guardian would be contrary to the child’s welfare, make appropriate findings and orders, and ensure that the petition is set for hearing.* If the child is ordered detained,

- *State the grounds for detention under Welf & I C §319(b) and Cal Rules of Ct 5.678(a)(1)–(2), and make the findings justifying detention required by Cal Rules of Ct 5.678(a)(3).* See §100.36.
- *Inquire as to what efforts were made to prevent and eliminate the need for removal.* If the efforts were reasonable, state so on the record. See Welf & I C §319(d)(1); Cal Rules of Ct 5.678(b)–(c). In making findings related to reasonable efforts, the court must read and consider any DSS reports and relevant evidence submitted by the parties and their counsel. Welf & I C §319(d)(1). Detention may be ordered even if there was a lack of preplacement services, but there may be a financial cost to the county under certain circumstances. See discussion in §100.38.
- *Make sure that information received by the court addresses the efforts that have been made.*

- *Order visitation with other persons with whom contact would benefit the child.* Cal Rules of Ct 5.670(g)(1).
- *Order visitation with any sibling who was not placed with the child, and who was taken into custody with the child or is otherwise under the court's jurisdiction, unless the court finds by clear and convincing evidence that sibling interaction between the child and the sibling is contrary to the safety or well-being of either child.* Cal Rules of Ct 5.670(g)(2).
- *State whether there is a relative willing and able to take the child.* Welf & I C §319(b), (d)(2). If so, the court should order DSS to investigate him or her as a possible placement.
- *Order reunification services.* Welf & I C §319(e).
- *State that there are no reasonable services that would prevent the need for further detention unless there was a lack of preplacement services and the lack was unreasonable.* In that case, the court must identify needed services and order DSS to provide them.

See Welf & I C §319(d)(1); see also Cal Rules of Ct 5.678(c)(2).

- *Order each parent or guardian to either complete Judicial Council form, Your Child's Health and Education (JV-225) or to apprise the social worker or court staff of the information necessary to complete the form.* Welf & I C §16010; Cal Rules of Ct 5.668(c).
- *Order that temporary placement and care be vested with the DSS, pending disposition or further court order.* Cal Rules of Ct 5.678(d).
- *Make a determination as to who holds educational rights to the child. If the parents are not capable of holding educational rights, the court may limit those rights at the detention hearing.* Welf & I C §319(g); Cal Rules of Ct 5.651.

(16) *Ensure that all detention findings and orders are made on the record and in the written orders of the court.* Cal Rules of Ct 5.674(b).

(17) Consider ascertaining whether the child has lived out-of-state and therefore whether provisions of the *Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)* (*Fam C §§3400–3465*) may apply. See Appendix II.

*Note:* California has subject matter jurisdiction even when parents and children moved from another state somewhat earlier, but when there is no evidence that they are just visiting. See *In re S.W.* (2007) 148 CA4th 1501, 1509–1510, 56 CR3d 665.

(18) *Rule on any additional requests.* If requested, rule on any additional requests such as motions for restraining orders under Welf & I C §213.5 and, if appropriate, under Welf & I C §§340.5. See §§100.4–100.8.

**A. [§100.58] Detention Script:  
Conduct of Initial or Detention Hearing**

*(1) Introduction*

[Mr./Ms.] [name of clerk], please swear all persons who may wish to speak during the proceedings.

*Note:* Often this step is omitted because in most counties parents speak through their attorneys, and social workers rarely testify at detention hearings.

*(2) Appointment of attorney for parent(s) or guardian(s)*

*[If parents are unrepresented by counsel]*

You have a right to be represented by an attorney during this detention hearing, and during all other hearings in the juvenile court. If you want to employ a private attorney, the court will give you an opportunity to do so.

- **JUDICIAL TIP:** Judges often explain to the parents the importance of hiring an attorney with experience in juvenile court.

[Or]

The court has reviewed the financial declaration of [name of parent or guardian] and finds that [he/she] is entitled to appointment of counsel. At this time, the court appoints [name of attorney] to represent [him/her].

*[If parents waive counsel]*

This is a serious and important matter. If the court finds that grounds for detention exist, this hearing could result in [name of child] being placed [with [name of parent or guardian]/in a foster home/in the shelter] from today until the jurisdiction hearing on [date]. Ultimately parental rights may be terminated and the child may be placed for adoption. Do you have any questions about your right to have an attorney represent you at this hearing? Understanding this right and the possible consequences of this hearing, do you want to proceed at this time without an attorney?

- **JUDICIAL TIP:** Many judges also inform parents of the applicable time frames and emphasize the complexity of the law and the difficulty of the procedure before accepting a waiver.

*[When applicable, add]*

The court now finds that the parents have intelligently waived their right to counsel at this hearing.

*(3) Attorney for child*

The court has read and considered the documentary material submitted by the Department of Social Services (the Department) for the limited purpose of assessing whether to appoint counsel for the child. Would anyone like to be heard on this issue?

*[After hearing evidence, if any, on issue of child's need for attorney]*

The court finds, based on the facts of this case, that there is a need to appoint counsel for the child at this time. The court appoints [*name of attorney*] as the child's CAPTA guardian-ad-litem to represent the child.

[Or]

The court finds, based on the facts of this case, that there is no identifiable benefit to the child that would require appointment of counsel at this time because [*give reason*].

- JUDICIAL TIP: It is advisable to ask counsel for DSS if there are any potential conflicts of interest among the children (if multiple siblings are involved) and, if so, to appoint separate counsel for siblings. See discussion in §100.20.

(4) *Parentage inquiry, if applicable*

The court needs to know the name and address of the child's father, as well as names and addresses of any men who might claim to be fathers.

- JUDICIAL TIP: It is important to question the mother with as much delicacy as possible, possibly beginning with the question of whether she is or was married to the father.

[*If no answers appear to be forthcoming, the court may ask the mother or other participant who might know the answers (see Cal Rules of Ct 5.668(b)(1)–(6))*]

1. Has there been a judgment of parentage?
2. Were you [*the mother*] married or did you believe yourself to be married, at the time of conception?
3. Were you [*the mother*] living with a man at the time of conception?
4. Did you [*the mother*] receive support or promises of support during the pregnancy?
5. Has a man formally acknowledged parentage?
6. Have genetic tests been administered and, if so, what were the results?

(5) *Explanation of procedure*

I am going to explain to you what happens at these juvenile court proceedings. These proceedings are divided into several separate hearings.

First, there will be an initial or detention hearing. That is what is happening here today.

[*If child is detained*]

The purpose of this hearing is for the court to inform you of the contents of the petition and of what to expect in juvenile court, as well as for the court to decide whether [*name of child*] should remain in protective custody [*in the shelter*] from today until the date of the jurisdiction hearing, which has been set for [*date*]. The jurisdiction hearing may be similar to a trial. It is the hearing at which the court decides whether what the petition says is true.

[*If child is not detained*]

The purpose of this hearing is for the court to inform you of the contents of the petition and of what to expect in juvenile court.

[Continue]

When you appear in court on [date], for the jurisdiction hearing, the court will decide whether the statements contained in the petition that has just been read are true. If the court finds them to be not true, the court will dismiss the petition. If the court finds them to be true, the court will conduct a disposition hearing.

The purpose of a disposition hearing is to decide what action, if any, the court should take in view of what has been found to have happened. If [name of child] is not able to be returned home at the disposition hearing, there may be later hearings that may culminate in the termination of parental rights.

If the court sustains the petition at the jurisdiction hearing and if [name of child] is declared a dependent of the court and removed from the custody of [his/her] parent or guardian, court-ordered reunification services may not be provided for more than 12 months for a child who is over three years old at the time of removal or six months for [a child who was/all the children if there was any one child who was] under three years old at the time of removal if [the parent or guardian does/you do] not participate regularly in a court-ordered treatment program.

*Note:* Very often, the attorney for the parent(s) or guardian(s) will state that he or she has explained these matters to the parent or guardian and will waive formal advisement. Many judges encourage attorneys who appear in their courts to take this responsibility because it can be helpful in streamlining judicial proceedings.

(6) *Notice*

(a) *One parent not present:*

[If one parent is not present, make sure that the absent parent received notice of the hearing. If so, state]

The court finds that notice has been given as required by law. The [mother/father/guardian] has failed to appear.

(b) *Both parents present:*

The court finds that the [mother/father/guardian(s)], the child, and all counsel were notified of this hearing and served with the petition as required by law.

(c) *One or both parents or guardian(s) not present and notice attempted:*

The court finds that the following attempts were made to locate the [mother/father/guardian(s)]: [List attempts.] The court has reviewed the declaration of search and finds that the efforts made to locate and serve the [parent(s)/guardian(s)] were reasonable.

(d) *Insufficient attempts at notice:*

The court finds that the Department has not used due diligence in attempting to locate the [parent(s)/guardian(s)]. The case is therefore continued for one day. The Department must take the following steps to locate the [parent(s)/guardian(s)]: [List them, e.g., check with Department of Corrections, check with child's school].

*Note:* Only rarely will a judge need to dictate to the DSS the search efforts that are needed.

(7) *Waiver of reading of petition and advisement of rights*

[To each counsel]

Does your client waive reading of the petition and advisement of rights?

(8) *Reading the petition*

[If not waived, read the petition]

Do each of you understand the petition just read, or do you have any question about it you would like to have answered by the court?

Are there any changes to names, addresses, or ages in the petition that should be corrected?

(9) *Advisement re addresses under Welf & IC §316.1 and Cal Rules of Ct 5.534(m)*

The address that [*is in the petition/you have given the court today*] will be used by the court and the social worker for all further notices unless you advise the court and the social worker in writing of any changes in address. [*There is a form available in the courtroom for this purpose.*]

(10) *Advisement of rights*

As you are aware, [*name of child*] has been placed in protective custody because of the circumstances stated in the petition that was just read to you.

You have certain rights at this hearing. You have the right to:

1. Be represented by counsel as already explained;
2. See, hear, and question all witnesses who may be examined at this hearing;
3. Cross-examine, which means ask questions of, any witness who may testify at this hearing; and
4. Present to the court any witnesses or other evidence you may desire.

In the case of reports submitted by the Department of Social Services, you also have the right to cross-examine the social worker who prepared the reports. Further, you have the right to present evidence and to use the court's subpoena power to bring witnesses to court to testify on your behalf. Finally, you have a right against self-incrimination, which means that no one can force you to say anything that might be used against you as the basis for, or in connection with, criminal proceedings. I would advise you, however, that you also have "use immunity" for any testimony you give in these proceedings. This means that your testimony here cannot be used in a criminal proceeding against you.

If you have any questions regarding immunity, I suggest that you discuss the issue further with your attorney. Now, do you understand each of these rights that I have explained to you?

(11) *Evidence*

*[Court reads any written reports, which the parties should have had an opportunity to review, and states for the record all material read by the court.]*

The court receives into evidence the report of *[date]*.

*Note:* The term for the social worker's report varies from county to county. Whatever the local usage is, the court must indicate which documents it is relying on.

*[Court should orally examine child, if present, and parents or other persons for relevant knowledge bearing on grounds for detention. (Child is often not present at a detention hearing.) Court allows cross-examination of any witness who may testify.]*

Now is the time for you to present any evidence or make any statement you may wish to make before the court decides whether *[name of child]* should remain in protective custody.

## **B. [§100.59] Detention Script: Findings and Orders**

### *(1) Introduction*

The court has read and considered [*name the documents, e.g., the petition or the social worker's report of [date], and attached documents, or local name for social worker's report, e.g., social study*]. The court has also considered the testimony of the witnesses and their demeanor on the stand, as well as the arguments of counsel.

### *(2) Parties*

The court finds that the legal status of [*name of party*] is [*describe*].

*Note:* The court may make a finding of whether each man who claims or is alleged to be the father is a biological, alleged, or presumed father (unless there is a legal father by virtue of the conclusive presumption of Fam C §7540) if the court has sufficient information to do so. See §§100.32–100.33.

### *(3) Detention*

#### *[No prima facie case]*

The court finds that no prima facie case has been made that [*name of child*] is a person described by Welfare and Institutions Code section 300, nor do any of the circumstances outlined in Welfare and Institutions Code section 319 subsections (b)(1) through (4) apply. [*Name of child*] should not remain in protective custody in the shelter pending the jurisdiction hearing and is hereby released to the custody of [*his/her*] [*mother/father/guardian(s)*] on the following conditions: [*state conditions*].

#### *[Prima facie case]*

Good cause appearing, the court finds that a prima facie case has been made that [*name of child*] is a person described by Welfare and Institutions Code section 300 because of [*list facts*]. In addition, [*this/these*] circumstance(s) outlined in Welfare and Institutions Code section 319, subsections (b)(1) through (4), [*applies/apply*]: [*List one or more and provide reasons for the conclusions.*]

- [*There is substantial danger to the physical health of the child/The child suffers from severe emotional damage*] and there are no reasonable means by which the child's [*physical/emotional*] health may be safeguarded without removal.

*Note:* All findings must be made on the record and in the written orders. Cal Rules of Ct 5.674(b).

- There is substantial evidence that the [*parent(s)/guardian(s)/ custodian(s)*] [*is/are*] likely to flee the jurisdiction.
- The child has left placement in which [*he/she*] was placed by order of the juvenile court.
- The child is unwilling to return home, and it is alleged that [*he/she*] has been physically or sexually abused by a person in the home.

*[Under Cal Rules of Ct 5.678(a), (d) when ordering detention, the court must make these additional findings]*

- The initial detention was justified because [*state reasons, e.g. substantial danger to physical health*].
- The child's continuing residence in the home of the parent or legal guardian is contrary to the child's welfare under California Rules of Court 5.678(a)(2).
- The child is ordered detained and temporarily placed in the care of the Department of Social Services pending disposition or further court order. [*The court approves placement with [emergency shelter/foster care/name of relative who is willing and available to take the child].*]

The following services are ordered as soon as possible. [*List services; see §100.38.*]

*Note:* (1) The court may also announce any temporary restraining orders granted. (2) It is possible to find that a prima facie case was made, but that there are no grounds for continuing detention.

Do you have any questions about the court's order or what is going to take place in the future?

*(4) Preplacement preventive services*

The court finds that preplacement preventive efforts were made to avoid removing the child from the home. [*State facts.*] This finding is based on the [*name of the document, such as Declaration of Efforts*], dated \_\_\_\_\_.

[Or]

Reasonable efforts have not been made.

*(5) Jurisdiction hearing*

The jurisdiction hearing is scheduled for [*date*] at \_\_\_\_\_ [*a.m./p.m.*], in Department \_\_\_\_\_.

*Note:* The court might want to ask whether time is waived, although under Welf & I C §352(c), waiver is implied if a party is represented by counsel and no objection is made to a continuance.

*(6) Settlement/readiness/status conference (if jurisdiction is not contested)*

You are ordered to be present at the [*name of conference or hearing, e.g., settlement, readiness, status conference, or uncontested jurisdictional hearing*] on [*date*], at \_\_\_\_\_ [*a.m./p.m.*], in Department \_\_\_\_\_. If you fail to appear, your default will be entered and the court may make findings and orders affecting your parental rights.

*Note:* The judge should make it clear that, whatever this conference is called, it is also a jurisdictional hearing, and the court will be able to make jurisdictional findings even if the parties fail to appear.

#### **D. [§100.61] Advisements and Inquiries at Detention Hearing**

Prepared by the Center for Families, Children, and the Courts

1. Advise of right to be represented by counsel at each stage of proceedings (see §§100.16–100.18).
2. Advise of following hearing rights (see §100.25):
  - Right to assert privilege against self incrimination,
  - Right to confront and cross-examine preparer of report/document submitted to court and witnesses called to testify,
  - Right to subpoena witnesses, and
  - Right to be present in court.
3. Advise and inform generally of (see §100.25):
  - Contents of the petition.
  - Nature and possible consequences of juvenile court proceedings.
  - Reason child taken into custody and purpose/scope of detention hearing.
  - Time limitations on reunification services.
4. Parentage inquiry—order mother to identify and provide address of all presumed or alleged fathers (see §§100.32–100.33).
5. Designated mailing address (see §100.25):
  - Order parents to provide,
  - Advise that it be used for purposes of notice of hearing and mailing of all documents,
  - Advise that it will be used until and unless written notification of change of mailing address is provided.
6. Relatives (see generally §100.39):
  - Order parent to provide to social worker name, address, other known identifying information for paternal and maternal relatives.
  - Advise of possible placement of child with non-custodial parent pursuant to section 361.2 of the Welfare and Institutions Code, if child removed from the custodial parent’s care.
7. Indian Child Welfare Act and Cal Rules of Court 5.480–482 (see §§100.49–100.57).
  - Inquire whether child is or may be an Indian child.
  - Probable cause to believe child may be Indian child. The court must proceed as if child is Indian child.
8. May make an emergency removal of a child under applicable state laws in order to prevent imminent physical damage or harm to the child (see §100.39).

## **Jurisdiction Hearing**

### **A. [§101.2] Uncontested Hearing**

(1) *Attorneys serving as temporary judges should obtain a stipulation from the parties, following the procedures set out under Cal Rules of Ct 2.816. If it is desired that a referee (or commissioner assigned as a referee) hear a case as a temporary judge, a written stipulation must be obtained from the parties. See discussion in §101.34.*

(2) *Call the case.* In many counties, the social worker assigned to the court as court officer or the deputy county counsel calls the case and announces the appearances.

*Note:* Some judicial officers will first call the entire calendar to determine which cases are ready and in what order they will be taken.

(3) *Determine the identity of those present and each person's interest in the case before the court.* Welf & I C §§346, 349; Cal Rules of Ct 5.530(b).

- *Exclude all persons from the court except parties (including the child), counsel for the parties, or anyone found by the court to have a direct and legitimate interest in the particular case or the work of the court.* Welf & I C §§345–346, 349.
- *Ask each parent or guardian to confirm for the court his or her permanent mailing address.*
- *Remind each parent or guardian that the designated mailing address will be used by the court and the social services agency for notification purposes until the parent or guardian provides a new address in writing to the court or social services agency.* Welf & I C §316.1(a); Cal Rules of Ct 5.534(m). Judges should also advise the parents that they may change the addresses by written notice as often as they need to. Judicial Council form, Notification of Mailing Address (JV-140), must be completed by the parent or guardian and filed with the court.

(4) *Make a finding whether notice has been given or attempted as required by law.* See Cal Rules of Ct 5.534(l).

(5) *If a parent or guardian has been notified and fails to appear, make a finding to that effect and indicate that the hearing is going to proceed in the absence of that parent or guardian.* See, e.g., *In re Christopher A.* (1991) 226 CA3d 1154, 1162, 277 CR 302. There is no “default” procedure in juvenile dependency hearings. See *In re Stacy T.* (1997) 52 CA4th 1415, 1422 n4, 61 CR2d 319. “Evidence preclusion” is an inappropriate sanction for a parent who fails to appear or appears late for a jurisdiction or disposition hearing that had been rescheduled a few times; proceeding in the parent’s absence is a better alternative. *In re Vanessa M.* (2006) 138 CA4th 1121, 1129–1131, 41 CR3d 909.

(6) *Unless the inquiry was conducted and resolved at the initial or detention hearing, the court must inquire about the identities and addresses of the presumed or alleged parents.* If a parentage inquiry was made at the initial or detention hearing, and the question of parentage was not fully resolved, the judge should inquire as to the progress made to resolve the issue (e.g., whether there are results of paternity tests, etc.). Welf & I C §316.2. See discussion in California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §§100.32–100.33 (Cal CJER).

(7) *Inquire whether the child has American Indian heritage and, if so, take steps to ensure that proper inquiry is made and if required proper ICWA notice is given.* See California Judges

Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §§100.48–100.51 (Cal CJER).

*Note:* The steps that follow (including appointment of counsel) will normally have been done at the detention hearing, and therefore may not have to be taken at the jurisdiction hearing.

(8) *Ask whether the factual information (names, dates, addresses, ages, etc.) on the petition is correct.* The judge should order that the petition be corrected by interlineation if, on inquiry, any of the participants provides corrections to the names, dates, addresses, ages, or other factual information in the petition. If one of the parents is a victim of domestic violence and is living apart from the batterer-parent, the address of the victim parent must remain confidential. Welf & I C §332(e).

(9) *If a parent, guardian, or Indian custodian is not already represented by counsel, advise him or her of the statutory right to counsel, including appointed counsel if appropriate.* The judge should appoint counsel for the parent, guardian, or Indian custodian as warranted, including any incarcerated or institutionalized parent, guardian, or Indian custodian. Welf & I C §317(a).

(10) *If child is unrepresented, determine if it is still the case that the child would not benefit from appointment of counsel, and, if so, make findings as to why.* Welf & I C §317(c). Otherwise appoint counsel to represent the child, and designate the attorney as the Child Abuse Prevention and Treatment Act (CAPTA) guardian ad litem. See Welf & I C §317; Cal Rules of Ct 5.534(g)–(h), 5.662(c).

(11) *Unless waived by counsel, read, or have the clerk read, a copy of the petition to those present.* Unless waived by counsel, the judge should explain the meaning and content of the allegations, as well as the nature of the hearing, procedures, and possible outcomes. Welf & I C §353; Cal Rules of Ct 5.682(a).

(12) *Advise the parties of their hearing rights, and inquire whether they understand and wish to waive those rights.* Cal Rules of Ct 5.682(b), (c). If the parties did not attend the initial or detention hearing, the judge should give the advisements discussed in California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §100.25.

(13) *Ask whether the parent or guardian wishes to admit, plead no contest, or deny the allegations in the petition, or submit the matter on the reports.* Cal Rules of Ct 5.682(c), (e).

(14) *If the parent or guardian denies the allegations and does not submit the matter on the reports, follow the checklist in §101.3, Contested Hearing.* Cal Rules of Ct 5.682(c).

(15) *If the parent or guardian neither admits nor denies the allegations, state on the record that the parent or guardian does not admit the allegations and follow the checklist in §101.3, Contested Hearing.* Cal Rules of Ct 5.682(c).

(16) *If the parent or guardian wishes to admit the allegations, plead “no contest,” or submit the matter based on the social worker’s reports, determine whether the parent or guardian understands the allegations, knowingly and intelligently waives the right to a contested hearing on the petition, and understands the consequences of the admission, plea of “no contest,” or submission.* Cal Rules of Ct 5.682(c). Judicial Council form, Waiver of Rights (JV-190), must be used for taking this waiver. See discussion in §101.32.

- **JUDICIAL TIP:** If the parent or guardian has submitted the matter, the judge should ask each attorney (including the child’s attorney) whether cross-examination of the social worker is waived and ask the parent and attorney to complete JV-190.

(17) *If there is an admission, plea of “no contest,” or submission, make a finding on the record that the parent or guardian understands the allegations and understands and waives hearing rights.* Cal Rules of Ct 5.682(c). See script in §101.53.

➤ **JUDICIAL TIP:** If the parent or guardian is submitting the matter, the judge should inquire whether the submission is on the reports or on the reports *and* recommendation. See *In re Richard K.* (1994) 25 CA4th 580, 589–590, 30 CR2d 575; discussion in §101.26. The court should also inquire as to whether any submission is the result of a negotiated settlement and, if so, have the terms set forth on the record.

(18) *If the parent or guardian has pleaded no contest or has submitted the jurisdictional determination based on information provided in the social worker’s report, review the report and any attached documents to determine if they support the allegations in the petition.* If the parent or guardian has admitted the allegations, the judge should review the social worker’s reports and any attached documents to determine a factual basis for the plea.

(19) *If the positions of all parents and guardians have been considered, make findings of whether the child is described by Welf & I C §300 and, if so, under which specific subsections; make additional findings required in uncontested cases under Cal Rules of Ct 5.682(f).*

(20) *If jurisdictional findings have been made, proceed to a disposition hearing or continue the matter for a disposition hearing under Cal Rules of Ct 5.686 and 5.690.* Welf & I C §358; Cal Rules of Ct 5.682(g).

(21) *If DSS had alleged that Welf & I C §361.5(b) or (e)(1) (no reunification services) may be applicable, continue the disposition hearing for a period not to exceed 30 calendar days.* Welf & I C §358(a)(3); Cal Rules of Ct 5.686(b). The court must order DSS to notify each parent of Welf & I C §361.5(b) and must inform each parent that if no reunification is ordered at the disposition hearing for any parent or guardian, a .26 hearing (a hearing held under Welf & I C §366.26) will be held and parental rights may be terminated. Welf & I C §358(a)(3); Cal Rules of Ct 5.686(b). When the parent is present at the hearing and has had an opportunity to review the recommendations, the court need not continue the matter if the parent waives that right and permits disposition to proceed. See generally discussion in §101.50. If the parent or guardian was not present at the detention hearing, the court should also give the more detailed advisements noted in California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §100.19 (Cal CJER).

## **B. [§101.3] Contested Hearing**

(1) *Follow steps (1) through (14) from checklist in §101.2, Uncontested Hearing.*

(2) *Receive the evidence, including the social worker's report and attachments, the report of any court-appointed special advocate, and any testimony.* Except as provided in Welf & I C §355.1 and subdivisions (c), (d), and (e) of Cal Rules of Ct 5.684, judges should rule on admission or exclusion of evidence according to the Evidence Code as it applies to civil cases. Cal Rules of Ct 5.684(b). The social worker who prepared the report must be available for cross-examination. Cal Rules of Ct 5.684(c)(2). The preparer may be on telephone standby if the preparer can be present in court within a reasonable time. Cal Rules of Ct 5.684(c)(2).

- *If the child's testimony is required, plan for and facilitate the child's testimony as appropriate.* See Welf & I C §350; Cal Rules of Ct 5.534(c). See also §§101.42–101.46
- *Receive the social worker's report and any attachments if the social worker is available for cross-examination or is on telephone standby and can be present in court within a reasonable time.*
- *Do not base jurisdiction findings or any other finding of ultimate fact on which a jurisdiction finding is made on hearsay contained in the report if a party objects to particular hearsay in the report and provides DSS a reasonable period to meet the objection unless:*
  - The hearsay is admissible under any statutory or judicial hearsay exception;
  - The hearsay declarant is a child under 12 years of age who is the subject of the petition, except if the objecting party establishes that the statement was produced by fraud, deceit, or undue influence and is therefore unreliable;
  - The hearsay declarant is a peace officer, health practitioner, social worker, or teacher and the statement would be admissible if the declarant were testifying in court; or
  - The hearsay declarant is available for cross-examination. Welf & I C §355(c); Cal Rules of Ct 5.684(d)(4). See also discussion in §§101.40, 101.43.
- *Consider the operation of any applicable presumptions.* Welf & I C §355.1; see discussion in §101.19.

(3) *Make findings as to whether the child is one described by Welf & I C §300 as alleged in the petition or find, based on proof, that the child is described by a different subsection of Welf & I C §300 than that alleged in the petition.* The court may amend the petition to conform to the evidence if necessary, including striking any portion of the petition found to be not proved. See Welf & I C §348. The allegations must be proved by a preponderance of the evidence. Welf & I C §355(a).

(4) *If the child is found to come within Welf & I C §300, make findings required by Welf & I C §356 and Cal Rules of Ct 5.684(f).* See discussion in §101.48 and form in §101.53.

(5) *If the child is not found to come within Welf & I C §300, dismiss the petition, order that any previously ordered detention be terminated, and make findings required by Cal Rules of Ct 5.684(h).* See Welf & I C §356. In such an instance, the court must order the child returned to the parents' or guardians' custody within two working days unless the parent or guardian and DSS agree to a later date. Cal Rules of Ct 5.684(h).

(6) *If jurisdictional findings have been made, proceed to a disposition hearing or continue the matter for a disposition hearing under Cal Rules of Ct 5.686 and 5.690. See Welf & I C §358(a); Cal Rules of Ct 5.684(g).*

(7) *If DSS had alleged that Welf & I C §361.5(b) or (e)(1) (no reunification services) may be applicable, the disposition hearing must be continued for a period not to exceed 30 days. The court must order DSS to notify each parent of Welf & I C §361.5(b) and must inform each parent that if reunification is not ordered at the disposition hearing, a .26 hearing will be held, and parental rights may be terminated. Welf & I C §358(a)(3); Cal Rules of Ct 5.686(b). See discussion in §101.50. If the parent had been present at the hearing and has had an opportunity to review the recommendations, the court need not continue the matter if the parent waives that right and permits disposition to proceed, with the understanding that a .26 hearing may result.*

## A. [§101.53] Script: Conduct of Jurisdiction Hearing

### (1) Introduction

[Mr./Ms.] [name of clerk], please swear all persons who may wish to speak during the proceedings.

### (2) Appointment of attorney for parent(s) or guardian(s)

*[If parent(s) or guardian(s) is/are unrepresented by counsel]*

You have a right to be represented by an attorney during this jurisdiction hearing, and during all other hearings in the juvenile court. *[If you want to employ a private attorney, the court will give you an opportunity to do so./The court has reviewed the financial declaration of [parent(s)/guardian(s)] and finds that [he/she/they] [is/are] entitled to appointment of counsel. At this time, the court appoints [name of attorney] to represent [him/her/them].]*

- **JUDICIAL TIP:** When the attorney is on the staff of a government agency, it is the office, not the individual attorney, who is being appointed.

*[If parent(s) or guardian(s) waive(s) counsel]*

This is a serious matter. If the court finds that the allegations in the petition are true, there is a possibility that [name of child] may be placed outside your home and that, eventually, your parental rights may be terminated. Do you have any questions about your right to have an attorney represent you at this hearing? Understanding this right and the possible consequences of this hearing, do you want to proceed at this time without an attorney?

*[When applicable, add]*

The court now finds that the [parent(s)/guardian(s)] [has/have] intelligently waived [his/her/their] right to counsel at this hearing.

### (3) Attorney for child

The court has read and considered the documentary material submitted by the Department of Social Services for the limited purpose of assessing whether to appoint counsel for the child. Would anyone like to be heard on this issue?

*[After hearing evidence, if any, on issue of child's need for attorney]*

The court finds, based on the facts of this case, that *[there is no identifiable benefit to the child that would require appointment of counsel at this time because [give explanation from Cal Rules of Ct 5.660(b)]./there is a need to appoint counsel for the child at this time. The court appoints [name of attorney] to represent the child].*

### (4) Explanation of procedure

I am going to explain to you what happens at these juvenile court proceedings. These proceedings are divided into several separate hearings. You have already participated in an initial or detention hearing. Today's hearing is a jurisdiction hearing. This hearing will determine whether there will need to be a third hearing, called a disposition hearing. If [name of child] is not able to be returned home at the disposition hearing, there may be later hearings that may result in the termination of parental rights.

You are in court today for a jurisdiction hearing. The purpose of this hearing is to decide whether the facts contained in the petition, which [*has been/will be*] read to you, are true. If the court finds that the facts are not true, the court will dismiss the case. If the court finds them to be true, the court will then conduct a disposition hearing. The purpose of a disposition hearing is to decide what action, if any, the court should take in view of what has been found to have happened.

If the petition is sustained today (that is, if the court finds that the facts are true) and if [*name of child*] is declared a dependent of the court and removed from the custody of his or her parent or guardian, court-ordered reunification services may not be provided for more than 12 months for a child who is over three years old at the time of removal or six months for a child who was under three years old at the time of removal if the parent or guardian does not participate regularly in a court-ordered treatment program.

Because your child is \_\_\_ years old, reunification services are limited to [*six/12*] months.

*Note:* See Cal Rules of Ct 5.668(a) (applicable to detention hearings). Often the attorney for the parent(s) or guardian(s) will state that he or she has explained these matters to the parent(s) or guardian(s) and will go on to explain the position of the parent(s) or guardian(s). Many judges train attorneys who appear in their courts to take this responsibility.

(5) *Notice*

[*One parent or guardian not present; make sure that the absent parent or guardian received notice of the hearing. If so, state*]

The court finds that notice has been given as required by law. The [*mother/father/guardian*] has failed to appear.

[*Both parents or guardian(s) present*]

The court finds that the [*mother/father/guardian(s)*], the child, and all counsel were notified of this hearing and served with the petition as required by law.

[*Notice attempted*]

The court finds that the following attempts were made to locate the [*mother/father/guardian(s)*]: [*List attempts.*]. The court has reviewed the declaration of search and finds that the efforts made to locate and serve the [*parent(s)/guardian(s)*] were reasonable.

[*Insufficient attempts at notice*]

The court finds that the Department has not used due diligence in attempting to locate the [*parent(s)/guardian(s)*]. The case is therefore continued for one day. [*The Department must take the following steps to locate the [parent(s)/guardian(s)]: [List them, e.g., check with Department of Corrections or with child's school.]*]

*Note:* Only rarely should a judge dictate to DSS specific search efforts that must be undertaken.

(6) *Waiver of reading of petition and advisement of rights*

[*To each counsel*]

Does your client waive reading of the petition and advisement of rights?

*(7) Reading the petition*

*[If not waived, read the petition.]*

Does each of you understand the petition just read, or do you have any question about it that you would like to have answered by the court?

Are there any changes to names, addresses, or ages in the petition that should be corrected?

*(8) Advisement re addresses under Welf & IC §316.1*

The address that *[is in the petition/you gave the court [at the detention hearing/today]]* will be used by the court and the social worker for all further notices unless you advise the court and the social worker of any changes in address.

*(9) Advisement of rights*

You have certain rights at this hearing. These are the right to (1) see and hear all witnesses who may be examined by the court at this hearing; (2) cross-examine, which means ask questions of, any witness who may testify at this hearing; (3) present to the court any witnesses or other evidence you may desire; and (4) have a hearing on the issues raised in the petition. You have the right to assert the privilege against self-incrimination *[but anything you say in this or in any other dependency proceeding may not be admissible as evidence in any other action or proceeding]*.

*(10) Parent's or guardian's plea*

Do you intend to admit or deny the statements contained in the petition?

- ☛ **JUDICIAL TIP:** Many judges consciously refrain from using language that might frighten the parents. They therefore use the phrase “statements contained in the petition,” rather than “allegations.”

*(11) Parent or guardian admits or pleads “no contest”*

If you admit or do not contest the facts stated in the petition, the court must make its findings on the basis of the petition and any evidence presented by the Department whether those facts are true or not. Do you understand this situation?

Would you like any further explanation concerning the petition or any of the facts stated in it?

Do you understand that by *[admitting/not contesting]* the facts contained in the petition, the court has only the petition and any evidence presented by the Department on which to base its decision?

Do you have any questions about your right to contest the petition?

Do you understand that if the court takes jurisdiction, it may declare your child a dependent of the court and may then remove *[him/her]* from your home? Do you also understand that if this

happens and you are not successful in reunifying within the time limits we discussed previously that your parental rights may be terminated? Do you have any questions about this process?

- ☛ JUDICIAL TIP: Some judges add here that “termination of parental rights means that some other parents may adopt your child and that you will no longer be the mom or dad. Therefore, it is important to participate fully in the case plan that you have been given.”

Understanding this right and the possible consequences, do you want to proceed at this time to [*admit the allegations/plead no contest*]? Do you admit the truth of the statements contained in the petition?

The court now finds that the parents understand the allegations, have intelligently waived their right to contest the petition, and understand the consequences of their decision.

(12) *Parent or guardian denies the allegations or neither admits nor denies them*

The [*parent/guardian*], [*name of parent or guardian*], does not admit the allegations.

(13) *The parent or guardian submits the jurisdictional determination based on information provided in the social worker’s report*

[*To parent or guardian*]

If the court makes findings solely on the basis of the evidence in the social worker’s report, do you understand that you will have given up your right to cross-examine those who prepared the report and to deny the statements found in the report?

The court now finds that the parents understand the allegations, have intelligently waived their right to contest the petition, and understand the consequences of their decision.

[*To parent, guardian, and the attorneys*]

May the court base its findings solely on the social worker’s report and other documents that it has received?

The court receives into evidence the report dated [*date*].

*Note:* The term for the social worker’s report varies from county to county. Whatever the local usage, the court must indicate which documents it is relying on.

[*Court reads any written reports and attachments and states for the record all material read.*]

(14) *Parent or guardian denies the allegations or neither admits nor denies them*

Now is the time for you to present any evidence or make any statement you may wish to make before the court decides whether allegations in the petition are true.

*Note:* The judge should orally examine the child, if present, and the parents or other persons with relevant knowledge bearing on the allegations in the petition. The judge should allow cross-examination of any witness who may testify.

(15) *Introduction of court process to child witness*

Hello. I am Judge [name]. I am in charge of this courtroom, My job is to make sure that everything is fair and that everyone else here does his or her job correctly. This is Bailiff [name]. [He/She] is here to make sure that no one gets hurt. [Mr./Ms.] [name] is the court reporter. [He/She] will write down everything that people say so that if anyone later forgets what was said, we can look it up. It is important to speak loudly and clearly so that [Mr./Ms.] [name] can hear you.

[Mr./Ms.] [names] are the lawyers. They will be asking you some questions. Their job is to help you tell what you saw and heard so that we can find out the truth.

It is very important to tell the truth, because if I do not understand the whole truth, I may not be able to make the plan that is best for everyone.

You will be answering questions this afternoon. We will stop often so that everyone may have a rest. If you have any problems before the next break, let [name of support person/name of attorney/me] know.

Also, you may not understand all the questions. We are used to talking to other adults and not to children. When you don't understand a question, raise your hand and let me know that you don't understand. If you don't know the answer to a question, just say "I don't know" or "I don't remember."

#### (16) *Assessing child's competency*

Judges and child development experts suggest assessing a child's communication skills and other aspects of competency by determining whether the child's speech is intelligible and whether the child can stay on a topic. See THE CHILD VICTIM WITNESS BENCH HANDBOOK APPENDIX A (CJER 2009). Following are some suggested conversational openers designed to permit this determination:

Here we are in the courtroom. What do you see here?

What did you do this morning?

*[For school-age children]*

Tell me about your school.

What do you do when you first get to school?

What do you do after lunch?

— Tell me more about [*specify activities*].

What is your favorite part of the day?

— Tell me more about it.

What is your favorite television program?

— Tell me about it.

— Who is in it?

— What happens in the program?

#### (17) *Right to seek modification*

*[Once a child has been adjudged a dependent, to the child if at least 12 years old]*

You have a right to ask for changes in any of these juvenile court orders by filing a petition for modification under Welfare and Institutions Code section 388. The forms for filing such a petition are available here in the courtroom (see Welf & I C §353.1). Once you file this petition, you will need to come to court for a hearing.

## B. [§101.54] Script: Findings and Orders

### (1) Introduction

The court has read and considered [*name the documents, which might be the petition, the social worker's report (specify date), and attached documents or whatever the local nomenclature is*]. The court has also considered the testimony of the witnesses and their demeanor on the stand, as well as the arguments of counsel.

### (2) Parties

The court finds that the legal status of [*name*] is [*status of man who claims or is claimed to be the father*].

*Note:* As to each man who claims to be (or is alleged by others to be) the father, the court may make a finding as to whether he is a biological or presumed father after holding a hearing on the issue. If the evidence does not establish that he is the biological or presumed father, the court may find that he is not the father of the child or that he remains only an alleged father. See Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §§100.32–100.33 (Cal CJER).

### (3) After uncontested hearing

[*If allegations are not sustained*]

- a. Notice has been given as required by law.
- b. The birthdate of the child is [*date*], and the child's county of residence is [*state name of county*].
- c. The parents or guardian(s) have knowingly waived the rights to
  - Trial on the issues,
  - Assert any privilege against self-incrimination,
  - Confront and cross-examine adverse witnesses, and
  - Use the court's process to compel attendance of witnesses.
- d. The parents or guardian(s) understand the nature of the conduct alleged in the petition and the potential consequences of their admission, plea of no contest, or submission.
- e. The admission, plea of no contest, or submission has been made voluntarily and freely.

The court finds that the allegations in the petition have not been sustained. The case is dismissed [*and any previously ordered detention is terminated*].

[*If allegations are found to be true*]

The court finds that the allegations in the petition are sustained by a preponderance of the evidence and that [*name of child*] is a child described by Welfare and Institutions Code section 300, subsections \_\_\_\_.

- ☛ **JUDICIAL TIP:** Some judges make these findings by clear and convincing evidence whenever warranted.

The court also finds that:

- a. Notice has been given as required by law.
- b. The birthdate of the child is [date], and the child's county of residence is [state name of county],
- c. The parents or guardian(s) have knowingly waived the rights to
  - Trial on the issues,
  - Assert the privilege against self-incrimination,
  - Confront and cross-examine adverse witnesses, and
  - Use the court's process to compel attendance of witnesses.
- d. The parents or guardian(s) understand the nature of the conduct alleged in the petition and the potential consequences of their admission, plea of no contest, or submission.
- e. The admission, plea of no contest, or submission has been made voluntarily and freely.
- f. There is a factual basis for the admission.
- g. The admitted allegations of the petition are true as alleged.

*(4) After contested hearing*

The court finds that the allegations in the petition have not been proved by a preponderance of the evidence. The court also finds that notice has been given as required by law and that the birthdate of the child is [date], and the child's county of residence is [state name of county]. The case is dismissed [and any previously ordered detention is terminated].

[Or]

The court finds that the allegations in the petition have been proved by a preponderance of the evidence and that [name of child] is a child described by Welfare and Institutions Code section 300, subsections \_\_\_\_\_.

The court also finds that:

- a. Notice has been given as required by law.
- b. The birthdate of the child is [date], and the child's county of residence is [state name of county].

*(5) Disposition hearing*

The disposition hearing is scheduled for [date], at \_\_\_\_\_ .m. in Department \_\_\_\_\_. [Name of parent(s), guardian(s), etc.] [is/are] ordered to attend.

*Note:* The court may order the disposition hearing to be continued. Under Welf & I C §352(c), waiver is implied if a party is represented by counsel and no objection is made to a continuance.

## JUVENILE DEPENDENCY DISPOSITION HEARING

### II. [§102.2] PROCEDURAL CHECKLIST

(1) *Attorneys serving as temporary judges should obtain a stipulation from the parties under Cal Rules of Ct 2.816.* If it is desired that a referee (or commissioner assigned as a referee) hear a case as a temporary judge, a written stipulation must be obtained from the parties. See discussion in §§102.23–102.25.

(2) *Call the case.* In many counties, the social worker serving as court officer or the deputy county counsel calls the case and announces the appearances. Some judicial officers first call the entire calendar to determine which cases are ready and in what order they will be taken.

(3) *Determine the identity of those present and each person's interest in the case before the court.* Welf & I C §§346, 349; Cal Rules of Ct 5.530(b), (d)–(e).

- *If requested, determine whether anyone requesting de facto parent status, any relative, or any other member of the public should be present.* Welf & I C §346; Cal Rules of Ct 5.502(10), 5.530(b), (e), 5.534(e)–(f).
- *If not handled at an earlier hearing, inquire about the identity and address of a presumed or alleged father or mother.* See Welf & I C §316.2; Cal Rules of Ct 5.635.
- *Exclude all persons from the court except the parties, persons declared to be de facto parents, counsel, and anyone found by the court to have a direct and legitimate interest in the particular case or the work of the court.* Welf & I C §§345–346.
- *Ask each parent or guardian to confirm for the court his or her permanent mailing address.*
- *Remind each parent or guardian that the designated mailing address will be used by the court and the social services agency for notification purposes until the parent or guardian provides a new address in writing to the court or social services agency.* Welf & I C §316.1(a); Cal Rules of Ct 5.534(m).
- *If the child is 10 years old or older and is present, permit his or her participation if he or she desires it.* Welf & I C §349(a), (c); Cal Rules of Ct 5.534(p)(1). *If the child is not present, determine whether he or she was properly notified of his or her right to attend the hearing and inquire whether he or she was given an opportunity to attend.* See Welf & I C §349(d); Cal Rules of Ct 5.534(p)(2). If the child was not properly notified or if he or she wished to be present and was not given an opportunity to be present, the court must continue the hearing but only for that period of time necessary to provide notice and secure the child's presence, unless it finds that a continuance would not be in the child's best interest. Welf & I C §349(d); Cal Rules of Ct 5.534(p)(2).

*Note:* The steps above concerning notice and determination of paternity and some of those that follow (including appointment of counsel) will usually have been taken at the detention or jurisdiction hearing and therefore will not have to be repeated at the disposition hearing unless the parent is appearing for the first time.

- ➡ **JUDICIAL TIP:** Judges should ensure that the clerk places the addresses and the advisement into the minute order and that DSS gets the order.

(4) *If no parent or guardian is present:*

- *Determine whether the parent or guardian received actual notice of the hearing.* In addition to the notice to appear made under Welf & I C §§297 (supplemental and subsequent petitions) and 332, the juvenile court may issue a citation directing any parent, guardian, or foster parent to appear and bring the child to the hearing. Welf & I C §362.3.
- *If not, determine whether due diligence efforts to serve them were made.*
- *If due diligence efforts are not found, continue the hearing for a reasonable time to permit proper service.*
- *Make a finding that notice has or has not been given or attempted as required by law.* See Cal Rules of Ct 5.534(l).

➤ **JUDICIAL TIP:** If the disposition hearing followed immediately after the jurisdiction hearing, it is not necessary at the disposition hearing to check that notice was properly given. However, it may still be good practice for judges to do so. If there is a finding of notice at this hearing, the judge should ensure that the clerk enters it, and all findings, in the minute order.

(5) *If a parent is present for the first time, inquire whether the child has American Indian heritage and, if so, the nature of that heritage, including whether the parent or child is a member of a recognized tribe and the name of the tribe if known. The court must take steps to ensure that proper notice is given.* See Welf & I C §224–224.2; Cal Rules of Ct 5.534(i), 5.481; discussion in California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §§100.48–100.51 (Cal CJER).

(6) *Advise any unrepresented parent or guardian of the right to retain counsel and the right to appointed counsel if he or she desires counsel and cannot afford to retain one.* If counsel has been retained or appointed to represent more than one parent or guardian, the court must examine the parties to determine if a present or potential conflict exists. If there has been no prior resolution of this issue and therefore no conflict of interest statement is on file, the court should obtain a personal waiver of conflict of interest from each of the affected parties or take steps to ensure that the rights of all parties are protected. The court must appoint counsel for an unrepresented parent or guardian as warranted, including any incarcerated parents. Welf & I C §317(a)(1); Cal Rules of Ct 5.534(g)–(h). If the child is an Indian child, the court must appoint counsel for the parent, Indian custodian, or Indian guardian. Welf & I C §317(a)(2); 25 USC §1912(b).

*Note:* Counsel will usually have been appointed for the parents and the child at the earlier detention or jurisdiction hearings

➤ **JUDICIAL TIP:** If the parents had waived their right to counsel earlier, the judge may check to see if a valid waiver is in the file. If the parent is in custody, the social worker or other appropriate person should be directed to contact the parent to ask whether he or she desires counsel.

(7) *If the child is not represented by counsel, appoint one unless the child would not benefit from the appointment.* The court must state on the record the reasons for any finding that the child would not benefit from counsel. Welf & I C §317(c); Cal Rules of Ct 5.534(g)–(h). See also Cal Rules of Ct 5.660 (standards for appointment, required findings when child would not

benefit from counsel, and use of CASA (court-appointed special advocate) as guardian ad litem, alternative to counsel).

➡ JUDICIAL TIPS:

- If there are siblings, the court should consider appointing separate attorneys for each sibling when they have different interests. See *In re Clifton B.* (2000) 81 CA4th 415, 428, 96 CR2d 778; Cal Rules of Ct 5.660(c). When there is a reasonable likelihood that a conflict of interest among siblings will arise, the court must appoint separate counsel. *Carroll v Superior Court* (2002) 101 CA4th 1423, 1429–1430, 124 CR2d 891.
- Some judges will also appoint a CASA to advocate for the child’s interests. See Welf & I C §356.5; Cal Rules of Ct 5.655.

(8) *Unless the inquiry was conducted and resolved at the initial or detention hearing or the jurisdiction hearing, the court must inquire about the identities and addresses of the presumed or alleged parents.* If a parentage inquiry was made at the initial or detention hearing, and the question of parentage was not fully resolved, the judge should ask about the progress made to resolve the issue (e.g., whether there are results of paternity tests). Welf & I C §316.2. See discussion in California Judges Benchguide 100: *Juvenile Dependency Initial or Detention Hearing* §§100.32–100.33 (Cal CJER).

(9) *Advise the parties of their hearing rights or obtain a waiver.* Cal Rules of Ct 5.534(k). The judicial officer should ask the attorneys whether they have explained these rights to their respective clients and then should ask the parties to confirm that they have had the rights explained to them, that they understand them, and that they waive formal reading of them. If the disposition hearing followed immediately after the jurisdiction hearing, the court need not re-advise the parties of their rights or obtain a new waiver at this time. See discussion in §102.27

(10) *Review the documentary evidence and read and consider any reports prepared by DSS, including recommendations contained in the reports and attachments; state on the record that the reports have been read, considered, and received into evidence.* See Welf & I C §§358(b), 358.1; Cal Rules of Ct 5.690. The social study (see §§102.28–102.30) must be submitted to the clerk at least 48 hours before the disposition hearing is scheduled to begin. Cal Rules of Ct 5.690(a)(2).

(11) *Read and consider the reports or testimony of any court-appointed special advocate (CASA).* Welf & I C §358(b).

(12) *Consider the testimony provided and other items offered.* See Welf & I C §358(a); Cal Rules of Ct 5.690(b).

(13) *Plan for facilitating child’s testimony if one or more parties request that the child testify.* See Welf & I C §350(b); Cal Rules of Ct 5.534(c). Usually the child has testified at the jurisdiction hearing and will not testify further at the disposition hearing.

(14) *Dismiss the petition or declare dependency if appropriate* (see §102.37). If the court does not declare dependency, it must dismiss the petition or place the child under informal DSS supervision. See Welf & I C §§360(b), 390; Cal Rules of Ct 5.695(a)(1)–(2).

(15) *Order the child, who has been declared a dependent, to remain in or be returned to the home, or make an out-of-home placement order if the court makes required findings.*

- *Child to remain in custody of parent or guardian* (see §§102.44–102.50)—with appropriate services such as:
  - Case management

- Counseling
- Emergency in-home caretakers
- Respite care
- Homemaking classes
- Parenting classes
- Any other services authorized by Welf & I C §§16500–16521.5
- *Need for removal* (see Welf & I C §361(c))—*findings by clear and convincing evidence that*
  - Leaving the child in or returning the child to the home would cause 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’s health can be protected without removal. The court must also consider whether to remove from the home the parent who has caused the harm or to permit the other parent to retain physical custody on the condition that the parent explain to the court how he or she will protect the child from further harm.
  - The parent or guardian is unwilling to assume physical custody of the child and has been notified that the child might be declared permanently free from parental custody and control if he or she remains outside the home.
  - The child is suffering severe emotional damage and there are no reasonable means to protect the child’s emotional health without removal.
  - The child or a sibling has been sexually abused, or is at substantial risk of abuse, by the parent, guardian, or member of the household, and removal is the only means of protecting the child.
  - The child has been left without provision for support, an incarcerated parent cannot arrange for the child’s care, or an adult custodian with whom the child was left is unable or unwilling to care for the child and the parent cannot be located.
  - ICWA Proceeding: Continued custody by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child as shown by a “qualified expert witness” under Welf & I C §224.6, unless that requirement is waived.
- *Order of placement preference if child must be removed* (see Welf & I C §361.2(e)). See §§102.45–102.57.
- *Whether reasonable efforts to prevent or eliminate the need for removal (or active efforts in the case of an Indian child) were made* (see Welf & I C §361(d); §102.95).
- *Whether or not DSS has used due diligence in identifying, finding, and notifying relatives.* Cal Rules of Ct 5.695(f), (g). See §102.54.
- *Placement with relative* (see §§102.54–102.56)—*considerations*:
  - Safety of the child if placed with the relative
  - Best interests of the child
  - Parent’s wishes
  - Provisions of Fam C §7950 (preferential consideration) with respect to placement with relative

- Placement of siblings and half siblings in the same home
- Good moral character of the relative
- Whether the relative can:
  - provide a secure, stable environment
  - exercise care and control
  - provide a home and necessities of life
  - protect the child from the parents
  - facilitate court-ordered reunification efforts
  - facilitate visitation with other relatives
  - facilitate implementation of the case plan
  - provide legal permanence for the child if reunification fails
- *Placement with nonrelative* (see §§102.51–102.52, 102.57).
- *Placement with extended family member* (see §§102.54–102.56).
- *Placement with noncustodial parent* (see §§102.45–102.50).
- *Placement and visitation with siblings, including suspension of sibling interaction* (see §§102.43, 102.94, 102.98).
- *Guardianship* (see §§102.58–102.60).

(16) *Order reunification services and visitation as appropriate.*

- *Provision of reunification services* (see §§102.61–102.74). The court must advise the parent about time limitations on reunification services. Welf & I C §361.5(a); see Cal Rules of Ct 5.695(h)(1), (2).
- *Determination of when provision of reunification services would be in best interests of child in a Welf & I C §361.5(b) situation* (see §102.76).
- *Visitation with incarcerated parent* (see §§102.89–102.90).
- *Reunification services for incarcerated or institutionalized parents* (see §§102.72–102.74)

(17) *If appropriate, find by clear and convincing evidence one or more of the circumstances by which the court may deny reunification services.* See §102.75. A judge should require DSS to designate the code sections under which it is requesting denial of services. See Welf & I C §361.5(a)–(b), (e)(1); Cal Rules of Ct 5.695(h)(6); §§102.75–102.84).

(18) *On making appropriate findings, order services in a situation in which services might otherwise be denied.*

- *The court may order reunification services in situations described by Welf & I C §361.5(b)(3)–(4), and (6)–(15) if it finds by clear and convincing evidence that reunification is in the child’s best interest.* Welf & I C §361.5(c).
- *The court may also determine that reunification services would benefit the child who would otherwise be denied services under Welf & I C §361.5(b)(6) or §361.5(b)(7) (relating to severe sexual abuse of child or to not receiving services for siblings or half-siblings) on consideration of relevant information, such as that set out in Welf & I C §361.5(i) and Cal Rules of Ct 5.695(h)(11).*

- *The court may order services in a situation governed by Welf & I C §361.5(b)(5) (severe physical abuse under the age of five) if it finds by competent evidence that services are needed to prevent further abuse or continued neglect of the child or that failure to attempt reunification is likely to be detrimental to the child because of a close attachment to the parent. Welf & I C §361.5(c); Cal Rules of Ct 5.695(h)(12).*

(19) *Make orders regarding child's needs and treatment.*

- *Mental health counseling or therapy (see §102.99).*
- *Treatment for abuse of alcohol and other drugs (see §102.97).*
- *Visitation with parents and others (see §§102.85–102.94).*
- *Sibling visitation and interaction (see §§102.94, 102.98).*
- *Mental health evaluation of child and parents (see §102.99).*
- *Child's educational needs (see §102.100).*
- *Restraining orders (see §102.101).*
- *Subsequent periodic reports (see §102.102).*
- *Custody and visitation orders enforceable in family court when juvenile court jurisdiction is terminated (see §102.107).*
- *Requests for disclosure (see §102.108).*
- *Paternity testing.*

(20) *Rule on any additional requests.*

- *Notice (see §102.26).*
- *Paternity (see §102.104).*
- *Joinder of private service providers (see §102.36).*
- *Continuation of prior out-of-home placement (see §102.104).*

(21) *Set further hearings as necessary.*

- *Continuation of disposition hearing for receipt of new case plan.*
- *Review hearing within the earlier of six months from the date of the disposition hearing but no later than 12 months after the child entered foster care as determined by Welf & I C §361.49. See Welf & I C §366.21(e); Cal Rules of Ct 5.710(a).*
- *.26 hearing under Welf & I C §361.5(f) if reunification services are not ordered.*

➡ **JUDICIAL TIPS:**

- Some judges set the 12-month permanency hearing and any interim hearings deemed necessary at the disposition hearing. The 12-month hearing must be held within 12 months from the date the child entered foster care as determined by Welf & I C §361.49. Welf & I C §366.21(f). This date is defined as the earlier of the date of the jurisdictional hearing or the date that is 60 days after the initial removal by a social worker or police officer from the custody of the parent or guardian. Welf & I C §§361.49, 361.5(a)(1); Cal Rules of Ct 5.502(9)(A).
- The case file should be prominently marked with the last date for the 18-month permanency review hearing, which is 18 months from the date the child was initially

removed from the custody of the parent or guardian, unless the child is under the age of three and the 12-month time frame applies. The file should also be marked with the presumptive maximum duration of services, which is six months for a child under three years old and 12 months for a child three years or older. See Welf & I C §361.5(a)(1)–(4).

- The Juvenile Law Advisory Committee of the Judicial Council strongly recommends that for cases involving children who are under three years old at the time they are initially removed, a progress review appearance hearing be set within 90 days of disposition. The purpose of this hearing would be to confirm that services as ordered are being offered or provided and that the parent or guardian is participating in those services. The hearing would provide an opportunity for the court to remind the parties of the short time period available to achieve reunification and the risk of the termination of reunification services at the six-month review if the parent has failed to participate in those services.
- Any change in the disposition orders would be considered only if a properly noticed petition under Welf & I C §388 is presented and granted or set for hearing. Dispositional orders are subject to modification under Welf & I C §388. *In re Karen G.* (2004) 121 CA4th 1384, 1390, 18 CR3d 301.

## A. [§102.115] Script: Conduct of Disposition Hearing

### (1) Introduction

[Mr./Ms.] [name of clerk], please swear all persons who may wish to speak during the proceedings.

[If parents and child are represented by counsel and all required conflict of interest statements are on file, go to (5).]

### (2) Appointment of Attorney for Parent(s) or Guardian(s)

You have a right to be represented by an attorney during this disposition hearing and during all other hearings in the juvenile court and the court will appoint an attorney for you if you cannot afford to hire one. If you want to employ a private attorney, the court will give you an opportunity to do so.

[Or]

The court has reviewed the financial declaration of [name of parent or guardian] and finds that [he/she] is entitled to appointment of counsel. At this time, the court appoints [name of attorney] to represent [him/her].

- **JUDICIAL TIP:** When the attorney is on the staff of a governmental agency, it is the *office*, not the individual attorney, that is being appointed.

[If parents waive counsel]

This is a serious matter. The court might determine that [name of child] will need to be placed outside your home and that, eventually, your parental rights may be terminated. Do you have any questions about your right to have an attorney represent you at this hearing? Understanding this right and the possible consequences of this hearing, do you want to proceed at this time without an attorney?

[When applicable, add]

The court now finds that the parents have intelligently waived their right to counsel at this hearing.

[If child is represented by counsel and there is no motion for separate counsel, go to (4) and/or (5).]

### (3) Attorney for Child

The court has read and considered the documentary material submitted by the Department of Social Services for the limited purpose of assessing the benefit, if any, of appointing counsel for the child. Would anyone like to be heard on this issue?

[After hearing evidence, if any, on issue of child's need for attorney]

The court finds, based on the facts of this case, that there is a need to appoint counsel for the child at this time. The court appoints [name of attorney] as the child's CAPTA guardian ad litem to represent the child.

[Or]

The court finds, based on the facts of this case, that there is no identifiable benefit to the child that would require appointment of counsel at this time because *[give reason]*.

- ☛ JUDICIAL TIP: It is advisable to ask counsel for DSS if there are any potential conflicts of interest among the children (if multiple siblings are involved) and, if so, to appoint separate counsel for the siblings.

#### *(4) De Facto Parent*

Mr. and Ms. *[name of parents]*, the court has received your request to be granted “de facto parent” status. With this status, you will be entitled to be present and to present evidence at this hearing. A de facto parent is one who cares deeply for the child and who has assumed a parental role on a day-to-day basis for a substantial time. A de facto parent may also have information about the child that other participants in the juvenile court process might not have.

*[Testimony is presented on this issue with respect to each person claiming de facto status either at this time or at some later time. See form in §102.116 for findings of de facto status.]*

#### *(5) Explanation of Procedure/Notification of Consequences*

I am going to explain to you what happens at these juvenile court proceedings. These proceedings are divided into several separate hearings. You have already participated in a detention hearing and a jurisdiction hearing. At the jurisdiction hearing *[which just took place/which took place on [date]]*, the court found that the facts set out in the petition filed by the Department of Social Services were true. This hearing will determine whether your child should be declared a dependent child of the court, that is, whether the court should take jurisdiction of your child’s case in order to exercise supervision over the child. Also to be determined at this hearing is whether your child should *[remain in/be returned to]* your custody or should be removed from your custody until certain conditions are met and, if so, what services should be provided to help you meet these conditions.

If *[name of child]* cannot be returned home at the end of a \_\_\_\_-month period, your parental rights may be terminated. There will be further hearings before this happens.

- ☛ JUDICIAL TIP: Very often, the attorney for the parent or guardian will state that he or she has explained these matters to the parents and will go on to explain the position of the parents or guardians. Many judges train attorneys who appear in their courts to take this responsibility.

*[If Welf & I C §361.5(b) is applicable]*

By now, *[the social worker/your attorney]* should have informed you that the Department of Social Services is claiming that your child should be removed from your custody and that services that could help your family reunite (reunification services) should not be offered because of the seriousness of the *[abuse/neglect]* and the unlikelihood that you could become a fit parent. If it is found that it would not be worthwhile to offer you reunification services, I will set a hearing for 120 days from now to select and implement a permanent plan for your child. Your parental rights may be terminated at that hearing.

#### *(6) Notice of Hearing*

(a) *One Parent Not Present*

[If one parent is not present, make sure that the absent parent received notice of the hearing. If so, state]

The court finds that notice has been given as required by law. The [mother/father/guardian] has failed to appear.

(b) *Both Parents Present*

The court finds that the [mother/father/guardian(s)], the child, and all counsel were notified of this hearing and served with the petition as required by law.

(c) *Notice Attempted*

The court finds that the following attempts were made to locate the [mother/father/guardian(s)]: [List attempts]. The court has reviewed the declaration of search and finds that the efforts made to locate and serve the [parent(s)/guardian(s)] were reasonable.

(d) *Insufficient Attempts at Notice*

The court finds that the Department has not used due diligence in attempting to locate the [parent(s)/guardian(s)]. The case is therefore continued for one day. The Department shall take the following steps to locate the [parent(s)/guardian(s)]: [List steps, e.g., check with Department of Corrections and Rehabilitation; check with child's school].

*Note:* Only rarely should a judge dictate to DSS specific search efforts that must be undertaken.

(7) *Waiver of Advisement of Rights*

[To each participant]

Did your attorney explain your rights to you? Do you waive advisement of rights?

[If the answer to both is yes, go to (10).]

(8) *Advisement of Rights*

You have certain rights at this hearing. These are (1) the right to see and hear all witnesses who may be examined by the court at this hearing, (2) the right to cross-examine, which means ask questions of, any witness who may testify at this hearing, (3) the right to present to the court any witnesses or other evidence you may desire, and (4) the right to a hearing on the issues raised in the petition. You have the right to assert the privilege against self-incrimination [but anything you say in this or in any other dependency proceeding may not be admissible as evidence in any other action or proceeding].

*Note:* See discussion in §102.27.

(9) *Advisement re Addresses Under Welf & I C §316.1*

The address that [is in the petition/you gave the court [at previous hearings/today]] will be used by the court and the social worker for all further notices unless you advise the court and the social worker of any changes in address.

(10) *Evidence*

*[Court reads any written reports and states for the record all material read by the court.]*

The court has read and considered and now receives into evidence the social study report of [date].

*Note:* The term for the social worker's report varies from county to county. Whatever the local usage is, the court must indicate which documents it is relying on. The social study is required to be filed and transmitted to the parties 48 hours before the hearing. Cal Rules of Ct 5.690(a). In the order of disposition, the court must state that it has read and considered the social study report. Welf & I C §358(b); Cal Rules of Ct 5.690(b).

*[To parent, guardian, child, or other interested person]*

Now is the time for you to present evidence or make a statement. The court's orders may include an order removing [name of child] from [his/her] home and placement with other caretakers. Orders may also cover visitation and plans for reunification should [name of child] be removed from the custody of [his/her] [parents/guardians].

If the court makes findings solely on the basis of the evidence in the social worker's report, do you understand that you will have given up your right to cross-examine those who prepared the report and to deny the statements found in the report?

*[To parent, guardian, and the attorneys]*

May the court base its findings solely on the social worker's report and other documents that it has received?

*[If the answer is no, the court should orally examine the child, if present, and the parents or other persons with relevant knowledge bearing on disposition. The court must allow cross-examination of any witness who may testify.]*

Now is the time for you to present any evidence or make any statement you may wish to make before the court decides on a placement for [name of child].

*[To persons seeking fifth amendment protection from testifying (see §102.27)]*

I am going to grant the [joint] request of the Department of Social Services [and the district attorney] for immunity and will order you to testify despite your claim of self-incrimination. However, anything you say here may not be used against you in any criminal court or juvenile court proceeding arising out of the same conduct we are discussing here today.

*[If there is no joint request, the judge must hear argument on why immunity should not be granted. Cal Rules of Ct 5.548(d).]*

(11) *Introduction of Court Process to Child Witness*

Hello. I am Judge [name]. I am in charge of this courtroom, My job is to make sure that everything is fair and that everyone else here does his or her job correctly. This is Bailiff [name].

[He/She] is here to make sure that no one gets hurt. [Mr./Ms.] [name] is the court reporter. [He/She] will write down everything that people say so that if anyone later forgets what was said, we can look it up. It is important to speak loudly and clearly so that [Mr./Ms.] [name], the court reporter, can hear you.

Mr. [name] and Ms. [name] are the lawyers. They will be asking you some questions. Their job is to help you tell what you saw and heard so that we can find out the truth.

It is very important to tell the truth, because if I do not understand the whole truth, I may not be able to make the plan that is best for everyone.

You will be answering questions this afternoon. We will stop often so that everyone may have a rest. If you have any problems before the next break, let [name of support person/name of attorney/me] know.

Also, you may not understand all the questions. We are used to talking to other adults and not to children. When you don't understand a question, raise your hand and let me know that you don't understand. If you don't know the answer to a question, just say "I don't know" or "I don't remember."

#### (12) *Assessing Child's Competency*

*Note:* Judges and child development experts suggest assessing children's communication skills and other aspects of competency by determining whether the child's speech is intelligible and whether he or she can follow the discussion. Here are some suggested conversational openers designed to permit this determination.

Here we are in the courtroom. What do you see here?

What did you do this morning?

[For school-age children]

Tell me about your school.

What do you do when you first get to school?

What do you do after lunch?

—Tell me more about [certain activities].

What is your favorite part of the day?

—Tell me more about it.

What is your favorite television program?

—Tell me about it.

—Who is in it?

—What happens in the program?

*(13) Advisement on Reunification*

At this time I am required to advise the parents of what happens if you fail to meet your reunification requirements. We review your progress on your reunification requirements in six months. If you have failed to meet your reunification requirements at that time, we review your progress on meeting your reunification requirements again in another six months. If you have still failed to meet your reunification requirements, the court may give you an additional six months or terminate all further reunification services. In no event can the court generally give you more than 18 months from the date of original detention to meet your reunification requirements. If reunification services are terminated, the court will ask the Department of Social Services to propose a long-term plan for the child. That plan can be foster care, guardianship, or adoption. If the department recommends adoption, there is a possibility that your parental rights will be terminated. I urge you to stay in touch with your social worker and your attorney, and to put forth every effort to meet your reunification requirements.

*(14) Advice to Child, Parent, and Guardian Concerning Right To Appeal*

You have the right to appeal the dispositional order. You have 60 days from today to file an appeal to the Court of Appeal and may use Judicial Council form JV-800, which is available here in the courtroom. If you do not have an attorney and cannot afford one, one will be appointed for your appeal. If you have appointed counsel, [he/she] will represent you for appeal. You will need to include a transcript of these hearings. If you are indigent, one will be provided to you free of charge.

Do you understand your appeal rights? Do you have any questions?

*(15) Advice to Attorneys, Child, Parent, and Guardian Concerning Right To Appeal the Setting of .26 Hearing*

To preserve your right to appeal from the order setting a .26 hearing, you must first seek an extraordinary writ using Judicial Council forms JV-820 and JV-825, which are available here in the courtroom. The writ petition must be filed with the Court of Appeal within seven days of the date of the order setting a .26 hearing. Under California Rules of Court 5.600, you or your attorney must file the petition, after consulting experienced writ attorneys if necessary.

*(16) Final Question*

Do you have any questions about the court's order(s) or what is going to take place in the future?

## **B. [§102.116] Script: Findings and Orders**

### *(1) Introduction*

The court has read and considered [*name the documents, e.g., the sustained petition, the social worker's report of [date], and attached documents*].

[*Add, if applicable*]

The court has also considered the testimony of the witnesses and their demeanor on the stand, as well as the arguments of counsel.

*Note:* In the order of disposition, the court must state that it has read and considered the social study report. Welf & I C §358(b); Cal Rules of Ct 5.690(b).

### *(2) Parties*

[*As to each man who claims to be (or is alleged by others to be) the father, the court may make a finding as to whether he is a legal, biological, alleged, or presumed father after holding a hearing on the issue.*]

The court finds that the legal status of [*name of party*] is the [*legal/biological/alleged/presumed*] father.

[*If de facto parent status is sought*]

The court finds by a preponderance of the evidence that [*name of party*] should be accorded the status of de facto parent because of the following: [*Specify reasons*].

[*Or*]

The court does not find by a preponderance of the evidence that [*name of party*] should be accorded the status of de facto parent. The facts underlying this finding are: [*Specify reasons*].

[*Optional*]

Therefore, [*name of party*] may not participate in future hearings.

### *(3) Declaration of Dependency (see §102.37)*

The court adjudges the child a dependent child of the court because of the following reasons: [*E.g.: The child has been neglected and therefore continuing supervision is required/Even though the child may be placed with [his/her] custodial parent, continuing supervision is necessary to ensure that the child's [educational/medical/emotional] needs are met*].

[*Or*]

The court does not adjudge the child as a dependent child of the court because of the following reasons: [*E.g.: The child's noncustodial parent will provide a loving, stable home and continuing supervision of the court is not necessary/Although the allegations in the petition were true, they did not overcome the fact that the custodial parent has now learned of the abuse and has taken forceful steps to prevent recurrence*].

The Department of Social Services is ordered to provide informal supervision of the family, by providing services as it deems necessary, without court supervision.

*(4) In-Home Placement of Child*

The court does not find by clear and convincing evidence that the child must be removed from the custody of [*his/her*] custodial parent. Therefore, the child is ordered to [*remain/be placed*] in the home with [*name of custodial parent*].

*[If limitations are to be placed on parents' control of child]*

The following limitations are to be placed on the parents' exercise of control of [*name of child*]. [*List limitations on medical, educational, disciplinary, or other decisions that are necessary for the child's protection (see Welf & I C §361(a); Cal Rules of Ct 5.695).*]

*Note:* See discussion in §102.44. Limitations on the right of the parent to make educational decisions must be explicitly set out in the order whether the child remains at home or is removed from the home; the court must also appoint a responsible adult as the educational representative under Cal Rules of Ct 5.650. Welf & I C §361(a); Cal Rules of Ct 5.695(c)(3); see §102.100.

*(5) Out-of-Home Placement of Child*

The court finds clear and convincing evidence that the child must be removed from the custody of [*name(s)*] and orders that the child live with [*name(s)*]. The reason(s) for the removal [*is/are*]: [*Give reason(s).*]

[*Leaving/Returning*] the child home would cause a substantial danger to the child's physical health and there are no reasonable means by which the child's health can be protected without removal.

[*Or*]

The parent or guardian is unwilling to assume physical custody of the child and has been notified that the child might be declared permanently free of parental custody and control if he or she remains outside the home for the time specified in Welfare and Institutions Code section 366.26.

[*Or*]

The child is suffering severe emotional damage from [*specify anxiety, depression, aggressive behavior, withdrawal*], and the child's emotional health requires removal.

[*Or*]

The child or a sibling has been sexually abused, or is at substantial risk of abuse, by the parent, guardian, or member of the household, and removal is the only means of protecting the child.

[*Or*]

The child has been left without provision for support.

[Or]

An incarcerated parent cannot arrange for the child's care.

[Or]

An adult custodian with whom the child was left is unable or unwilling to care for the child and the parent cannot be located.

[Or]

[State other reasons (see *Welf & I C §361(c)*; *Cal Rules of Ct 5.695(d)*; see also *Welf & I C §361(c)*; *Cal Rules of Ct 5.695(i)(1)* (the court must state facts on which the removal is based)).]

(a) *Placement With Relative* (see *Welf & I C §361.2*):

The court has considered the following factors in making the placement: [List applicable factors set out in *Welf & I C §361.3(a)*. See §102.54].

(b) *Placement With Nonrelative*

- The approved home of a nonrelative extended family member (see *Welf & I C §362.7*) (*Welf & I C §361.2(e)(3)*).
- A foster home that had been a previous placement if in the child's best interests (*Welf & I C §361.2(e)(4)*).
- A suitable licensed community care facility (*Welf & I C §361.2(e)(5)*, (8)).
- A foster family agency for placement in a foster family home or certified family home (*Welf & I C §361.2(e)(6)*).
- A home or facility in compliance with the Indian Child Welfare Act (ICWA) (*Welf & I C §361.2(e)(7)*).

The court denies placement with a relative for the following reasons: [List reasons].

*Note:* The court must state reasons on the record why placement with a relative was denied. *Welf & I C §361.3(e)*; see §102.52.

(c) *Voluntary or Temporary Out-of-Home Placement*

The child [should/should not] continue to live with [name] [an out-of-home placement in which the child was placed voluntarily or after the detention hearing] because [discuss appropriateness of the placement, extent of compliance with the case plan, and other factors set out in *Welf & I C §366(a)* (see *Welf & I C §361(d)*)].

(d) *Guardianship*

The court has read and considered the assessment and orders that letters of guardianship issue. [Name] is to be appointed guardian. The court finds that [state findings and the factual basis for them, e.g., prospective guardian has had a close relationship with the child since birth, neither parent seeks reunification with the child, the child's medical status would weigh against adoptability (see *Welf & I C §360(a)*; *Cal Rules of Ct 5.695(b)*; discussion in §§102.58–102.60)].

[To the parents]

Once the guardianship is established, there will be no reunification services.

(6) *Siblings (Welf & I C §§362.1, 361.2(i))*

The court finds that the child [*does/does not*] have siblings under the court's jurisdiction.

The nature of the relationship between the child and siblings is [*describe relationship*].

Developing or maintaining the sibling relationships [*is/is not*] appropriate because [*state reasons*].

The siblings are not placed together because [*state reasons*].

Efforts being made to place the siblings together are [*describe*].

Efforts to place the siblings together are not appropriate because [*state reasons*].

(7) *Reasonable Efforts*

The court finds [*by a preponderance of the evidence*] that reasonable efforts were made to prevent or eliminate the need for removing the child from the home. [*State facts.*] This finding is based on the [*name the document, such as Declaration of Efforts*], of [*date*].

*Note:* If the child is an Indian child, active efforts must be made. See 25 USC §1912(d).

[*Or*]

The court finds that reasonable efforts have not been made.

(8) *Reunification*

(If there is a signed case plan)

- Did you review this case plan with your attorney (with the assistance of the interpreter if applicable)?
- Did you understand it?
- Did you sign it?

The court orders the Department of Social Services to provide the following reunification services for the following people: [*List the services that are offered and the people who are to participate in them, e.g., parents to visit the child once a week, father to participate in psychological evaluation and counseling, grandmother to attend parent support group meetings, etc. See discussion of case-limited and case-specific plans in §102.65.*]

The court finds by clear and convincing evidence that reunification services should be denied to the [*parent/guardian*] because [*list reasons, e.g., that the child has suffered severe sexual or physical abuse by the parent (see Welf & I C §361.5(b))*].

*Note:* If a parent's mental illness is the reason for the denial of services, the judge should make the sequential series of findings set out in *In re Rebecca H.* (1991) 227 CA3d 825, 843, 278 CR 185 (see §102.81).

- JUDICIAL TIP: Clear and convincing evidence is only required for a denial of reunification services under Welf & I C §361.5(b). However, many judges use this more stringent burden of proof when denying reunification services on any ground.

*[If child was adjudicated a dependent based on severe sexual abuse or physical harm]*

The court finds that it would not benefit the child and therefore orders no reunification services, based on the following findings: *[State findings based on factors in Welf & I C §361.5(i); Cal Rules of Ct 5.695(h)(11)].*

*Note:* When services are denied because of severe sexual or physical abuse, the court must read into the record the basis for the finding of the abuse and the factual findings that are used to determine that reunification services would not benefit the child. Welf & I C §361.5(j).

*[If reunification services are ordered despite finding of presence of circumstance listed in Welf & I C §361.5(b)]*

Despite the circumstance that *[state circumstance as outlined in Welf & I C §361.5(b), e.g., parent has been convicted of causing death of another child through abuse or neglect]*, the court finds by a preponderance of the evidence that reunification services are necessary *[to prevent reabuse/to prevent further neglect/because of the child's positive attachment to the parent]*.

*[If the parent is incarcerated or institutionalized]*

The court orders the following reunification services for *[name of parent]*: *[List services, e.g., maintenance of telephone contact, transportation, visitation, and services to extended family members who are caring for the child (see Welf & I C §361.5(e))].*

*[Or]*

The court finds by clear and convincing evidence that reunification services with *[name of parent]*, *[an incarcerated parent,]* would be detrimental to the child because *[list reasons]*.

*Note:* In giving reasons, the court must consider such factors as the age of the child, the degree of parent-child bonding, the length of the sentence, the severity of crime or illness, detriment if services are not offered, and the wishes of the child, if the child is ten years or older. Welf & I C §361.5(e).

#### *(9) Other Findings*

The court also finds that:

*[Add, if applicable]*

Notice has been given as required by law.

*[Name of parent/guardian]* has knowingly waived the following rights to:

- Trial on the issues.
- Assert the privilege against self-incrimination.

- Confront and cross-examine adverse witnesses.
- Use the court's process to compel attendance of witnesses.

Good cause is found for the issuance of restraining orders against [name] which are necessary because [state reasons].

*Note:* Restraining orders under Welf & I C §340.5 (threatening a social worker) and Fam C §6320 (order enjoining family member from harassment, etc.) must be based on a showing of good cause.

The court finds that [name of person on behalf of whom the dwelling exclusion order is granted] has a right to possession of the premises under color of law because [state reasons]. The court also finds that [name of person to be excluded] has [assaulted/threatened to assault] [name of child/name of child's caretaker] and that physical harm would result to [name of child/name of caretaker] if this restraining order is not granted.

*Note:* See Fam C §6321.

The court also finds that (Welf & I C §§366(a)(1), 361(e)):

[Add, if applicable]

The placement is necessary and appropriate because [state reasons]:

DSS has complied with the case plan in making reasonable efforts [or active efforts in the case of an Indian child] to return the child home and finalize permanent placement, together with efforts to maintain relationships with people who are important to the child when the child is 10 years old or older and has been in out-of-home placement for six months or longer. These efforts are as follows [describe]:

The progress made toward alleviating or mitigating causes requiring foster care is [describe].

The child [has/has no] siblings under the jurisdiction of the court (Welf & I C §366(a)(1)(D)). [If there are siblings], The court finds that:

- The nature of the sibling relationship is [state relationship] and therefore it [is/is not] necessary to develop and maintain it,
- Efforts to place the siblings together and nature and extent of sibling visits are as follows [describe]:
- The impact of sibling relationships on placement and permanency planning is [describe impact].
- There [is/is not] the continuing need to suspend sibling interaction.
- Limitations on the parent's or guardian's right to make educational decisions for the child are as follows [state limitations]:

- Likely date on which the child may be safely returned home or placed for legal guardianship, adoption, or other permanent placement is [*specify date*].

(10) *Visitation*

[*Name of parent/guardian/sibling/other*] may visit [*name of child*] [*give frequency, e.g., regularly, once a week, as frequently as possible as determined by the Department of Social Services*] at [*give location, e.g., the grandmother's house, a place convenient to the parent by public transportation to be determined by the Department of Social Services*].

[*Or*]

[*Name of parent/guardian/sibling/other*] may have full, unmonitored visitation with [*name of child*] at [*a place of [his/her] choosing/a place chosen by mutual agreement between the child and [name]*].

*Note:* Under Welf & I C §16501.1(f)(9)(A), a case plan for a child for whom out-of-home services are ordered must include a recommendation regarding unsupervised sibling visitation. Visitation may be ordered even if the court has established a legal guardianship. Cal Rules of Ct 5.695(b)(2)(D).

[*Or*]

Visitation with [*name of parent/guardian/other*] is to be monitored by a social worker and limited to [*specify frequency*] at [*place*].

- ☛ **JUDICIAL TIP:** If the court determines that visitation is likely to be harmful, it may require the order setting limited, monitored visitation to stand until a later court hearing. However, in an appropriate case, the court may modify the restricted visitation order with the statement that visitation may be increased and supervision eliminated as DSS finds appropriate.

[*Or*]

Sibling interaction is to be suspended.

(11) *Other Orders*

[*Add, if applicable*]

The court orders that [*name of child/parent/guardian/other*] receive an evaluation for [*mental health/addiction*] treatment. The case is continued until the court receives a report on the [*mental health/substance abuse*] regarding [*name*].

*Note:* For discussion of evaluation and treatment for mental disorders, see Welf & I C §§357, 370, 6550–6552, and of evaluation and treatment for addiction, see Welf & I C §359.

The court orders the Department of Social Services to make [*monthly/other [specify]*] reports on the status of [*name of child*] in [*foster care/[specify other out-of-home placement]*] (see Welf & I C §365).

The court hereby issues an order [restraining the conduct of [name] in the following respects: [[specify]/excluding [name] from the residence of [name]/enjoining [name] from threatening [name of social worker assigned to the case/member(s) of social worker's family]]. This restraining order is to be in effect for [specify length of time].

*Note:* See Welf & I C §340.5; Fam C §§6320, 6321, 6345 (duration may be a maximum of three years); Cal Rules of Ct 5.630(h).

(12) *Review Hearing*

The first review hearing is scheduled for [date], at \_\_\_\_ \_\_.m. in Department \_\_\_\_\_. All persons who are present today [*i.e., parent, guardian, etc.*] have the right to be present and to be represented by counsel.

*Note:* When a child is detained pending execution of the placement order, the court must periodically review the case (at least every 15 days) to determine if the delay was reasonable. Welf & I C §367(b); Cal Rules of Ct 5.695(k); see §102.109. The standard review hearing must be set for a date not to exceed six months from the disposition hearing or 12 months from the date the child entered foster care if applicable. Welf & I C §§361.49, 364(a), 366(a); Cal Rules of Ct 5.695(j), 5.710(a).

[Or]

A selection and implementation hearing is scheduled for [date], at \_\_\_\_ \_\_.m. in Department \_\_\_\_\_. All persons who are present today [*e.g., parent, guardian*] have the right to be present and to be represented by counsel. The Department of Social Services shall prepare an assessment, including an analysis of the following factors: [*Set out the relevant factors from Welf & I C §361.5(g)(1)*].

*Note:* If the court has not ordered reunification services because of the application of Welf & I C §361.5(b)(2)–(6) or §361.5(e)(1), it must conduct a selection and implementation hearing within 120 days of the disposition hearing, unless the other parent is provided with reunification services under Welf & I C §361.5(a). Welf & I C §361.5(f).

#### IV. SAMPLE FORMS

##### A. [§103.67] Script: Conduct of Review Hearing

*[If parents and the child are represented by counsel and all required conflict of interest statements are on file, go to (4).]*

###### (1) Appointment of attorney for parents or guardians

You have a right to be represented by an attorney during this review hearing and all other hearings in the juvenile court. If you want to employ a private attorney, the court will give you an opportunity to do so.

[Or]

The court has reviewed the financial declaration of *[name of parent or guardian]* and finds that *[he/she]* is entitled to appointment of counsel. At this time, the court appoints *[name of attorney]* to represent *[him/her]*.

☛ JUDICIAL TIP: When the attorney is on the staff of a governmental agency, it is the *office*, not the individual attorney, who is being appointed.

*[If parents waive counsel]*

This is a serious matter. The court might determine that eventually your parental rights may be terminated. Do you have any questions about your right to have an attorney represent you at this hearing? Understanding this right and the possible consequences of this hearing, do you want to proceed at this time without an attorney?

*[When applicable, add]*

The court now finds that the parents have knowingly and intelligently waived their right to counsel at this hearing.

*[If child is represented by counsel and there is no motion for separate counsel, go to (3).]*

###### (2) Attorney for child

The court has read and considered the documentary material submitted by the DSS that is relevant to the limited purpose of assessing whether to appoint counsel for the child. Would anyone like to be heard on the issue of why the court should not appoint counsel for the child?

*[After hearing evidence, if any, on issue of child's need for attorney]*

The court finds, based on the facts of this case, that there is a need to appoint counsel for the child at this time. The court appoints *[name of attorney]* as the child's CAPTA guardian-ad-litem to represent the child.

[Or]

The court finds, based on the facts of this case, that *[the child understands the nature of the proceedings; the child is able to communicate and advocate effectively on behalf of him or herself before the court, other counsel, other parties, including social workers, and other professionals involved in the case; and under the circumstances of the case, the child would not*

*gain any benefit by being represented by counsel because [state reasons for each finding]/there is a need to appoint counsel for the child at this time].*

The court [*does not appoint counsel at this time/appoints [name of attorney]*] to represent the child.

(3) Explanation of procedure/notification of consequences

I am going to explain to you what happens at these juvenile court proceedings. These proceedings are divided into several separate hearings. You have already participated in a detention hearing, a jurisdiction hearing, and a disposition hearing [*as well as [six-/12-/18-] month review hearings*]. At the previous hearing, the court ordered that [*state orders*]. At this hearing the court will determine whether [*the out-of-home placement will continue/jurisdiction should be terminated/ reunification services should be maintained, increased, or terminated, etc.*].

*Note:* Often, the attorney for the parent or guardian will state that he or she has explained these matters to the parents and will go on to explain the parents' or guardians' position. Many judges encourage attorneys who appear in their courts to take this responsibility.

(4) Waiver of advisement of rights

*[To each participant]*

Did your attorney explain your rights to you?

Do you waive advisement of rights?

*[If the answer to both is yes, go to (10).]*

(5) Advisement of rights

You have certain rights at this hearing. These are (1) the right to see and hear all witnesses who may be examined by the court at this hearing, (2) the right to cross-examine, which means ask questions of, any witness who may testify at this hearing, (3) the right to present to the court any witnesses or other relevant evidence, (4) the right to subpoena witnesses, and (5) the right to a hearing on the issues raised in the review report. You have the right to assert the privilege against self-incrimination [*but anything you say in this or in any other dependency proceeding may not be admissible as evidence in any other action or proceeding*].

*Note:* See discussion in §103.26.

For nonminor dependents (eff. 1/1/12)

You have the right to seek termination of dependency jurisdiction which means that the court will not be involved in your life in any way. If it later turns out that you would like the protection of the court, you may contact your lawyer to seek reinstatement of jurisdiction, up until the time you turn 21 years old.

(6) Advisement re addresses under Welf & I C §316.1

The address that [*is in the petition/you gave the court [at previous hearings/today]*] will be used by the court and the social worker for all further notices unless you advise the court and the social worker of any changes in address.

*Note:* The court should ensure that Judicial Council Form JV-140, Notification of Mailing Address, is made available

(7) Evidence

*[Court reads any written reports and states for the record all material read by the court]*

The court has read and considered and now receives into evidence the report dated \_\_\_\_\_, prepared by *[name]*, consisting of \_\_\_\_\_ pages, and containing the following attachments: *[list attachments]*.

*Note:* The term for the social worker's supplemental report (see Welf & I C §366.1) varies from county to county. Whatever the local usage, the court must indicate which documents it is relying on.

The court has also read and considered the report of *[name]*.

*Note:* The court may read and consider the report of any court-appointed special advocate. See §103.27.

*[To parent, guardian, child, or other interested person]*

Now is the time for you to present any evidence or make any statement you may wish to make before the court decides *[whether to continue the child's present living situation or change it in some way/what services to offer or augment, etc.]*. If the court makes findings solely on the basis of the evidence in the social worker's report, do you understand that you will have given up your right to cross-examine those who prepared the report and to deny the statements found in the report?

*[To parent, guardian, and the attorneys]*

May the court base its findings solely on the social worker's report and other documents that it has received?

*Note:* If the answer is no, the court should orally examine or permit testimony of the child, if present, and the parents or other persons with relevant knowledge bearing on relevant issues. The court must allow cross-examination of any witness who may testify.

Now is the time for you to present any evidence or make any statement before the court decides on continuing or changing the child's placement and the nature and extent of the reunification services.

*[To persons seeking fifth amendment protection from testifying (see California Judges Benchguide 102: Juvenile Dependency Disposition Hearing §102.19 (Cal CJER))]*

I am going to grant the *[joint]* request of the DSS *[and the district attorney]* for immunity and will order you to testify despite your claim of self-incrimination. However, anything you say here may not be used against you in any criminal court or juvenile court proceeding arising out of the same conduct we are discussing here today.

*Note:* If there is no joint request, the judge must hear argument on why immunity should not be granted. Cal Rules of Ct 5.548(d).

(8) Introduction of court process to child witness

Hello. I am Judge \_\_\_\_\_. I am in charge of this courtroom. My job is to make sure that everything is fair and that everyone else here does his or her job correctly. This is Bailiff Y. [*He/She*] is here to make sure that no one gets hurt. [*Mr./Ms.*] Z is the court reporter. [*He/She*] will write down everything that people say so that if anyone later forgets what was said, we can look it up.

It is important to speak loudly and clearly so that [*Mr./Ms.*] Z can hear you.

Mr. L and Ms. M are the lawyers. They will be asking you some questions. Their job is to help you tell what you saw and heard so that we can find out the truth.

It is very important to tell the truth, because if I do not understand the whole truth, I may not be able to make the plan that is the best for everyone.

You will be answering questions this [*morning/afternoon*]. We will stop often so that everyone may have a rest. If you have any problems before the next break, let the [*support person/attorney/judge*] know.

Also, you may not understand all the questions. Adults are used to talking to other adults and not to children. When you don't understand a question, raise your hand and let me know that you don't understand. If you don't know the answer to a question, just say, "I don't know," or "I don't remember."

*Note:* Some judges may not want to tell the child that their job is to be fair for fear that the child will not find the result fair and be more traumatized than reassured. Whatever explanation, if any, is given to the child must be appropriate to the child's age, experience, and stage of development.

(9) Final question

Do you have any questions about the court's orders or what is going to take place in the future?

## **B. [§103.68] Script: Findings and Orders—In General**

### (1) Introduction

The court has read and considered *[name the documents, e.g., the social worker's report dated \_\_\_\_\_, and attached documents or whatever the local nomenclature is]*.

*[If applicable]*

The court has also considered the testimony of the witnesses and their demeanor on the stand as well as the arguments of counsel.

### (2) Parties

*[As to each man who claims to be (or is alleged by others to be) the father, the court may make a finding as to whether he is a biological or presumed father (or not a father at all) after holding a hearing on the issue.]*

The court finds that the legal status of *[name]* is *[status of father, e.g., presumed father]*.

*[If de facto parent status is sought]*

The court finds by a preponderance of the evidence that *[name]* should be accorded the status of de facto parent because of the following: *[state reasons]*.

*[Or]*

The court does not find by a preponderance of the evidence that *[name]* should be accorded the status of de facto parent. The facts underlying this finding are: *[state facts]*.

*[Optional]*

Therefore, *[name]* may not participate in future hearings.

### (3) When child has not been removed

The court finds that the following conditions that justified assumption of jurisdiction under section 300 no longer exist: *[state conditions]*. Moreover, withdrawal of supervision would not cause those conditions to rearise. Therefore, jurisdiction is terminated.

*[Or]*

The court finds by a preponderance of the evidence that the following conditions that justified assumption of jurisdiction under section 300 still exist: *[state conditions]*.

*[And/Or]*

The court *[further]* finds that withdrawal of supervision would cause those conditions to rearise. Therefore, jurisdiction is retained and a further review hearing is scheduled for *[date]*.

These additional services are ordered to alleviate these conditions:

*[List services and the conditions they are intended to address.]*

### C. [§103.69] Script: Findings and Orders—Six-Month Review

*Note:* For all possible findings and orders, see Judicial Council forms JV-430–JV-433. For required findings concerning the case plan and the child’s education, see Appendix V, Case Plan and Educational Findings and Orders—Dependency.

#### (1) Return of child

The court orders that custody of *[name of child]* is returned to *[parent/guardian/other former custodian]*.

[Or]

The court finds by a preponderance of the evidence that returning the child home would create a substantial risk of harm to the child’s *[physical health/emotional well-being]* because *[state reasons]*. Therefore, *[name of child]* may not be returned home at this time.

#### (2) Finding under Welf & I C §366.21(e); Cal Rules of Ct 5.708(i)(1); 42 USC §675(5)(B)

The court finds that out-of-home placement *[is/is not]* appropriate and that the placement *[continues to be/is no longer]* necessary because *[state reasons]* and is *[no longer]* appropriate to this child because *[state reasons]*. *[[Name of parent or guardian] shall therefore have custody of the child effective [date].]*

If the child has been placed out of state, the placement *[continues to be/ is no longer]* appropriate (Welf & I C §366(c)).

#### (3) Reunification services (Welf & I C §366.21(e))

The court further finds that:

*[Add as applicable]*

DSS has complied with the case plan in making reasonable efforts (to return the child to a safe home and in completing any steps to finalize permanent placement); and

*[Parents/Guardians/Other]* have participated regularly and made substantive progress in court-ordered treatment programs; the extent of the progress is as follows *[describe]*:

[Or]

DSS has provided services and opportunities but *[parent/guardian/ other]* has not participated regularly and made substantive progress in court-ordered treatment programs in that *[describe]*.

[Or]

The services provided have been inadequate in that *[explain]* *[and in addition [parent/guardian/other] has not participated regularly and made substantive progress in court-ordered treatment programs in that [describe]]*.

The court also finds that the following progress has been made toward alleviating or eliminating the need for foster care *[describe]*:

[And/Or]

The services set forth in the case plan include those needed to assist the child in making the transition from foster care to independent living.

Limitations on the right of the parent or guardian to make educational decisions are [describe] (Welf & I C §366(a)(1)(C)).

(4) Date of return of child or permanent placement

Finally, it is likely that the child will be returned home by [date].

[Or]

It is likely that the child will be placed for adoption or legal guardianship by [date].

[And/Or]

The child [has/does not have] siblings under the court's jurisdiction.

[If there are siblings]:

The nature of the relationship with the siblings is [describe].

It is [appropriate/ not appropriate] to maintain sibling relationships.

[If siblings are not placed together], the reason for that placement, is [describe].

The frequency and nature of sibling visitation is [describe].

The impact of sibling relationship on placement and permanent planning is [describe].

[Or]

There is a continuing need to suspend sibling interaction, if applicable.

(5) Moving toward termination of parental rights

The court finds the following by clear and convincing evidence:

The child was removed initially under Welfare and Institutions Code section 300(g), and

[Add as applicable]

the whereabouts of [name of parent or guardian] are still unknown.

[Or]

[name of parent or guardian] has failed for six months to contact and visit the child.

[Or]

[name of parent or guardian] has been convicted of a felony indicating parental unfitness.

[Continue]

A hearing under Welfare and Institutions Code section 366.26 will be scheduled for *[date within 120 days (Welf & I C §366.21(e); Cal Rules of Ct 5.710(b)(3), (c))]*. This order may be challenged by the filing of an extraordinary writ in the appellate court.

(6) Reunification services discontinued/assessment prepared (Welf & I C §366.21(h)–(i); Cal Rules of Ct 5.708(n)(1), (4))

Reunification services shall be discontinued. DSS shall prepare an assessment that will include the current search efforts for the absent parent, a review of the nature and amount of contacts between *[name of child]* and the *[parent/guardian]*, prospects for adoption, and an evaluation of *[name of child]*.

(7) Visitation and Maintenance of Relationships (Welf & I C §366.21(h))

Visitation with *[name of parent or guardian]* shall continue.

[Or]

The court finds that visitation would be detrimental to the child and therefore must *[be discontinued/not take place]*.

[And/Or]

The court finds that visitation with *[individuals important to the child other than siblings]* must continue.

(8) Child placed with noncustodial parent

The court finds that supervision is no longer necessary. Custody is transferred permanently to *[name of noncustodial parent]* as provided in Welfare and Institutions Code section 361.2(b)(1). Jurisdiction is terminated.

[Or]

Placement with *[name of noncustodial parent]* shall continue with court supervision.

(9) When out-of-home placement continues but .26 hearing has not been ordered (Welf & I C §366.21(e))

Reasonable reunification services have *[not]* been *[provided/offered]* to the *[parent/guardian]*. The court now orders that reunification services be *[initiated/continued/modified]*.

If *[name of child]* cannot be returned home by the 12-month permanency hearing, a proceeding for termination of parental rights under Welfare and Institutions Code section 366.26 may be instituted.

(10) (Eff. 1/1/12) For nonminor dependent or for a dependent for whom this is the last hearing before turning 18 years of age

The plan that has been developed to ease your transition to independent living contains the following provisions *[you may continue to receive aid/ are under the court's protection if you do*

*the following: attend college/ work at least 80 hours per month/other options*] (see Welf & I C §11403)]. The benefits of remaining under the court's jurisdiction are that [*state benefits*]. If you wish, you may ask the court to terminate this jurisdiction which would mean that the court will not be involved in your life in any way (Welf & I C §366(a)(1)(F)).

(11) Setting 12-month permanency hearing (Welf & I C §§366(a), 366.21(a); Cal Rules of Ct 5.715(a))

A 12-month permanency hearing is set for [*insert date within six months*].

[*To parents or guardians*]

You have the right to be present and represented by counsel at that hearing.

**D. [§103.70] Script: Findings and Orders—12-Month Permanency Hearing**

*Note:* For all possible findings and orders, see Judicial Council forms JV-435–JV-438. For required findings concerning the case plan and the child’s education, see Appendix V, Case Plan and Educational Findings and Orders—Dependency.

(1) Return of child

The court orders that custody of *[name of child]* shall be returned to *[name of parent/guardian/other former custodian]*.

[Or]

The court finds by a preponderance of the evidence that returning the child home would create a substantial risk of harm to the child’s *[physical health/emotional well-being]* because *[state reasons]*. Therefore, *[name of child]* may not be returned home at this time.

(2) Reasonable reunification services (Cal Rules of Ct 5.708(e))

Reasonable reunification services have *[not]* been *[provided/offered]* to the *[parents/guardians]*.

*[If applicable]* The services set forth in the case plan include those needed to assist the child in making the transition from foster care to independent living.

Limitations on the right of the parent or guardian to make educational decisions are *[describe]* (Welf & I C §366(a)(1)(C)).

(3) Finding re placement (Welf & I C §366.21(f); Cal Rules of Ct 5.708(i)(1); 42 USC §675(5)(B))

The court finds that the placement *[continues to be/is no longer]* necessary because *[state reasons]* and *[is appropriate/is no longer appropriate]* to this child because *[state reasons]*.

*[Name of custodian]* shall therefore have custody of the child effective *[date]*.

If the child has been placed out of state, the placement *[continues to be/ is no longer]* appropriate (Welf & I C §366(c)).

The court further finds that:

DSS and *[parents/guardians/other]* have participated regularly and made substantive progress in court-ordered treatment programs.

[Or]

DSS has provided services and opportunities but *[name of parent/guardian/other]* has not participated regularly and made substantive progress in court-ordered treatment programs in that *[describe]*.

[Or]

The services provided have been inadequate in that *[describe]*.

(4) Permanent Plan

The permanent plan is:

Adoption

[Or]

Legal guardianship with a specific goal of [e.g., dismissal of dependency or adoption]

[Or]

Permanent placement with [name], a fit and willing relative with a specific goal of [e.g., kinship adoption, guardianship, transition to independent living with identification of caring adult to serve as a lifelong connection].

The plan is appropriate and is ordered as the permanent plan. The likely date by which DSS will finalize the permanent plan is [date] and the likely date by which the child's permanent goal will be achieved is [date].

(5) Finding re foster care

The court also finds that the following progress has been made toward alleviating or eliminating the need for foster care [describe]:

(6) (Eff. 1/1/12) For nonminor dependent or for a dependent for whom this is the last hearing before turning 18 years of age

The plan that has been developed to ease your transition to independent living contains the following provisions [you may continue to receive aid/ are under the court's protection if you do the following: continue to attend college/work at least 80 hours per month/other options] (see Welf & I C §11403). The benefits of remaining under the court's jurisdiction are that [state benefits]. If you wish, you may ask the court to dismiss this jurisdiction which would mean that the court will not be involved in your life in any way (Welf & I C §366(a)(1)(F)).

[And/Or]

You may remain [with your current foster family/in some other planned, permanent living arrangement]. (Welf & I C §366.21(g)(2)).

(7) Further Hearings

The court finds that to return [name of child] to the custody of [his/her] [parents/guardians] would be detrimental because [state reasons]. The court also finds that [there is a substantial probability that [name of child] will be returned to the physical custody of [name of parent/guardian]/reasonable services have not been provided to [name of parent/guardian]].

Therefore, a permanency review hearing is set for [date within six months, but not later than 18 months from the date the child was taken from the physical custody of the parent or guardian (see Welf & I C §366.21(g)(1); Cal Rules of Ct 5.720(a))].

[To parent or guardian]

You have the right to be present and represented by counsel at that hearing.

If [*name of child*] cannot be returned home by the next review hearing, a proceeding for termination of parental rights under Welfare and Institutions Code section 366.26 may be instituted.

*Note:* This procedure is authorized by Welf & I C §366.21(g)(1).

[Or]

The court finds by clear and convincing evidence that [*name of child*] is not a proper subject for adoption and there is no one willing to accept legal guardianship. Therefore, [*name of child*] shall remain in foster care and a hearing is set for [*date not later than six months*].

The court finds by clear and convincing evidence that reunification services have been offered or provided to [*name of parent or guardian*].

(8) Scheduling .26 hearing

A hearing under Welfare and Institutions Code section 366.26 will be scheduled for [*date within 120 days*] (see Welf & I C §366.21(e); Cal Rules of Ct 5.715(b)(4)(B)).

This order may be challenged by the filing of an extraordinary writ in the appellate court.

(9) Discontinuing reunification services (Welf & I C §366.21(h)–(i))

Reunification services shall be discontinued. DSS shall prepare an assessment that includes the current search efforts for the absent parent, a review of the nature and amount of contacts between [*name of child*] and the [*parent/guardian*], prospects for adoption, and an evaluation of [*name of child*].

(10) Visitation

Visitation with [*parent/guardian*] shall continue.

[*Discontinuance or prohibition of visitation* (see Welf & I C §366.21(h))]

The court finds that visitation would be detrimental to [*name of child*] and therefore must [*be discontinued/not take place*].

**E. [§103.71] Script: Findings and Orders—18-Month Permanency Review**

*Note:* For all possible findings and orders, see Judicial Council forms JV-440–JV-443. For required findings concerning the case plan and the child’s education, see Appendix V, Case Plan and Educational Findings and Orders—Dependency.

(1) Return of child

The court orders that custody of *[name of child]* shall be returned to *[name of parent/guardian/other former custodian]*.

[Or]

The court finds by a preponderance of the evidence that returning the child home would create a substantial risk of harm to the child’s *[physical health/emotional well-being]* because *[state reasons]*. Therefore, *[name of child]* may not be returned home at this time.

(2) Services

Reasonable reunification services have *[not]* been *[provided/offered]* to the *[parent/guardian]*. The court must take into account barriers to accessing those services or maintaining contact with the child caused by incarceration or institutionalization. Welf & I C §366.22(a).

[Continue]

(3) Placement/Permanent Plan

The permanent plan is:

Adoption

[Or]

Legal guardianship with a specific goal of *[e.g., dismissal of dependency or adoption]*

[Or]

Permanent placement with *[name of relative]*, a fit and willing relative with a specific goal of *[e.g., kinship adoption, guardianship, transition to independent living with identification of caring adult to serve as a lifelong connection]*.

The plan is appropriate and is ordered as the permanent plan. The likely date by which DSS will finalize the permanent plan is *[date]* and the likely date by which the child’s permanent goal will be achieved is *[date]*.

(4) (Eff. 1/1/12) For nonminor dependent or for a dependent for whom this is the last hearing before turning 18 years of age

The plan that has been developed to ease your transition to independent living contains the following provisions *[you may continue to receive aid/ are under the court’s protection if you do the following: continue to attend college/work at least 80 hours per month/other options]* (see

Welf & I C §11403)]. The benefits of remaining under the court's jurisdiction are that [*state benefits*]. If you wish, you may ask the court to dismiss this jurisdiction which would mean that the court will not be involved in your life in any way. (Welf & I C §366(a)(1)(F)).

[*And/Or*]

You may remain [*with your current foster family/in some other planned, permanent living arrangement*]. (Welf & I C §366.22(a)).

(5) Scheduling Further Hearings

The best interests of the child would be met by providing additional services to [*parent or guardian*] who has recently been discharged from [*incarceration/institutionalization*] and has made significant and consistent progress in establishing a safe home for the child *or*

To [*parent or guardian*] who has made significant and consistent progress in a drug treatment program.

Therefore, the case is continued to a 24-month subsequent permanency hearing, and DSS is required to provide six more months of services (see Welf & I C §366.22(b)).

[*Or*]

A hearing under Welfare and Institutions Code section 366.26 will be scheduled for [*date within 120 days (see Welf & I C §366.22(a); Cal Rules of Ct 5.720(b)(3)(C))*].

This order may be challenged by the filing of an extraordinary writ in the appellate court.

(6) Discontinuing reunification services

Reunification services shall be discontinued. DSS shall prepare an assessment that will include the current search efforts for the absent parent, a review of the nature and amount of contacts between [*name of child*] and [*parent/guardian*], prospects for adoption, and an evaluation of [*name of child*].

(7) Visitation

Visitation with [*parent/guardian*] shall continue.

[*When visitation detrimental to child (see Welf & I C §366.21(h))*]

The court finds that visitation would be detrimental to [*name of child*] and therefore must [*be discontinued/not take place*].

**F. [§103.72] Script: Findings and Orders—Postpermanency Planning Review Hearing**

*Note:* For all possible findings and orders, see Judicial Council forms JV-445–JV-446. For required findings concerning the case plan and the child’s education, see Appendix V, Case Plan and Educational Findings and Orders—Dependency.

(1) Terminating or continuing jurisdiction

*[Termination of jurisdiction (see Welf & I C §366.3(a);  
Cal Rules of Ct 5.740(a))]*

Because *[name of child]* has been adopted since the last review hearing, juvenile court jurisdiction is terminated and the case is dismissed.

*[Continuation of dependency jurisdiction]*

The court finds that *[name of guardian]* is the legal guardian of *[name of child]* and orders the continuation of dependency jurisdiction over *[name of child]*.

*[Termination of dependency jurisdiction (see Welf & I C §§366.3(a), 366.4; Cal Rules of Ct 5.740(a), (c))]*

The court finds that *[name of guardian]* is the legal guardian of *[name of child]* and orders the termination of dependency jurisdiction. The court retains jurisdiction over *[name of child]* as a ward of the guardianship.

*Note:* For terminating dependency jurisdiction for a nonminor dependent (see Welf & I C §§224.1 (Indian child) 303, 366, 366.31, 391), see the script in §103.73. Dependency jurisdiction may not be terminated without holding a hearing under Welf & I C §391. Welf & I C §391(e).

(2) Notice

*[If child is in a placement other than a preadoptive home or the home of a legal guardian, parental rights have not been terminated, and jurisdiction has not been dismissed:]*

*[And]*

*[If one parent is not present, make sure that the absent parent received notice of the hearing. If so, state]*

The court finds that notice has been given as required by law. The *[mother/father/guardian]* has failed to appear.

*[When both parents present]*

The court finds that the *[mother/father/guardian]*, the child, and all counsel were notified of this hearing and served with the review report as required by law.

(3) Review of court documents; findings

The court has read and considered the report submitted by DSS and has taken into account the following factors *[describe with particularity (see Welf & I C §366.3(e))]*:

- The progress being made to provide a permanent home;
- The continuing necessity for and appropriateness of the child's placement;
- Identification of people, other than siblings, who are important to a child who is 10 years old or older and who is in out-of-home placement for six months or longer, and actions necessary to maintain the child's relationship with those individuals, provided that those relationships are in the best interest of the child;
- The continuing appropriateness of and extent of compliance with the permanent plan, including efforts to maintain relationships with those people who are important to a child who is 10 years old or older and who is in out-of-home placement for six months or longer from the date he or she entered foster care, as well as efforts to identify a prospective adoptive parent or legal guardian;
- The extent of DSS compliance with the case plan in making reasonable efforts to return the child to a safe home and to complete plans for permanent placement;
- Whether there should be limitations on the right of the parent or guardian to make educational decisions for the child;
- The adequacy of services provided, including documents, information, and services for a child who has reached the age of majority (see Welf & I C §391);
- The parents' progress toward alleviating the causes that required foster care;
- The likely date by which the child may be safely returned to and maintained in the home, placed for adoption or in some other permanent living situation, or, in the case of an Indian child in consultation with the child's tribe, placed for tribal customary adoption;
- The services needed to assist a child who is 16 years of age or older to make the transition from foster care to independent living; and
- Whether the child has siblings under the court's jurisdiction, and if so:
  - The nature of the relationship with the siblings;
  - The appropriateness of developing and maintaining sibling relationships;
  - If siblings are not placed together, the reason for that placement, and efforts, if any, to correct it;
  - Frequency and nature of sibling visitation; and
  - Impact of sibling relationship on placement and permanent planning.
- (Eff. 1/1/12) If the child is a nonminor dependent
  - Transition to independent living;
  - Efforts made to assist in education, employment, etc.; and
  - Efforts made toward providing relevant documents as set out in Welf & I C §391(e)(2).

(4) Child remains in foster care

[*Name of child*] shall remain in foster care.

For nonminor dependent

You may remain [*with your current foster family/in some other planned, permanent living arrangement*] under a mutual agreement with DSS (see Welf & I C §11403(d)) or in supervised independent living consistent with the transitional plan. Welf & I C §366.31(b).

(5) Other options (see Welf & I C §366.3(h))

The permanent plan is:

Adoption

[Or]

Legal guardianship with a specific goal of [e.g., *dismissal of dependency or adoption*]

[Or]

Permanent placement with [*name of relative*], a fit and willing relative with a specific goal of [e.g., *kinship adoption, guardianship, transition to independent living with identification of caring adult to serve as a lifelong connection*].

The plan is appropriate and is ordered as the permanent plan. The likely date by which DSS will finalize the permanent plan is [date] and the likely date by which the child's permanent goal will be achieved is [date].

[Or for nonminor dependent (eff. 1/1/12)]

The plan that has been developed to ease your transition to independent living contains the following provisions [*you may continue to receive aid/are under the court's protection if you do the following: continue to attend college/ work at least 80 hours per month/other options*] (see Welf & I C §11403). The benefits of remaining under the court's jurisdiction are that [*state benefits*]. If you wish, you may ask the court to dismiss this jurisdiction which would mean that the court will not be involved in your life in any way. (Welf & I C §366(a)(1)(F)).

(6) Further reunification services (see Welf & I C §366.3(e); Cal Rules of Ct 5.740(b))

The court finds by a preponderance of the evidence that further efforts at reunification are the best alternative for the child and orders further reunification services until [date not later than six months].

(7) Reasonable efforts

Reasonable efforts to finalize a permanent placement [*have/have not*] been made. Welf & I C §366.3(d)–(g).

(8) Setting review hearing

A review hearing is set for [date within six months].

[To parents or guardians (see Welf & I C §366.3(e)–(g); Cal Rules of Ct 5.740(a)–(b))]

You have the right to be present at that hearing.

**G. [§103.73] Script: Findings and Orders—Terminating Jurisdiction for Nonminor Dependent (Welf & I C §391 (eff. 1/1/12))**

(1) Findings

The court finds that:

(a) DSS has notified [*the nonminor dependent*] about this hearing and

- He/she is present in court.

[Or]

- He/she has chosen not to appear.

[Or]

- [*The nonminor dependent*] is not available and DSS has made the following efforts to locate him/her. [*List efforts to locate nonminor dependent.*]

(b) The court has received a report concerning whether it is in the [*the nonminor dependent's*] best interests to continue dependency jurisdiction, including a plan for transitioning to independent living and the advisability of a court-ordered trial discharge from foster care

(2) Continuing dependency jurisdiction (Welf & I C §391(d)–(f))

Dependency jurisdiction is continued. At every review hearing between now and when [*the nonminor dependent*] turns 21 years old, DSS must submit a report describing efforts towards a transition to independent living, including efforts to supply [*the nonminor dependent*] with his/her social security card, birth certificate and other documents, assistance with obtaining housing, health insurance, and application to educational or training programs, and assistance in obtaining employment.

(3) Terminating dependency jurisdiction

Dependency jurisdiction is terminated because [*the nonminor dependent*] [*does not wish to continue dependency jurisdiction/after reasonable efforts, DSS is unable to locate the nonminor dependent/the nonminor dependent is not eligible under Welf & I C §11403(b)*].

[And]

[*The nonminor dependent*] will remain within the court's jurisdiction until he/she turns 21.

[And/Or]

\_\_\_\_\_ [*The nonminor dependent*] is to have a trial period of independence away from foster care, with an end date being the day before the nonminor turns 21. (Welf & I C §366.31(c)). You [*the nonminor dependent*] may ask your lawyer to request the court to reinstate jurisdiction under Welfare & Institutions Code §388(e). (Welf & I C §366.31(c)).

[And]

DSS must give [*the nonminor dependent*] information concerning his/her family and placement history, location of siblings, date of termination of jurisdiction, and any Indian heritage. (Welf & I C §391(e)(1))