

POLICY WEBINAR | JUNE 2022

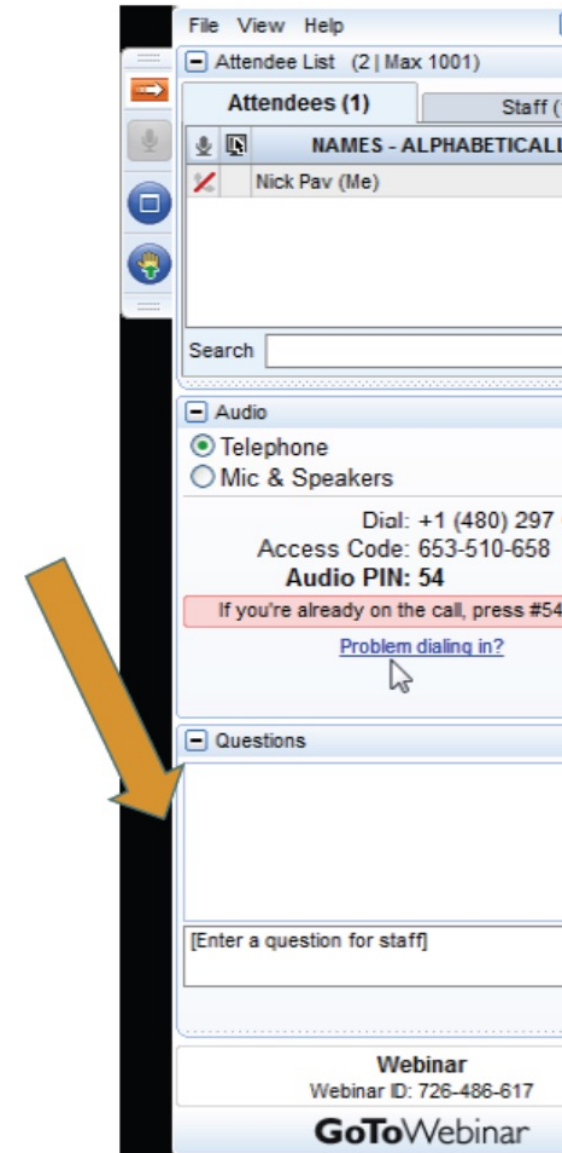
# Supporting Older Teens: Access to Systems and Services

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*for* CHILDREN'S  
RIGHTS



# Logistics

- Webinar resources, including recording and supplemental materials, will be posted at <https://allianceforchildrensrights.org/resources/>
- All attendees are muted during webinar.
- Please submit questions using the “Questions” function on your GotoWebinar dashboard.
- Email Erica Hickey at [ehickey@alliancecr.org](mailto:ehickey@alliancecr.org) if you experience technical difficulties.



# Agenda

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Challenges faced by teens experiencing abuse and neglect

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Landscape of options for teens experiencing abuse/neglect

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Overview of dependency court system and impetus for AB 748

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Overview of AB 748 and “nonminor disposition hearing”

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Practice tips for youth and advocates



# Presenters

Maighna Jain, Bay Area Legal Aid

Kim Lewis, California Coalition for Youth

Daniel Richardson, Judicial Council of California

Sabrina Forte, Alliance for Children's Rights

# Challenges Faced By Teens Experiencing Abuse and Neglect

# The Youth Homelessness Population Includes...

- Unaccompanied minors (ages 12-17) and young adults (ages 18-24) who are detached from their families and living in unstable or inadequate living situations.
- “Runaway” youth who have left home without permission.
- Youth who are told to leave home or prevented from returning home.
- Youth who are abandoned by an adult caregiver.
- Youth who have been released from public systems (including foster care and juvenile justice) with nowhere to go.

# What Are the Causes of Youth Homelessness?

Family conflict and breakdown, including abuse or neglect.

Youth in foster care, juvenile justice, or mental health systems transition out of these systems without adequate housing and income support.

Poverty, lack of affordable housing, family homelessness

# Running Away from What?

- In a 2016 report of youth experiencing homelessness across the country:
  - 70% of youth surveyed said that they had been kicked out of their home and could not return home even if they wished to do so.
  - Other causes of homelessness include: couldn't find a job (24.7%), physical abuse at home (23.8%), caretaker substance abuse (22.6%)
  - The majority reported childhood abuse, including emotional abuse (71.3%), physical abuse (56.7%), and sexual abuse (30.1%)



# Legislative Analyst's Office (LAO) Report

- During FY 2018-19 budget negotiations, the Legislature directed the LAO to review data about the reporting of child abuse and neglect for older youth vs. younger youth, with the goal of better understanding maltreatment rates among unaccompanied youth and system responses to those youth.
- Report link: <https://lao.ca.gov/reports/2019/3980/foster-care-032219.pdf>

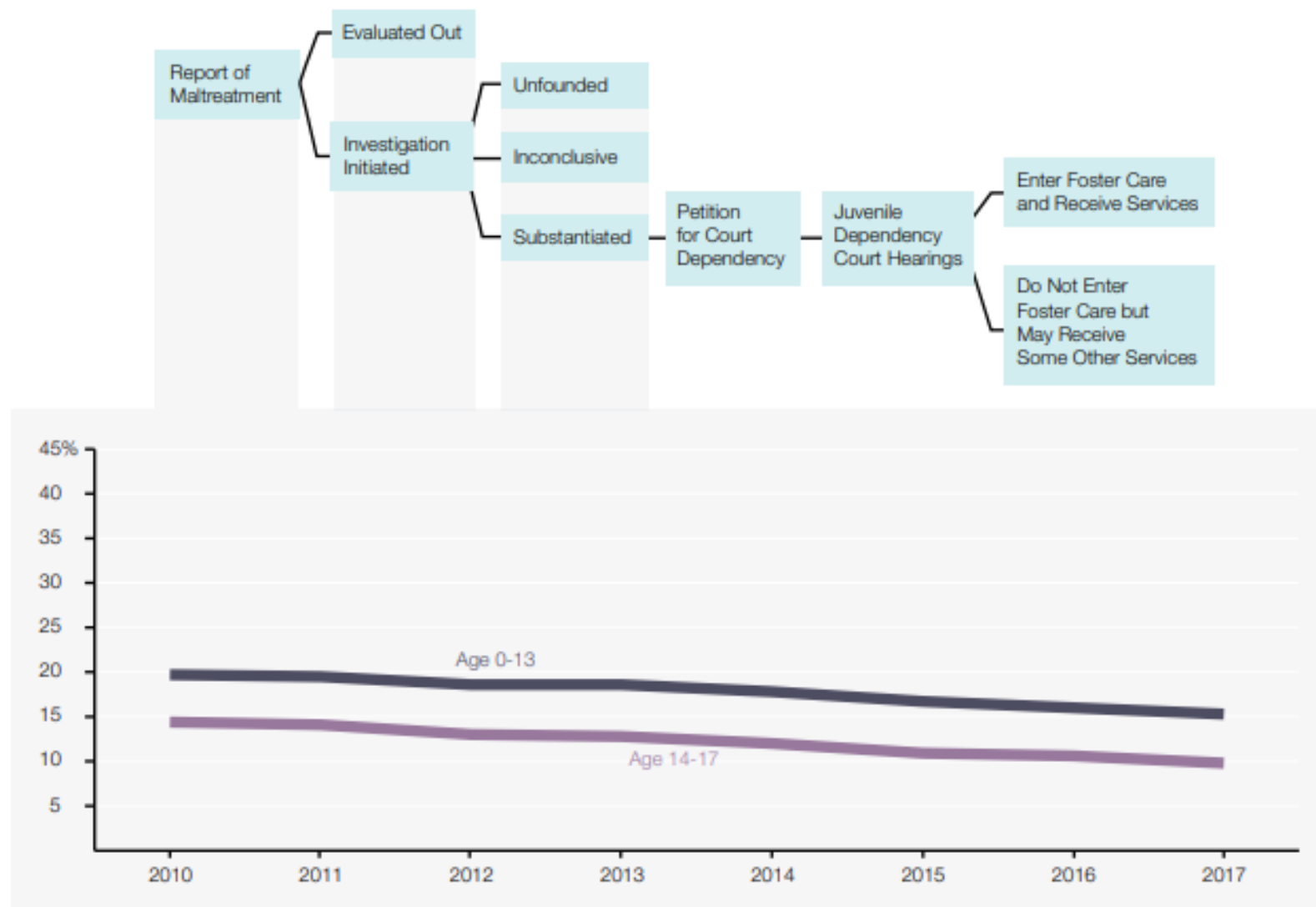


# LAO Report Findings

- Higher rates of older youth being “evaluated out” without further investigation than younger youth.
  - 30% for older youth vs. 19% for younger youth
  - Disparities particularly notable in cases of alleged sexual and physical abuse
- Lower rates of substantiated reports after an investigation.
  - 22% for younger youth vs. 17% for older youth.
  - Varies significantly by type of abuse/neglect alleged.
- Rates of entry into foster care roughly equal once a report is substantiated.

Figure 3

### Maltreatment Substantiations as a Percentage of All Reports by Age Group





# LAO Report Recommendations

- Additional Data Gathering
  - Track reasons for why maltreatment reports are evaluated out
  - More precisely track youth experiencing homelessness (existing data include youth in families experiencing homelessness but not unaccompanied youth)
  - Track whether and how counties refer children to other social services
  - Collect data on self-petitions and outcomes of those petitions
  - Monitor outcomes for youth with prior reports



# Options for Teens Experiencing Abuse and Neglect

# Resources for Any Youth Experiencing Homelessness - Housing

- Coordinated Entry Systems (CES): Streamline intake and referral to more efficiently connect people experiencing homelessness to stable housing.
- Youth Homelessness Prevention Centers (12-17 years)
  - Must establish procedures to secure long-term stability for youth (reconnecting with family or foster care placement)
  - Not an eligible foster care placement
- Youth Transitional Living Programs (generally limited to 18 years+)

# Resources for Any Youth Experiencing Homelessness – Support Services

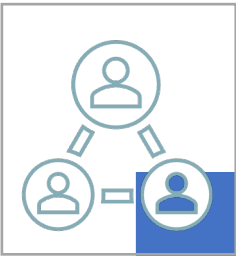
- Healthcare through Medi-Cal/EPSDT if income-eligible
- Education rights under McKinney-Vento Act (school of origin, partial credits, etc.)
- Nutrition supports through CalFresh
- Cash aid through GA/GR or CalWORKs (very difficult for minors to access)
- Mentoring, academic support, case management, etc. through community-based organizations

# Emancipation

- Legal process that “frees” a child from the custody and control of their parent/guardian.
- Typically requires filing a petition for emancipation with the court.
- Must demonstrate ability to manage own finances, parental consent/acquiescence with living apart, best interests

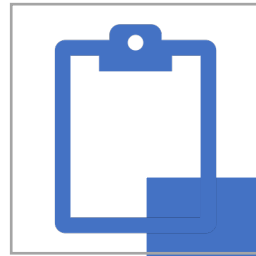


# Probate Court Guardianship



## Child's Legal Status

- Guardian has full legal and physical custody of the child.
- Parents retain parental rights.



## Agency Determination

- May be investigation and report by a Probate Court investigator or CPS



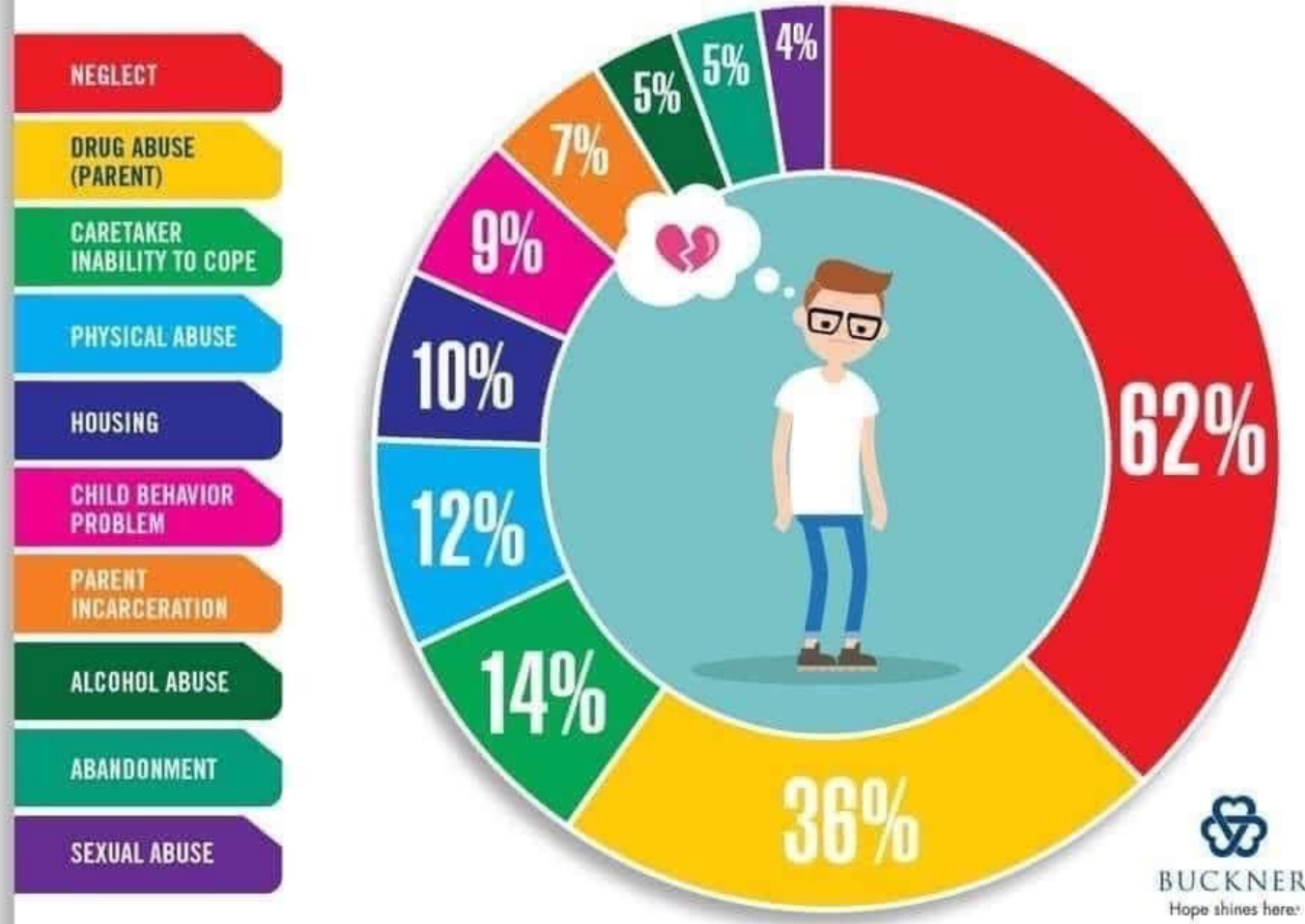
## Court Determination

- Judicial determination that guardianship is necessary or convenient and is in the best interests of the child.

# Dependency Court

- “**Foster care**” means the 24-hour out-of-home care provided to children whose own families are unable or unwilling to care for them, and who are in need of temporary or long-term substitute parenting. (WIC 11400(f))

# Why kids are removed from their homes.



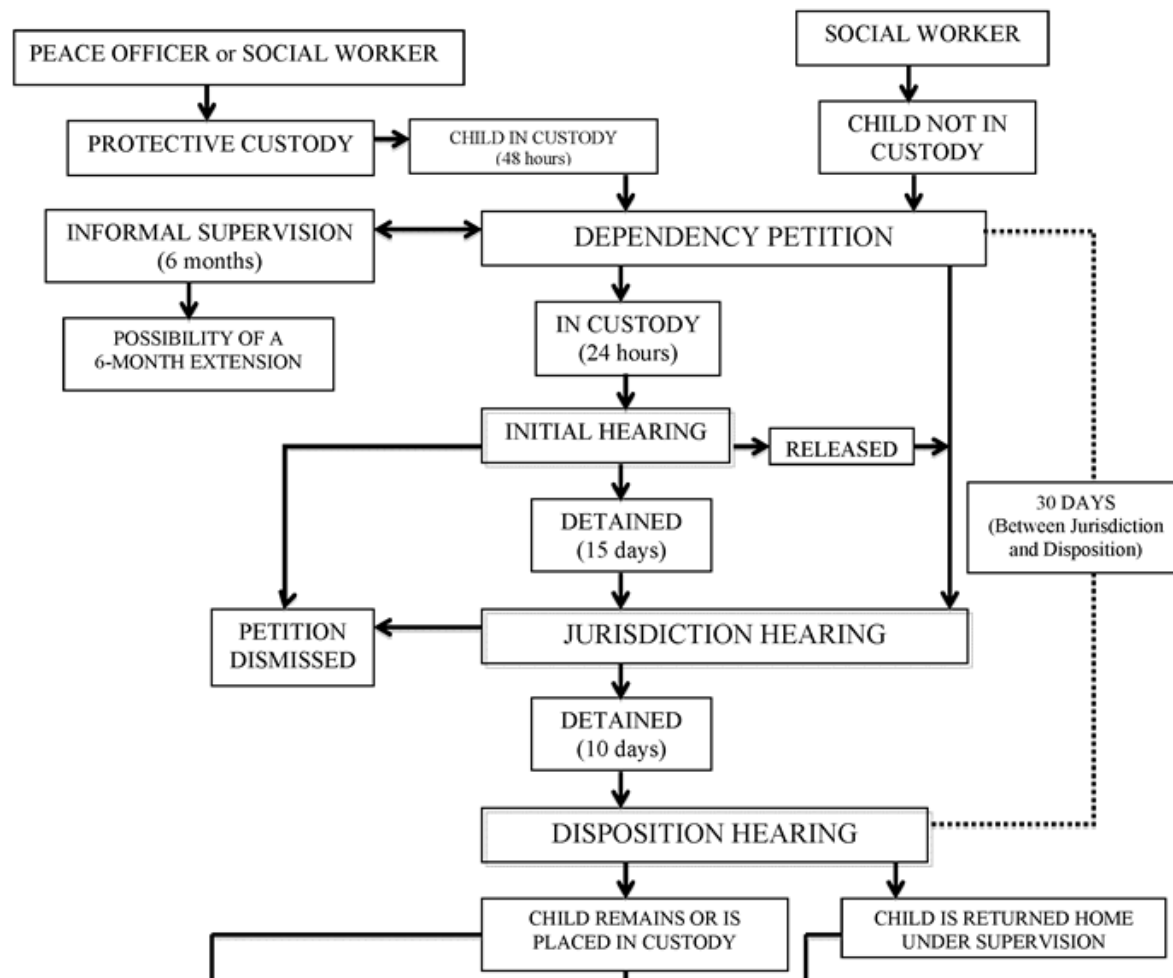
NOTE: These categories are not mutually exclusive, so percentages will total more than 100% and counts will be more than the total number of entries.



Source: Children's Bureau

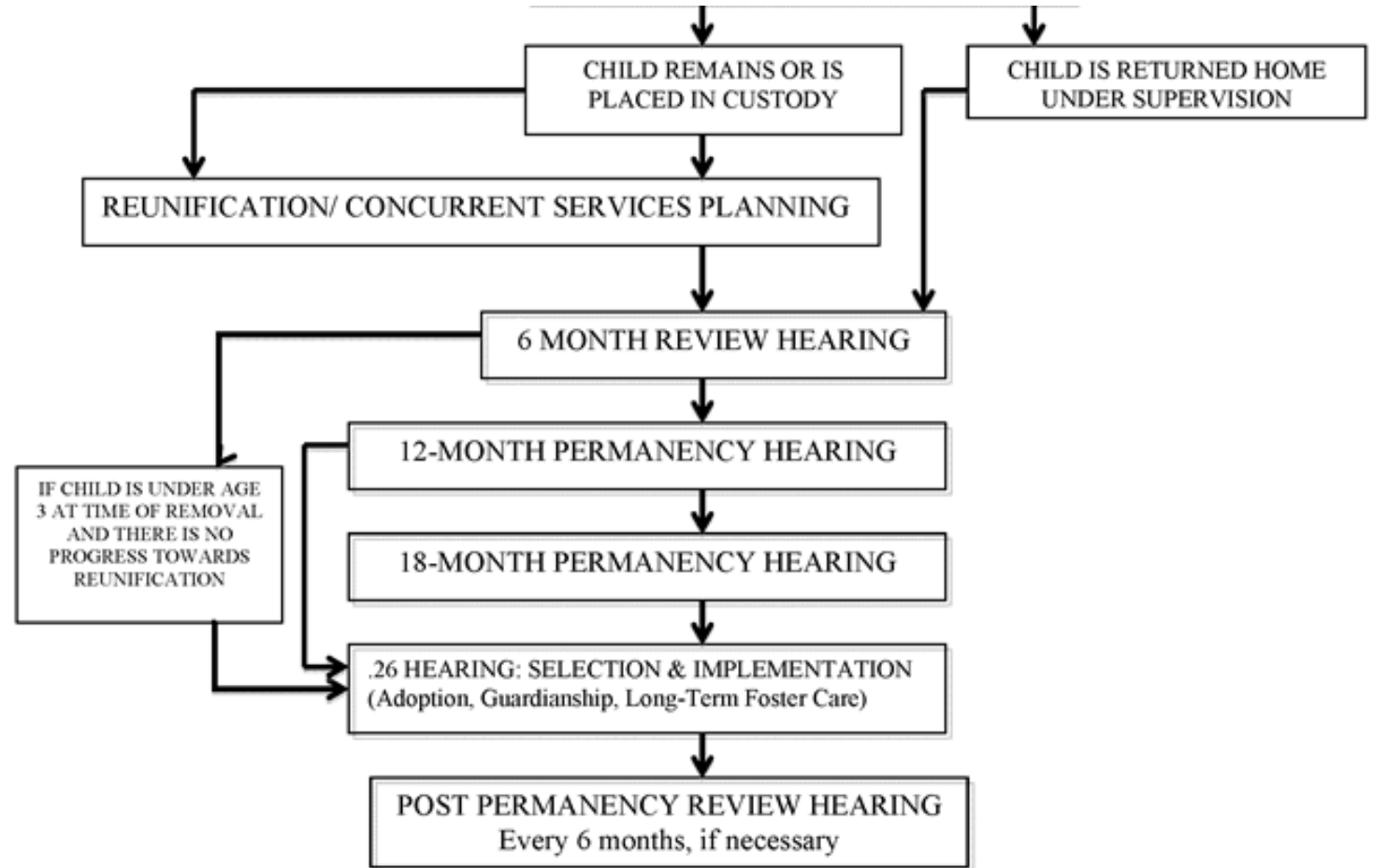
## Juvenile Dependency Proceedings (Welfare & Institutions Code Section 300 et seq.)

# Dependency Court Timelines



# Dependency Court Timelines

- Source: Advokids



# Barriers Related to Dependency Court Timelines

17 year olds who come to the attention of the child welfare agency shortly before their 18<sup>th</sup> birthday may not reach the juris and/or disposition hearing until after they turn 18.

- Tyler's Story
- *In re David B.* (2017) 12 Cal. App. 5<sup>th</sup> 633

# AB 748 and Nonminor Disposition Hearings

## AB 748 (Gipson)

- Chaptered in 2019 and went into effect January 1, 2020.
- Amends Welfare and Institutions Code Section 358 to create a “nonminor disposition hearing” if:
  - A youth has reached 18 years of age;
  - The youth was found to be under the jurisdiction of the juvenile court prior to turning 18 years of age;
  - The youth had been continuously detained pursuant to the juvenile court’s orders; and
  - The youth provides informed consent to the dispositional hearing.
- A nonminor ordered into foster care placement at this hearing is considered a nonminor dependent for purposes of extended foster care



# Guidance for Courts

- California Rules of Court, rule 5.697
- [Form JV-463](#): Nonminor's Informed Consent to Hold Disposition Hearing
- [Form JV-461](#): Findings and Orders After Nonminor Disposition Hearing
- [Form JV-461\(A\)](#): Dispositional Attachment: Nonminor Dependent

# Notice and Informed Consent

- Served by the social worker to all parties entitled to notice under WIC 295, including the nonminor's parent or guardian.
- The notice to the youth must include a copy of the JV-463 (informed consent form).
- The youth must give informed consent by signing the form at or before the disposition hearing.
  - Court must appoint guardian ad litem if nonminor is not competent to direct counsel and give informed consent.

# Hearing Requirements and Participants

- Held within 30 days of the date of the jurisdictional finding.
- Nonminor may appear by telephone.
- Nonminor still entitled to counsel and may invite other participants, as appropriate.
- The parent or guardian may participate as a party, but participation is limited to addressing whether one of the conditions listed in WIC 361(c) existed immediately prior to the youth's 18<sup>th</sup> birthday.

# Disposition Report

- Prepared by the social worker and filed at least 48 hrs before hearing.
- Must discuss all matters relevant to disposition and include a recommendation for disposition:
  - Whether one of the conditions of WIC 361(c) existed immediately before the youth attained 18 years of age,
  - Reasonable efforts made to prevent/eliminate the need for removal,
  - A plan for achieving legal permanence of successful adulthood,
  - Whether reunification services are being considered and progress toward reunification,
  - Family finding efforts,
  - Efforts to place siblings together,
  - Development of case plan, TILCP, and plans to maintain EFC eligibility,
  - Necessity and appropriateness of current placement,
  - Provision of documents and services under WIC 391

## The Hearing

- The court must consider the dispo report, the report of a CASA (if applicable), any relevant evidence offered by the parties, and the nonminor's case plan and TILCP (if applicable)
- Standard: Clear and convincing evidence that one or more of the conditions in Section 361(c) existed immediately prior to 18<sup>th</sup> birthday



# WIC 361(c)

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- (1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removal.
- (2) The parent, guardian, or Indian custodian of the minor is unwilling to have physical custody of the minor, and the parent, guardian, or Indian custodian has been notified of the timelines and requirements under Section 366.26.
- (3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or herself or others, and there are no reasonable means by which the minor's emotional health may be protected without removal.
- (4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, Indian custodian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removal, or the minor does not wish to return home.
- (5) The minor has been left without any provision for his or her support, or a parent, guardian, or Indian custodian who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent, guardian, or Indian custodian is unwilling or unable to provide care or support for the child and the whereabouts of the parent, guardian, or Indian custodian is unknown and reasonable efforts to locate him or her have been unsuccessful.
- (6) In an Indian child custody proceeding, continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and that finding is supported by testimony of a "qualified expert witness" as described in Section 224.6.

# Other Required Findings

Reasonable  
efforts

Due diligence  
in family  
finding

ICWA  
applicability

# Orders

- If 361(c) criteria met → declare dependency and set a NMD review hearing under WIC 366.31
- If 361(c) criteria met BUT nonminor dependent chooses not to remain in foster care → declare dependency and set a termination hearing within 30 days (WIC 391 applies; general jurisdiction retained)
- If 361(c) criteria not met or no informed consent → vacate temporary placement orders and dismiss dependency jurisdiction (no general jurisdiction)




# Other Orders


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- Placement and care vested with the placing agency
- Order compliance with ICWA, if no inquiry occurred and the NMD requests an ICWA determination
- May order family reunification services
- May make findings and orders under Cal. Rules of Court, rule 5.903(e), and findings on the progress of reunification services.
  - If not made at nonminor dispo hearing, must be made at next NMD status review hearing.

# Implementing AB 748



## Utilizing WIC 329 and 331 to Commence Dependency Proceedings

- WIC 329 allows any person (including a youth) to submit an affidavit to the county child welfare agency and request an investigation for abuse and neglect. (Form JV-210)
  - If the child welfare agency decides not to file a dependency court petition, WIC 331 allows the original requestor to file a request for the dependency court to review the agency's decision. (Form JV-212)
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# WIC 329/331 Practice Tips

- Try to file the JV-210, request for investigation, and JV-212, request for hearing, as timely as possible. Even if you need to submit supplemental briefing or evidence later, it starts the process. + ● ○
- Make sure the face of the JV-210 and JV-212 clearly state the urgency due to the age of the youth.
- Pending the investigation and/or court hearing setting, try to continuously engage the Department about why a petition should be filed.
- Ask other service providers to also engage with the Department about the risks to the youth.

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# Pre-Petition Dependency Court Processes (WIC 331)

- After filing a JV-212, follow up with the clerk every day until your hearing is set. It is not unusual that these cases get lost in the shuffle.
- Do not agree to any continuances of the JV-212 hearing. If you have a client quickly approaching 18 years of age, any continuance could cause great detriment to the client.
- If a JV-212 hearing is set, make sure all conversations regarding substantive issues are on the record. This holds true for dependency proceedings, too. Any off the record conversations or understandings will not benefit the youth if this is appealed.
- If the court orders the petition be filed by the Department in your case, ask the court to also order a 24-48 hour timeframe by which the petition must be filed.
- If the Department fails to file the petition, consider filing a motion for contempt of court.

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# Post-Petition Dependency Court Processes

- Make sure to bridge the gap between your representation and the court appointed dependency attorney for your client—set up a phone call, do some education about AB 748, emphasize the importance of expediting the jurisdiction hearing when necessary.
- If possible, ask minor’s counsel to invite you to the detention and jurisdiction hearings, so you can provide context to the court if asked and continued support to the client. This can also help make sure the court understands the AB 748/WIC 358(d)(1). Briefing prior to jurisdiction can help the court understand changes in the law.
- Negotiation with parent’s counsel (i.e., basis for jurisdiction)

# What if the case is dismissed at or before the nonminor dispositional hearing?

- If the case gets dismissed at detention or at jurisdiction, file an emergency writ. Advokids is a great resource for learning more about writ procedures.
- If your organization and client allow for media attention, local systemic change, and statewide reform, for failure to enter youth into foster care, consider using it! It is important to highlight how failure to enter into foster care often leads directly to youth homelessness.
- Keep the client's case open if they don't make it into extended foster care—youth denied entry into foster care who age out with no support system are some of our most vulnerable community members and could benefit from as much support and guidance as possible. Connect them with housing resources, public benefits, and other supports.

# Resources

- CDSS All-County Letter 21-62: <https://www.courts.ca.gov/documents/jv461a.pdf>
- LAO Report: <https://lao.ca.gov/reports/2019/3980/foster-care-032219.pdf>
- Form JV-210: <https://www.courts.ca.gov/documents/jv210.pdf>
- Form JV-212: <https://www.courts.ca.gov/documents/jv212.pdf>



Questions?



Thank you!

