WELFARE AND INSTITUTIONS CODE
DIVISION 2. Children
PART 1. Delinquents and Wards of the Juvenile Court
CHAPTER 2. Juvenile Court Law
ARTICLE 6. Dependent Children--Jurisdiction

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Wel & Inst Code, prec § 300 (2005)

Preceding § 300

HISTORY:

[Added Stats 1976 ch 1068 § 6. Former Article 6, consisting of § § 625-641, was added Stats 1961 ch 1616 § 2 and renumbered Article 15 by Stats 1976 ch 1068 § 23.]

NOTES:

Collateral References:

Law Review Articles:

Home alone . . . What happens to the child when a sole parent is arrested? 34 Orange County Law No. 11 p 10.

Where have all the children gone? Due process and judicial criteria for removing children from their parents' homes in California. 21 Southwestern U LR 125.

The problem of the drug-exposed newborn: A return to principled intervention. *42 Stan LR 745.*

Child abuse: The irreconcilable differences between criminal prosecution and informal dependency court mediation. 31 U Louisville J Family L 37.

Annotations:

Treatment of juvenile alleged to have violated law of United States under Federal Juvenile Delinquency Act *(18 USCS § § 5031*-5042), *58 ALR Fed 232.*

WELFARE AND INSTITUTIONS CODE
DIVISION 2. Children
PART 1. Delinquents and Wards of the Juvenile Court
CHAPTER 2. Juvenile Court Law
ARTICLE 6. Dependent Children--Jurisdiction

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Wel & Inst Code § 300 (2005)

§ 300. Persons subject to jurisdiction of juvenile court

Any child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No child shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No child shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in *Section 11165.1 of the Penal Code*, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under the age of five years and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child's parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to *Section 1255.7 of the Health and Safety Code* and the child has not been reclaimed within the 14-day period specified in subdivision (e) of that section; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the Legislature that nothing in this section disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's de-

termination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control. The Legislature further declares that a child whose parent has been adjudged a dependent child of the court pursuant to this section shall not be considered to be at risk of abuse or neglect solely because of the age, dependent status, or foster care status of the parent.

As used in this section, "guardian" means the legal guardian of the child.

HISTORY:

Added Stats 1987 ch 1485 § 4, operative January 1, 1989. Amended Stats 1989 ch 913 § 3; Stats 1991 ch 1203 § 1.5 (SB 1125); Stats 1992 ch 382 § 1 (SB 1646); Stats 1996 ch 1082 § 1.5 (AB 2679), ch 1084 § 1.5 (SB 1516); Stats 1998 ch 1054 § 2 (AB 1091); Stats 2000 ch 824 § 3 (SB 1368).

Amended Stats 2005 ch 625 § 3 (SB 116), ch 630 § 1 (SB 500).

NOTES:

Former Sections:

Former § 300, similar to the present section, was added Stats 2000 ch 824 § 3.5, to become operative January 1, 2006, and repealed Stats 2005 ch 625 § 4.

Former § 300, similar to present *W & I C § 10907*, was added Stats 1955 ch 1179 § 1, and repealed Stats 1965 ch 1784 § 2.

Former § 300, similar to the present section, was added Stats 1976 ch 1068 § 6, amended Stats 1978 ch 539 § 1, Stats 1982 ch 977 § 2.5, effective September 13, 1982, Stats 1985 ch 1548 § 1, Stats 1986 ch 71 § 1, ch 1122 § 2, and repealed Stats 1987 ch 1485 § 3.

Editor's Notes:

There was another section of this number which was added Stats 1987 ch 1485 § 4.5, amended Stats 1989 ch 913 § 4, to become operative January 1, 1992, and repealed Stats 1991 ch 1203 § 2.Amendments:

1989 Amendment:

(1) Substituted the colon for the period at the end of the introductory clause; **(2)** substituted "Section 11165.1" for "subdivision (b) of Section 11165" in subd (d); **(3)** deleted "or" after "support;" the first time it appears in subd (g); **(4)** deleted "and an interlocutory decree has not been granted pursuant to *Section 224n of the Civil Code*" after "rights" in subd (h); and **(5)** substituted "January 1, 1992" for "January 1, 1990" both times it appears in the last paragraph.

1991 Amendment:

Deleted the former last paragraph which read: "This section shall remain in effect only until January 1, 1992, and as of that date is repealed, unless a later enacted statute, which is enacted before January 1, 1992, deletes or extends that date."

1992 Amendment:

Added "; or the willful, prolonged failure to provide adequate food" at the end of the second sentence in subd (e).

1996 Amendment:

In addition to making technical changes, substituted **(1)** "caused" for "has been convicted of causing" in subd (f); **(2)** "minor" for "child" wherever it appears; and **(3)** "the first sentence for the former first, second, third, and fourth sentences in the last paragraph of subd (j) which read: "It is the intent of the Legislature in enacting this section to provide maximum protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to protect children who are at risk of that harm. This protection includes provision of a full array of social and health services to help the child and family and to prevent reabuse of children. That protection shall focus on the preservation of the family whenever possible. Nothing in this section is intended to disrupt the family unnecessarily or to inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting." (As amended Stats 1996 ch 1084, compared to the section as it read prior to 1996. This section was also amended by an earlier chapter, ch 1082. See *Gov C § 9605*.)

1998 Amendment:

Substituted **(1)** "child" for "minor" wherever it appears; **(2)** "child's" for "minor's" wherever it appears; and **(3)** "social worker" for "probation officer" in the third sentence of subd (e).

2000 Amendment:

(1) Added "physical custody of the child has been voluntarily surrendered pursuant to *Section 1255.7 of the Health and Safety Code* and the child has not been reclaimed within the 14-day period specified in subdivision (e) of that section;" in subd (g); and **(2)** added subd (k).

2005 Amendment:

(1) Amended subd (j) by (a) adding the last sentence of the secnd paragraph; and (b) adding the comma after "this section" in the third paragraph; and (2) deleted former subd (k) which read: "(k) This section shall be repealed on January 1, 2006, unless a later enacted statute extends or deletes that date." (As amended Stats 2005 ch 630, compared to the section as it read prior to 2005. This section was also amended by an earlier chapter, ch 625. See *Gov C § 9605*.)Historical Derivation:

(a) Former W & I C § 600, as added Stats 1961 ch 1616 § 2, amended Stats 1965 ch 535 § 1, Stats 1971 ch 1729 § 1, ch 1748 § 64.5.

(b) Former W & I C § 700, as amended Stats 1939 ch 1099 § 1, Stats 1953 ch 1336 § 1, Stats 1959 ch 1202 § 11.

(c) Stats 1915 ch 631 § 1.

(d) Stats 1909 ch 133 § 1, as amended Stats 1911 ch 48 § 1, ch 369 § 1, amended and renumbered § § 1-4 by Stats 1913 ch 673 § 1.Note:

Stats 1976 ch 1068 provides:

"SEC. 81. Any statutory reference to a person or minor adjudged or determined to be a dependent child of the juvenile court pursuant to Article 5 (commencing with *Section 600) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code*, as that article existed prior to the effective date of this act, shall be deemed to be a reference to a person or minor adjudged or determined to be a dependent child of the juvenile court pursuant to Article 6 (commencing with *Section 300) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code*, as added by this act.

"Any reference in any statute, whether enacted in 1976 at the Regular Session of the Legislature or prior thereto, to any section of the Welfare and Institutions Code which was by this act repealed and reenacted with a different number shall be deemed a reference to the successor section as reenacted by this act."

"SEC. 82. It is the intent of the Legislature in enacting this act to completely separate the statutory references in *Sections 600 through 800 of the Welfare and Institutions Code* to, respectively, dependent children and wards of the juvenile court, by nonsubstantive amendments.

It is the intent of the Legislature that this act shall not make any substantive change in the Arnold-Kennick Juvenile Court Law."

Stats 1987 ch 1485 provides:

"SEC. 51. Sections 3, 4, 6, 12, 13, 37, 40, 43, 44, 45, 47, 48, and 49 of this act shall be operative January 1, 1989.

SEC. 52. Section 4.5 of this act shall be operative January 1, 1990."

Stats 1991 ch 1203 provides:

"SECTION 1. The Legislature finds and declares that:

(a) The foundation for qualitative child welfare services rests upon preplacement preventive services and out-of-home care services. This system requires first, a written case plan for each child and family designed to achieve protection and care in the most familylike environment possible consistent with the best interest and special needs of the child; second, for those children in out-of-home care, a judicial or administrative review every six months to determine the appropriateness of the placement; and third, for those children who remain in out-of-home care for a period of 18 months, a permanent plan hearing to determine the future status of each child, with a review each 18 months thereafter. The child welfare services program further requires a case plan system based upon casework practice guidelines which promote the best interest of the child and family.

"(b) The Legislature further finds and declares that the realignment of health and human services programs in the state offers the opportunity to reemphasize the state's commitment to child welfare services by developing a framework based upon policy guidelines that provide quality services for the state's most endangered children.

(c) "Therefore, it is the intent of the Legislature in enacting this act to modify regulatory complexities to allow the provision of quality child welfare services and to minimize unnecessary administrative requirements. It is further the intent of the Legislature to improve the interrelationship of the dependency proceedings under *Section 300 of the Welfare and Institutions Code* with the requirements of *Sections 11400 and 16500 of the Welfare and Institutions Code*, and *Section 11165 of the Penal Code*, by minimizing duplication of effort and underscoring the mutual goals of the child welfare services system and the juvenile court."Related Statutes & Rules:

Purpose of Juvenile Court Law: *W & I C § 202*.

Segregation of minors adjudged dependent children from those taken into custody as delinquents or violators of law or court order: *W & I C § 206*.

Juvenile court: *W & I C § § 245* et seq.

Assumption of jurisdiction: *W & I C § 301*.
Retention of jurisdiction: *W & I C § 303*.
Effect of dependency proceedings on other custody proceedings: *W & I C § 304*.
Peace officer's authority to take minor into temporary custody without warrant: *W & I C § 305*.
Hearings: *W & I C § § 325* et seq.
Evidence that must be adduced to support finding that minor is person described by this section: *W & I C § 355*.
Finding by court whether minor is person described by this section: *W & I C § 356*.
Judgments and orders: *W & I C § § 360* et seq.
Termination of jurisdiction while parents' dissolution proceeding is pending or after entry of custody order: *W & I C § 362.4*.
Jurisdiction following order for permanent plan: *W & I C § 366.3*.
Jurisdiction of case transferred from another county: *W & I C § 375*.
Notice of minor's rights regarding sealing or destruction of juvenile court record following dismissal, release, or termination of case: *W & I C § 826.6*.
Prosecution of person causing child, receiving aid to families with dependent children, to come within provisions of this section: *W & I C § 11481*.
Pilot program for claiming AFDC-FC expenditures in advance for family reunification and maintenance services program: *W & I C § 16500.5*.
Office of Child Abuse Prevention: *W & I C § § 18950* et seq.
Purposes for which emancipated minor considered over age of majority: *Fam C § 7050*.
County in which petition for adoption of child adjudged dependent of juvenile court and freed for adoption to be filed: *Fam C § 8714*.
Contributing to delinquency of minor: *Pen C § 272*.
Termination of parental rights of prisoner: *Pen C § 2625*.
Special appeal rules for dependency and freedom from custody appeals: *CRC Rule 39.1*.
Notification of appeal rights in juvenile cases: *CRC Rule 251*.
Prehearing discovery; disclosure in proceedings under subds (a), (b), or (c) of this section: *CRC Rule 1420*.
Granting of immunity to witnesses: *CRC Rule 1421*.
Confidentiality of records: *CRC Rule 1423*.
Right to appeal: *CRC Rule 1435*.Collateral References:
Witkin & Epstein, Criminal Law (2d ed) § § 433, 836, 2243.
Witkin Evidence (3d ed) § § 33, 38, 42, 159, 329, 496.
Witkin Summary (9th ed) Torts § 286.
Cal Jur 3d (Rev) Constitutional Law § 92; Guardianship and Conservatorship § 313; Criminal Law § § 967, 968, 2558; Delinquent and Dependent Children § § 1, 15, 40 et seq. 62, 68, 69, 77, 96, 100 et seq., 138, 153 et seq., 173 et seq., 193, 196.
Federal Child Abuse Prevention and Treatment Act: *42 USCS § § 5101* et seq.

Forms:
Suggested forms are set out below, following Notes of Decisions.

Law Review Articles:
Juvenile court and welfare agency: their division of function. *38 ABAJ 575.*
Justice for children--Juvenile delinquents and uncontrollable children posing unique problems for courts and social agencies seeking their rehabilitation. *60 ABAJ 558.*
Intent in fact, insanity and infancy: Illusory concepts in the exercise of juvenile court jurisdiction. 9 Cal Western LR 273.
Homeless children and the welfare system: forging a new relationship. *28 Family LQ 521.*
Raising the standard for expert testimony: an unwarranted obstacle in proving claims of child sexual abuse in dependency hearings in California. *18 Golden Gate LR 443.*
California's Incarcerated Mothers: Legal Roadblocks to Reunification. *30 Golden Gate LR 285.*
The Mentally Ill Juvenile Offender: Crisis for Law and Society. *51 LA BJ 263.*
California legislative and judicial standards on child abandonment. *53 LA BJ 239.*
The perpetuation of shattered hearts: The disturbing conflict between dependency court and family law jurisdiction:16 LA Law No. 5 p. 30.

Conflict of parens patriae and constitutional concepts of juvenile justice. 6 Lincoln LR 65.
The role of the juvenile court--Social or legal institution? 5 Pepperdine LR 633.
Child abuse victims: Are they also victims of an adversarial and hierarchial court system? 5 Pepperdine LR 717.
The battered child, and juvenile court acts. 8 San Diego LR 383.
Juvenile detention hearings. *15 Santa Clara Law 267.*
The relationship of California family and juvenile courts in child abuse cases. *27 Santa Clara LR 201.*
Juvenile court dispositional alternatives in California: Imposing a defense duty. *27 Santa Clara LR 279.*
Forever torn asunder: Charting evidentiary parameters, the right to competent counsel, and the privilege against self-incrimination in California child dependency and parental severance cases. *27 Santa Clara LR 299.*
Who is my father? The case for early determination of paternity in California juvenile dependency proceedings. 18 Thom Jefferson LR 143.
Extension of juvenile rights or liabilities. 1 U of San Fernando Valley LR 167.
Children in transit--Child custody and the conflict of laws. *6 UCD LR 160.*
Impact of dependency hearing on indigent parents. *6 UCD LR 240.*
Prisoners' domestic relations; parental rights. *6 UCD LR 320.*
Legal aspects of medical care in California juvenile justice institutions. *7 UCD LR 1.*
Juvenile justice in transition. *14 UCLA LR 1444.*
Discovery rights in adjudicative dependency hearings. *7 USF LR 340.*
In re Sade C.: how much process is due indigent parents in appeals of dependency proceedings that adversely affect parental rights? *32 USF LR 197.*
Regarding Troy: Will The Real Abusers Please Stand Up. 24 UWLA LR 379.
In Re Basilio T.: In the Best Interest of the Minor? 20 Western St LR 379.
Mothers' prenatal drug use: Sufficient grounds for juvenile court jurisdiction. J Juvenile L 116.

Attorney General's Opinions:
Absence of duty of state to reimburse county for cost of dependent and neglected children committed to county juvenile facilities. *32 Ops. Cal. Atty. Gen. 216.*
Age of child at time of alleged offense or delinquency, or at time of legal proceedings, as criterion of jurisdiction of juvenile court. *39 Ops. Cal. Atty. Gen. 304.*
§ 681 as not authorizing juvenile court to require district attorney to represent petitioner in proceedings under this section. *57 Ops. Cal. Atty. Gen. 193.*
When county probation department or social services department pursuant to juvenile court authorization places dependant child of court in licensed children's institution in another county, and child is eligible for special education and related mental health services, county from which child is placed is responsible for costs of providing related mental health services. *(1990) 73 Ops. Cal. Atty. Gen. 143.*
An eligibility technician employed by a county department of social services and a chief probation officer, but not a juvenile court judge, may be licensed as foster parents for children who are wards of the juvenile court and receive placement of such children in their homes if they do not participate in any licensing or placement decisions with respect thereto, provided that the appointing power for the technician and officer has not adopted an incompatible activity rule prohibiting licensing or placement. *79 Ops. Cal. Atty. Gen. 288.*

Annotations:
Jurisdiction of court to award custody of child domiciled in state but physically outside it. *9 ALR2d 434.*
Marriage as affecting jurisdiction of juvenile court over delinquent or dependent. *14 ALR2d 336.*
Age of child at time of alleged offense or delinquency, or at time of legal proceedings, as criterion of jurisdiction of juvenile court. *89 ALR2d 506.*
Mens rea or guilty intent as necessary element of offense of contributing to delinquency or dependency of minor. *31 ALR3d 848.*
Governmental tort liability for social service agency's negligence in placement, or supervision after placement, of children. *90 ALR3d 1214.*
Truancy as indicative of delinquency or incorrigibility, justifying commitment of infant or juvenile. *5 ALR4th 1212.*

Notes of Decisions:
A. GENERALLY 1. In General 2. Construction, Interpretation, and Application 3. Due Process 4. Right to Counsel 5. Purpose of Dependency Proceedings 6. Jurisdiction

B. ACTION AND PROCEEDINGS 7. In General 8. Pleadings 9. Parent's Right to Notice and Opportunity To Be Heard 9.5. Siblings 10. Evidence 11. --Sufficiency 12. Findings, Orders, and Judgment 13. --Parental Care or Control; Custody 14. Appellate Review 15. Tort Actions by Dependent Children

A. GENERALLY 1. In General

A jurisdictional finding that a child was a dependent child and a dispositional order directing her removal from the mother's custody were proper where there was sufficient evidence to support a finding that the child had been molested and that the mother was unlikely to protect the child against similar molestation in the future, thus establishing that the mother's home was an unfit place (*Welf. & Inst. Code, § 300*, subd. (d)). *In re In re Courtney S. (1982, 1st Dist) 130 Cal App 3d 567, 181 Cal Rptr 843.*

A dependency proceeding pursuant to *Welf. & Inst. Code, § 300*, is a "child custody proceeding" within the meaning of a provision of the Indian Child Welfare Act *(25 U.S.C. § 1911*, (a)), which gives an Indian tribe exclusive jurisdiction as to any state in a child custody proceeding involving an Indian child residing or domiciled within the reservation of that tribe. A dependency proceeding may result in foster care placement, termination of parental rights, or preadoptive or adoptive placement. *In re Wanomi P. (1989, 2nd Dist) 216 Cal App 3d 156, 264 Cal Rptr 623.*

In order for a minor to be adjudged a dependent child under *W & I C § 300(e)*, the appropriate agency had to establish the following elements: the minor was under the age of five; the minor suffered severe physical abuse as defined in § 300(e); and the abuse was caused by a parent or any person known to the parent, if the parent knew or reasonably should have known that the person was physically abusing the minor. *In re Joshua H. (1993, 5th Dist) 13 Cal App 4th 1718, 17 Cal Rptr 2d 282.*

Under *W & I C § 300*, in order to admit an out-of-court statement of abuse of children it must provide sufficient indicia of reliability which is determined by factors such as spontaneity and consistent repetition, mental state of the declarant, use of terminology unexpected of a child of a similar age, and lack of motive to fabricate. *In re Lucero L. (2000) 22 Cal 4th 1227, 96 Cal Rptr 2d 56, 998 P2d 1019.*

In a case where the Riverside County Department of Public Social Services filed a dependency petition pursuant to *Cal. Welf. & Inst. Code § 300*, the mother's 18-month reunification period commenced at the time of the original detention of the minor and not later when she lost custody of the minor on the *Cal. Welf. & Inst. Code § 387* petition and further reunification services could only be granted if the juvenile court found exceptional circumstances, but there were no exceptional circumstances because (1) reunification services were fully available to the parents and they were fully capable of participating in the services, throughout the reunification period; (2) parents could not be relied upon to abstain from drug abuse over the long term; (3) the parents abandoned the minor at his grandparents' house at the time of their relapse; (4) the parents' drug problems were deep-seated and recurrent; and (5) the parents were afforded more than sufficient time to "become adequate" parents if they sincerely intended to do so; thus, pursuant to *Cal. Welf. & Inst. Code § 361.5(a)*, the juvenile court abused its discretion in ordering another reunification period. *In re N.M. (2003, 4th Dist) 108 Cal App 4th 845, 134 Cal Rptr 2d 187.*

Failure to advise a mother of a possible consequence of her submission to dependency jurisdiction, specifically that reunification services could be denied, did not violate due process and her argument on that point was waived by her failure to object at the dispositional hearing. The trial court's failure to make explicit, on-the-record findings was not reversible error. *In re S.G. (2003, 5th Dist) 112 Cal App 4th 1254.*

Trial court had no authority to grant an aunt's petition filed under *Cal. Welf. & Inst. Code § 388* because (1) the child had already been adopted by grandparents, (2) after adoption, pursuant to *Cal. Fam. Code § 8616*, the child and grandparents sustained toward each other the legal relationship of parent and child, (3) the child could not then be removed on a petition filed under *Cal. Welf. & Inst. Code § 388*, but then could only be removed pursuant to *Cal. Welf. & Inst. Code § 300*; the appeal was dismissed as moot. *In re Albert G. (2003, 2nd Dist) 113 Cal App 4th 132.*

In a parental rights termination case, the juvenile court and a children and family services agency did not fail to satisfy their affirmative duty to inquire as to the applicability of the Indian Child Welfare Act; based on the record, there was sufficient evidence that an inquiry was made as to whether the child was an Indian child, and there was no indication in the record that the child had Indian heritage. *In re Aaliyah G. (2003, Cal App 2nd Dist) 2003 Cal App LEXIS 861, 2003 CDOS 5090, 2003* Daily Journal DAR 6418.

2. Construction, Interpretation, and Application

The juvenile court had jurisdiction to determine the question of the custody of two children, where, though the original order establishing jurisdiction to declare the minors to be dependent children of the court under *Welf. & Inst. Code, § 600*, subd. (a), on the basis that they had no parent or guardian actually exercising care or control over them was de-

fective for lack of any form of notice to their mother, she had waived that defect both impliedly and by her express stipulation that the court had jurisdiction over her. Though the original basis for jurisdiction no longer existed after the mother appeared and showed herself willing and capable of exercising care and control, the juvenile court law, as shown by *Welf. & Inst. Code, § § 607, 728, 778*, referring to the retaining of jurisdiction, annual review, and termination of jurisdiction, proceeds on the principle that once juvenile court jurisdiction is established, it continues as long as the best interests of the minor so require. (Disapproving language to the contrary in *In re Neal D., 23 Cal App 3d 1045 [100 Cal Rptr 706].) In re G. (1974) 11 Cal 3d 679, 114 Cal Rptr 444, 523 P2d 244.*

Any potential unconstitutional vagueness of overbreadth of former Welf. and Inst. Code, § 600, subds. (b) and (d), in the use of such terms as "destitute", "necessities of life," "suitable place of abode" and "neglect," in relation to dependency proceedings was cured by the application of *Civ. Code, § 4600*, to all custody proceedings, which permits a juvenile court to award custody to a nonparent against the claim of a parent only upon a clear showing that such an award is essential to avert harm to the child, while a finding that such an award will promote the "best interests" or the "welfare" of the child is not sufficient. *In re Robert P. (1976, 1st Dist) 61 Cal App 3d 310, 132 Cal Rptr 5.*

Proceedings under *CC § 232*, to permanently terminate a parent's right of control and custody of his child, are analogous to dependency proceedings in juvenile court under *W & I C § 300*. In both cases the state or a state agency ordinarily initiates the proceeding, intervening as parens patriae to supplant the authority of the natural parents because of their alleged inability to care properly for the minor child. Since the objectives of these two sections are similar, *W & I C § 300*, and related provisions have been used to clarify ambiguities in the language and procedures of *CC § 232*. However, an adverse judgment in a section 232 proceeding is far more serious than is one in a dependency proceeding. In the latter case, an adverse judgment leads only to a temporary loss of custody, not a permanent severance of the parent-child relationship, whereas in the former a minor child is declared to be permanently free from parental custody and control and thus freed for adoption. *In re H. (1978) 21 Cal 3d 170, 145 Cal Rptr 548, 577 P2d 683.*

With respect to *Welf. & Inst. Code, § 300*, subd. (a), providing for an adjudication of dependency by the juvenile court of a child "in need of proper and effective parental care or control" and who has no parent "willing to exercise or capable of exercising such care or control," the term "proper and effective parental care or control" is determined by external standards. It is the conduct of the parent that determines whether he or she is capable of exercising proper parental control. *In re In re Edward C. (1981, 1st Dist) 126 Cal App 3d 193, 178 Cal Rptr 694.*

Welf. & Inst. Code, § 300, which authorizes the juvenile court to adjudge a minor to be a dependent child of the court under the circumstances enumerated therein, pertains only to the jurisdictional phase of a dependency hearing, and the statutory burden of proof provided by *Welf. & Inst. Code, § 355*, proof by a preponderance of the evidence, also only applies to the determination of jurisdiction. *In re In re Cheryl H. (1984, 2nd Dist) 153 Cal App 3d 1098, 200 Cal Rptr 789* (disapproved by *People v Raley, 2 Cal 4th 870, 8 Cal Rptr 2d 678, 830 P2d 712).*

A juvenile court correctly took jurisdiction of a child under the provisions of *Welf. & Inst. Code, § 300*, subd. (d), notwithstanding the contentions that the child resided in her father's home, that the section is applicable only when unfitness of the child's home is alleged, and that no such unfitness was alleged, where the child's mother retained legal custody of the child and had the right to take the child to her home one or two weekends per month. "Home" is not necessarily the primary residence of the child; in this case it was the mother's home that was unfit. *In re In re William T. (1985, 5th Dist) 172 Cal App 3d 790, 218 Cal Rptr 420.*

Few cases have attempted to define "proper and effective parental care or control," under *Welf. & Inst. Code, § 300*, subd. (a) (finding of dependency where child is in need of parental care or control and has no parent capable of exercising care or control), since in most cases it is easier to describe what is not proper parental care and control. However, it is clear that the term is determined by external standards and that it is the conduct of the parent which determines whether he or she is capable of exercising proper parental control. *In re Anne P. (1988, 6th Dist) 199 Cal App 3d 183, 244 Cal Rptr 490.*

The trial court erred in sustaining a child dependency petition on the ground that the child's father was incarcerated and had not arranged for placement of the child before the child was removed from the mother's custody (*Welf. & Inst. Code, § 300*, subd. (g). The pertinent language of the statute refers to a minor whose parent "has been incarcerated and cannot arrange for the care of the minor" which indicates that the circumstances justifying dependency must exist at the time of the hearing, whereas the trial court's focus on the father's acts before the minor was removed from the mother's custody effectively read into the statutory language a requirement not imposed by the statute, that an incarcerated parent make arrangements for his or her child's care before the child's removal from the custodial parent. The statute requires proof that the incarcerated parent was unable to arrange for care at the time of the hearing, not that he had failed to do so at some prior point in time. The language of § 300, subd. (g), demonstrates that the Legislature did not intend dependencies to be established under the statute when the incarcerated parent is able to make suitable arrangements for the child's care. *In re Aaron S. (1991, 1st Dist) 228 Cal App 3d 202, 278 Cal Rptr 861.*

Under fundamental rules of statutory construction, courts are bound to give effect to statutes according to the usual, ordinary import of the language employed in framing them. If the words of the statute are clear, the court should not add to or alter them to accomplish a purpose that does not appear on the face of the statute or from its legislative history. Additionally, effect should be given whenever possible to every word and phrase of a statute, so that no part is left without meaning. When the language of a statute is clear, its plain meaning should be followed, without reading unspecified restrictions into it, unless to do so would lead to an absurd result. *In re Aaron S. (1991, 1st Dist) 228 Cal App 3d 202, 278 Cal Rptr 861.*

In child dependency proceedings, a mother's conviction under *Pen. Code, § 273a*, subd. (1), for felony child endangerment arising out of the death of her infant son, constituted a conviction for "causing the death of another child through abuse or neglect," under *Welf. & Inst. Code, § 300*, subd. (f), ground for dependency of her other child. The Legislature intended *Welf. & Inst. Code, § 300*, subd. (f), to include any conviction arising out of a criminal proceeding initiated against a parent based on the fact that the parent caused the death of a child through abuse or neglect. Thus, the juvenile court must look behind the bare fact of the conviction to the actual facts and circumstances which gave rise to the initial criminal prosecution. Substantial evidence supported the trial court's finding of dependency where the child endangerment conviction was the result of a plea bargain of an original charge of murder (*Pen. Code, § 187*), and the social worker's report revealed the facts and circumstances surrounding the infant's death showing the mother's responsibility. *In re Jessica F. (1991, 4th Dist) 229 Cal App 3d 769, 280 Cal Rptr 349.*

The revision of *Welf. & Inst. Code, § 300*, subd. (b), to define a dependent child as one who, as a result of neglect has suffered, or is at substantial risk of suffering, serious physical harm or illness, was intended to narrow the grounds on which children may be subjected to juvenile court jurisdiction. Before courts and agencies can exert jurisdiction under § 300, subd. (b), there must be evidence indicating that the child is exposed to a substantial risk of serious physical harm or illness. While evidence of past conduct may be probative of current conditions, the question under the statute is whether circumstances at the time of the hearing subject the minor to the defined risk of harm. The past infliction of physical harm by a caretaker, standing alone, does not establish the substantial risk; there must be some reason to believe the acts may continue in the future. Moreover, the fact that a child has been left with other caretakers will not warrant a finding of dependency if the child receives good care. Substantial physical dangers tend to fall into two factual patterns: one involves an identified, specific hazard in the child's environment, while the second involves children of such tender years that the absence of adequate supervision and care poses an inherent risk to their physical health and safety. *In re Rocco M. (1991, 1st Dist) 1 Cal App 4th 814, 2 Cal Rptr 2d 429.*

Welf. & Inst. Code, § 300, subd. (g), which authorizes the juvenile court to adjudge a minor a dependent child of the court when the minor's parent has been incarcerated or institutionalized and cannot arrange for the care of the minor, applies when, at the time of the jurisdictional hearing, a parent has been incarcerated and does not know how to make, or is physically or mentally incapable of making, preparations or plans for the care of the child. However, the statute requires only that an incarcerated parent arrange adequately for the care of the child during the period of incarceration, and it is irrelevant whether or not the caretaker is a suitable long-term placement. Thus, an aging relative who would not qualify for long-term custody under a guardianship petition may still be able to provide adequate care during the remainder of the parent's prison term under the provisions of § 300, subd. (g). *In re Monica C. (1995, 1st Dist) 31 Cal App 4th 296, 36 Cal Rptr 2d 910.*

A juvenile court may be compelled to conduct a jurisdiction hearing in dependency proceedings on consecutive court days until conclusion, absent a showing of exceptional circumstances justifying a continuance of the hearing. Here, when the juvenile court continued the combined jurisdiction and disposition hearing from July 30 until August 26 over the objection of petitioner, no possibility existed that the hearing would be completed within 60 days of the June 11 detention hearing. *W & I C § 352(b)* requires a showing of "exceptional circumstances" and a court finding in the record to justify such a continuance. The minute order of the July 30 hearing was bereft of any such finding. *Renee S. v Superior Court (1999, 3rd Dist) 76 Cal App 4th 187, 189, 90 Cal Rptr 2d 134.*

The trial court erred in ordering the detention of a minor alleged to fall within the description of *W & I C § 602* in a nonsecure facility designed to house children detained pursuant to *W & I C § 300*, since § 602 detainees were statutorily required to be segregated from children detained under § 300. The fact that the minor at issue was already a § 300 dependent did not require a different result. By acting in a criminal manner, a minor within the court's § 300 jurisdiction became a person the Legislature deemed inappropriate for detention alongside § 300 dependents. *Los Angeles County Dept. of Children & Fam. Services v Superior Court (2001, 2nd Dist) 87 Cal App 4th 320, 104 Cal Rptr 2d 425.*

Nothing in *W & I C § 300(g)* even requires an incarcerated parent to prove affirmatively the suitability of her caretaking arrangements, it requires only that she be able to make the arrangements *In re S. D. (2002, 4th Dist) 99 Cal App 4th 1068, 121 Cal Rptr 2d 518.*

True finding of sexual abuse or a substantial risk of sexual abuse under a *W & I C § 300(d)* petition is not authorized by the Uniform Child Custody Jurisdiction and Enforcement Act, *Fam C § 3400* et seq., because even though it may establish the required emergency, it has permanent rather than temporary ramifications with regard to custody. Assumption of emergency jurisdiction under *W & I C § 300* does not confer the authority to make a permanent custody disposition. *In re C. T. (2002, 4th Dist) 100 Cal App 4th 101, 121 Cal Rptr 2d 897.*

W & I C § 306(a)(2) provides that any social worker in a county welfare department may take into and maintain temporary custody of, without a warrant, a minor who has been declared a dependent child of the juvenile court under *W & I C § 300* or who the social worker has reasonable cause to believe is a person described in *W & I C § 300(b)* or (g), and the social worker has reasonable cause to believe that the minor has an immediate need for medical care or is in immediate danger of physical or sexual abuse or the physical environment poses an immediate threat to the child's health or safety. *Moodian v County of Alameda Soc. Servs. Agency (2002, ND Cal) 206 F Supp 2d 1030.*

3. Due Process

Due process requirements called for by the Fifth and Fourteenth Amendments were violated in a hearing on a petition under *Welf. & Inst. Code, § 600,* subd. a, to declare a child a dependent child of the court, where, in addition to adjudicating on the petition, the referee virtually presented the case for the county's Department of Public Social Services and countered the parent's case. *Lois R. v Superior Court (1971, 2nd Dist) 19 Cal App 3d 895, 97 Cal Rptr 158.*

The fact that the status of a minor under *Welf. & Inst. Code, § 600,* subd. (b), is one of dependency rather than that of an alleged wrongdoer, does not deprive a parent, whose right to custody is challenged by proceedings thereunder, to the right of due process. *In re Neal D. (1972, 5th Dist) 23 Cal App 3d 1045, 100 Cal Rptr 706.*

In a proceeding to adjudge three minors dependent children of the court under *Welf. & Inst. Code, § 600,* subd. (a), as persons having no parent exercising or capable of exercising "proper and effective parental control," an allegation that the children's mother evidenced immaturity and demonstrated a life style contrary to the welfare and best interests of the children to such degree as to make her inadequate to their care and supervision failed to give her meaningful notice of the charges against her, and thus denied her due process of law. *Welf. & Inst. Code, § 656,* subd. (f), requires that a dependency petition contain a concise statement of facts, separately stated, to support the conclusion that the minor falls within the statute under which the proceedings are instituted, and charges of "immaturity" and "life style" contrary to the best interests of the children did not give the mother any indication of what type of evidence would be relevant to a defense against the charges. Moreover, the deficiency of such notice was further demonstrated by the trial court's "findings" that the mother evidenced immaturity and exhibited a pattern of behavior in her daily living habits and child-care which was inimical to the welfare and best interests of the minors. *In re J. T. (1974, 1st Dist) 40 Cal App 3d 633, 115 Cal Rptr 553.*

In proceedings pursuant to former W & I C § 600 subd. (a), to declare minors dependent children, the lack of notice to the mother of the proceedings denied her due process of law and such proceedings therefore could not be the foundation for a free from parental custody proceeding under *CC § 232*. A parent cannot be deprived of custody without the essential ingredients of due process which includes notice of a hearing. The efforts made to locate the mother, who was a Mexican national subject to deportation residing in Pennsylvania, were not reasonably calculated to locate her and to apprise her of the pending proceeding, where no letter was sent to her last known address, there was no publication of citation, where the mother had lived, worked and raised her family in Pennsylvania for a number of years before leaving the children with an aunt in California, and continued to work and reside in Pennsylvania, and where the only efforts made to obtain the mother's address was by contacting welfare authorities in Pennsylvania and immigration offices in California. *In re Antonio F. (1978, 4th Dist) 78 Cal App 3d 440, 144 Cal Rptr 466.*

A father whose children had been declared dependent pursuant to petitions alleging various acts of sexual abuse (*Welf. & Inst. Code, § 300*), was not deprived on his procedural due process rights at an annual review hearing resulting in the revocation of his visitation rights under a dissolution of marriage decree and the issuance of a no-contact order, even though there was no supplemental petition or notice pursuant to *Welf. & Inst. Code, § 386.* A supplemental petition is required only when an order removing a minor from the home is sought. *In re In re Michael S. (1981, 2nd Dist) 127 Cal App 3d 348, 179 Cal Rptr 546.*

The standard of proof for termination of parental rights under the child dependency statutes (*Welf. & Inst. Code, § 300* et seq.) comports with constitutional due process, notwithstanding that a parent's rights may be terminated based on a finding made by a preponderance of the evidence, rather than by clear and convincing evidence, that return of the child to parental custody would create a substantial risk of detriment to the child. Except for a temporary period, the grounds for initial removal of the child from parental custody must be established under a clear and convincing standard, and the statutes require a series of hearings involving ongoing reunification efforts under a presumption that the child should be returned to the custody of the parents. Only if the state continually establishes that a return of custody

would be detrimental to the child is a hearing to terminate parental rights (*Welf. & Inst. Code, § 366.26*) reached. *Cynthia D. v Superior Court (1993) 5 Cal 4th 242, 19 Cal Rptr 2d 698, 851 P2d 1307.*

Constitutional due process does not require an elevated "clear and convincing" standard of proof to terminate parental rights under the child dependency statutes (*Welf. & Inst. Code, § 300* et seq.). Not until the state has established parental unfitness by clear and convincing evidence over several hearings may the court find, by a preponderance of the evidence, that return of the child to parental custody would be detrimental to the child. At the hearing to terminate rights under *Welf. & Inst. Code, § 366.26*, the parent's conduct has on several occasions been established to be detrimental to the child, and the interests of the child and parent have diverged such that the child's interest must be given more weight. Also, the many steps in the statutory process, together with the presumption that the family should be preserved when possible, reduce the risk of an erroneous finding. Further, the state's parens patriae interest in preserving and promoting the welfare of the child is served by the lesser standard. By the time termination of parental rights is possible, the danger to the child from parental unfitness is so well established that there is no reason to believe that a positive, nurturing parent-child relationship exists. *Cynthia D. v Superior Court (1993) 5 Cal 4th 242, 19 Cal Rptr 2d 698, 851 P2d 1307.*

Welf. & Inst. Code, § 300, subd. (c), giving the juvenile court jurisdiction over minors suffering emotional harm caused by parental action or inaction, or when the parents are unable to prevent it, is not unconstitutionally vague. The statute is specific regarding the type of impairment to the child's emotional functioning which will support intervention, although it is vague as to the parental conduct that would be at fault. However, it is clear that the overall statutory scheme seeks to protect against abusive behavior that results in severe emotional damage, not run-of-the-mill flaws in parenting styles. Abuse means to ill-use or maltreat, to injure, wrong, or hurt. Viewed in light of the entire statute, § 300, subd. (c) is not overly vague. Persons of common intelligence would not have to guess whether someone was maltreating their child to the point of causing severe emotional harm. *In re Alexander K. (1993, 1st Dist) 14 Cal App 4th 549, 18 Cal Rptr 2d 22.*

Due process requirements for jurisdiction and disposition hearings in delinquency proceedings are different. They are necessarily most stringent as the jurisdictional phase of a juvenile proceeding, whether under *Welf. & Inst. Code, § 300*, or *Welf. & Inst. Code, § 602*, because the liberty interest of the minor (and of the minor's parent or guardian) are strongest in that phase of the proceeding. Once the juvenile court has determined that the minor comes within *Welf. & Inst. Code, § 300*, or *Welf. & Inst. Code, § 602*, the minor no longer has a protectable interest in being free from the court's jurisdiction; due process then requires only that the court properly consider all factors relevant to its dispositional choice. *In re Romeo C. (1995, 3rd Dist) 33 Cal App 4th 1838, 40 Cal Rptr 2d 85.*

In a dependency proceeding (*Welf. & Inst. Code, § 300*, subd. (b)), in which a minor child was adjudicated a dependent of the juvenile court, the trial court, by denying the father's request for a default prove-up to cross-examine the child's social worker, deprived the father of his due process right to confront and cross-examine witnesses (*Cal. Rules of Court, rules 1412(i), 1449(b), 1450(c)*). The trial court based its decision solely on the father's failure to appear at the jurisdictional hearing and on the social worker's report, which asserted that the father, as a minor himself, lacked the maturity and experience to provide the child with proper care and supervision. Although the father was not personally present at the hearing, his attorney was present and prepared to examine the social worker on the father's behalf, and the father's disobedience to the trial court's order to attend the hearing did not mean that his attorney could not cross-examine the witness. Moreover, the trial court's error was not harmless beyond a reasonable doubt, given the lack of evidence other than the report to support its determination. Since the social worker's evaluation was highly conclusory with regard to whether there would be a substantial risk of harm to the child if placed in the father's custody, and provided no factual basis other than the father's chronological age for her statement regarding his lack of maturity, cross-examination of the social worker could have demonstrated the lack of support for her statements. *In re Dolly D. (1995, 2nd Dist) 41 Cal App 4th 440, 48 Cal Rptr 2d 691.*

In child dependency proceedings, evidence was not sufficient to order the father to submit to random drug tests. The only evidence of the father's alleged drug use was the mother's unsworn and unconfirmed allegation, which was flatly denied by the father. Although the trial court has broad discretion to make virtually any order deemed necessary for the well-being of the child (*W & I C § 361.2(b)(2)*), drug testing should not be imposed based solely on the unsworn and uncorroborated allegation of an admitted drug addict who has abandoned her children. *In re Sergio C. (1999, 2nd Dist) 70 Cal App 4th 957, 960, 83 Cal Rptr 2d 51.*

Juvenile court entered an order terminating the alleged father's parental rights; however, the juvenile court did not follow the procedures set forth in *Cal. Welf. & Inst. Code § 316.2* and *Cal. R. Ct. 1413(e)*, which prejudiced the alleged father, as he had the right to be given the opportunity to establish paternity. The order was vacated, and the matter was remanded with directions to the juvenile court. *In re Paul H. (2003, Cal App 3rd Dist) 2003 Cal App LEXIS 1314.*

4. Right to Counsel

The proceedings carried out by a referee in conducting a hearing on a petition by a county Department of Public Social Services to adjudge minors dependent children of the court under *Welf. & Inst. Code, § 600*, subd. (a), violated the right of the children's parents to due process of law as guaranteed by the Fifth and *Fourteenth Amendments of the United States Constitution*, where, though the mother of the children was in court with counsel and a deputy probation officer was present, no member of the department or attorney representing it was there, and where the referee conducted the questioning of the department's witness, cross-examined the witnesses of the parents, and, throughout the hearing, ruled on objections and motions put by counsel and made and then ruled upon objections to questions asked by counsel. Whether or not the referee made a conscious effort to not only do justice but give the appearance of justice, the system of juvenile justice is better served by requiring counsel, or a trained representative, to appear on behalf of the department in all cases. *Gloria M. v Superior Court (1971, 2nd Dist) 21 Cal App 3d 525, 98 Cal Rptr 604.*

Parents do not have a constitutional right to court-appointed counsel on appeal from an order adjudicating their minor child to be a dependent child, as defined in *Welf. & Inst. Code, § 600*, subd. a. *Joseph T., In re (1972) 25 CA3d 120, 101 CA3d 606.*

Eligible parents are guaranteed court-appointed counsel in a superior court proceeding brought for the purpose of having their minor child declared free from their custody and control, pursuant to *Civ. Code, § § 232-239*, but that proceeding is ancillary to proceedings involving the prospective adoption of the minor, and is not included in the Juvenile Court Law. *In re Joseph T. (1972, 1st Dist) 25 Cal App 3d 120, 101 Cal Rptr 606.*

The Court of Appeal denied a motion for appointment of counsel for parents to serve at public expense on an appeal from an order adjudicating their minor child to be a dependent child, as defined in *Welf. & Inst. Code, § 600*, subd. (a), where it appeared that there were no constitutional requirements for such an appointment, no statutory provisions therefor, and that no miscarriage of justice would occur by reason of the parents' inability to afford private counsel. *In re Joseph T. (1972, 1st Dist) 25 Cal App 3d 120, 101 Cal Rptr 606.*

In class action attacking proceedings hereunder on grounds that indigent parents were not afforded counsel, where recent statutory changes entitled named plaintiffs (whose specific case arose under subd. (d)) to counsel and where irreparable injury was not established to remainder of class, granting of injunctive relief held improper. *Cleaver v Wilcox (1974, CA9 Cal) 499 F2d 940.*

A minor has a statutory right to counsel (*Welf. & Inst. Code, § 318.5*), but if a minor is already represented by counsel, it is not crucial that a judge inform him of his right to counsel. If either the minor or his parents appear without counsel, the judge shall advise the unrepresented party of his rights under this section. Thus, in a proceeding under *Welf. & Inst. Code, § 300*, subd. (b), to declare a 12-year-old boy a child of the court for the purpose of insuring that he receive cardiac surgery, the judge was under no statutory duty to inform the boy of his right to counsel, where a deputy district attorney represented the boy at the hearing. *In re Phillip B. (1979, 1st Dist) 92 Cal App 3d 796, 156 Cal Rptr 48.*

In a dependency proceeding, the juvenile court did not err in excluding the testimony of a psychologist based on his evaluation of the father and the daughter during sessions arranged by the father's counsel, on the ground that the minors' counsel had not given permission for the parents to have the daughter examined by the psychologist. Although the attorney, at an earlier hearing on the father's motion to be permitted to move back into the family home, had failed to object to introduction of the psychologist's declaration, which plainly stated that he had interviewed the daughter, that failure was understandable because the attorney had just taken over the minors' representation. Moreover, the court's ruling was premised on a violation of *Rules Prof. Conduct, rule 2-100*, which prohibits an attorney or an attorney's agent from contacting a person who is known to be represented without first obtaining the permission of the opposing attorney. That rule bars ex parte communications with opposing parties regardless of whether the information sought, obtained, or conveyed is privileged from disclosure, and, thus, regardless of whether the minors failed to timely invoke the attorney-client privilege, they were still entitled to the protection of the rule. *In re Katrina W. (1994, 2nd Dist) 31 Cal App 4th 441, 37 Cal Rptr 2d 7.*

In dependency proceedings, the juvenile court did not err by allowing county counsel to continue representing the department of children's services (DCS) after it had been relieved of its representation of the minors. Although *Rules Prof. Conduct, rule 3-310*, prohibits an attorney from representing a client whose interests conflict with that of a former client unless the attorney obtains the informed written consent of the former client, no objection to county counsel's continued representation of DCS was made to the juvenile court, and, accordingly, any objection had been waived. Also, county counsel's statements to the court that no confidential matter had been obtained during the one-month period of representation of the minors were never challenged. Because no confidential matter had been obtained, there could be no prejudice to the minors from county counsel's continued representation of DCS. *In re Katrina W. (1994, 2nd Dist) 31 Cal App 4th 441, 37 Cal Rptr 2d 7.*

Following a dependency proceeding in which the court concluded at the dispositional hearing that it would be detrimental to return the dependent child to her mother, the mother established a prima facie case of ineffective assistance of counsel in her petition for a writ of habeas corpus. Despite the fact that the court relied primarily on the conclusion of the mother's treating psychologist that the child should not be in her mother's care, the mother's counsel did not present to the court an independent evaluation by a psychologist from a university that directly contradicted those conclusions. While her treating psychologist opined that the mother suffered from a borderline personality disorder that necessitated medication and that the mother's drug abuse exacerbated her condition, the university psychologist diagnosed her condition as adjustment disorder secondary to her separation from her child that would neither require medication nor interfere with her parenting ability. Given that this was the only evidence favorable to the mother, there was no practical or tactical reason why it was not brought to the court's attention. This, coupled with the fact that the court considered this case closely and the evidence was of a critical nature, constituted a prima facie showing that counsel's error was prejudicial. *In re Kristin H. (1996, 6th Dist) 46 Cal App 4th 1635, 54 Cal Rptr 2d 722.*

A mother's petition for a writ of habeas corpus alleging ineffective assistance of her counsel at a dependency proceeding in which the court concluded at the dispositional hearing that it would be detrimental to return the child to her mother was timely filed three months after the appeal was filed. Although the appellate court granted appellate counsel permission to expand the appointment to include preparation and filing of the mother's petition when the appeal was filed, the subsequent three-month delay was attributable to trial counsel's failure to provide the file and to furnish a declaration. *In re Kristin H. (1996, 6th Dist) 46 Cal App 4th 1635, 54 Cal Rptr 2d 722.*

Welf. & Inst. Code, § 317.5, which provides that all parties who are represented by counsel at dependency proceedings shall be entitled to competent counsel, confers upon a parent a right to file an appeal or a petition for a writ of habeas corpus alleging ineffective assistance of counsel during a dependency proceeding. Because the entire dependency process is now governed by one statutory scheme, which begins with the filing of a petition under *Welf. & Inst. Code, § 300*, and may end with a selection and implementation hearing terminating parental rights under *Welf. & Inst. Code, § 366.26*, dependency proceedings are no longer separate from actions to terminate parental rights, and thus fundamental rights of the parent are implicated. Furthermore, the conclusion that the statutory right to competent counsel conferred by *Welf. & Inst. Code, § 317.5*, carries with it the right to judicial review is consistent not only with the plain language of the statute itself, but also with its legislative history, as the statute was intended to address the problem of a lack of any meaningful process whereby parents or dependent children could complain about their appointed counsel. *In re Kristin H. (1996, 6th Dist) 46 Cal App 4th 1635, 54 Cal Rptr 2d 722.*

Once the state has become involved in the parent/child relationship through a *Welf. & Inst. Code, § 300*, dependency proceeding, there is a substantial possibility that the parent may lose custody of the child or be separated from the child for significant periods of time. Because dependency proceedings may work a unique kind of deprivation, a parent must be able to present an adequate defense. A natural parent's desire for and right to the companionship, care, custody, and management of his or her children is an interest far more precious than any property right. Such an interest undeniably warrants deference and, absent a powerful countervailing interest, protection. When the state initiates a parental rights termination proceeding, it seeks not merely to infringe that fundamental liberty interest, but to end it. Furthermore, although parents in dependency proceedings are not prosecuted as defendants, petitions often contain allegations of criminal activity, and the proceedings are adversarial in nature. Moreover, the possible end result of the process, namely the total and irrevocable severance of the parent-child relationship, has been acknowledged as a punitive sanction. *In re Kristin H. (1996, 6th Dist) 46 Cal App 4th 1635, 54 Cal Rptr 2d 722.*

In dependency proceedings, the right to competent counsel provided in *Welf. & Inst. Code, § 317.5*, was not meant to be defined by standards established pursuant to *Welf. & Inst. Code, § 317.6*; furthermore, if counsel fails to meet competency standards, the remedy is not the complaint process referred to in *Welf. & Inst. Code, § 317.6*, subd. (a)(3). Rules of court and local rules are to be developed pursuant to *Welf. & Inst. Code, § 317.6*, after a sufficient time for research and consultation, to provide standards of minimum training and experience in order to guide the court in appointing competent attorneys to represent parties in dependency proceedings. A process established by local rule to resolve complaints about appointed counsel was not intended to supplant a right to judicial review of a claim that counsel's incompetence infected the proceedings to such an extent that they were fundamentally unfair. Such a result would serve neither the interests of the parties nor the state's interest in substantial justice. *In re Kristin H. (1996, 6th Dist) 46 Cal App 4th 1635, 54 Cal Rptr 2d 722.*

While the child's interests should be given great weight in a proceeding involving parental rights, it may not always be true that preventing the parent from asserting a timely claim of ineffective assistance of counsel in a dependency proceeding furthers the interests of the child. If counsel's ineffective representation of the parent has resulted in an inappropriate termination of the parent-child relationship, the child may have an interest equal to that of the parent in its restora-

tion. Thus, the denial of effective assistance at trial is an issue properly presented to a reviewing court. *In re Kristin H. (1996, 6th Dist) 46 Cal App 4th 1635, 54 Cal Rptr 2d 722.*

In a dependency proceeding, a parent seeking review based on a claim of ineffective assistance of counsel pursuant to *Welf. & Inst. Code, § 317.5*, must show that counsel failed to act in a manner to be expected of reasonably competent attorneys practicing in the field of juvenile dependency law. The parent must also establish that the claimed error was prejudicial. Violation of a statutory right to counsel is properly reviewed under the harmless error test; thus, the parent must demonstrate that it is reasonably probable that a more favorable result would have been reached in the absence of the error. *In re Kristin H. (1996, 6th Dist) 46 Cal App 4th 1635, 54 Cal Rptr 2d 722.*

5. Purpose of Dependency Proceedings

Though older cases treated proceedings under the Juvenile Court Act as civil in nature, it is now clear that, at least insofar as they may result in incarceration for treatment, they must meet the constitutional due process standards required of criminal proceedings. *In re Donna G. (1970, 2nd Dist) 6 Cal App 3d 890, 86 Cal Rptr 421.*

Juveniles are entitled to the fundamental protection of the Bill of Rights in proceedings that may result in confinement or other sanctions, whether the state labels those proceedings as "criminal" or "civil." *M. v Superior Court of Shasta County (1971) 4 Cal 3d 370, 93 Cal Rptr 752, 482 P2d 664.*

The custody, care and nurture of a child reside first in the parents, whose primary function and freedom include preparation for obligations the state can neither supply nor hinder. Thus, the criterion of improper and ineffective parental care justifying wardship under *Welf. & Inst. Code, § 600*, subd. (a), denotes a fairly extreme case of neglect, cruelty or continuing exposure to immorality. *In re J. T. (1974, 1st Dist) 40 Cal App 3d 633, 115 Cal Rptr 553.*

The purpose of proceedings under former W & I C § 600(d), to declare a child a dependent of the juvenile court, was to protect and promote the welfare of the child, not to punish the parent. *Collins v Superior Court (1977, 2nd Dist) 74 Cal App 3d 47, 141 Cal Rptr 273.*

In a dependency proceeding, the juvenile court erred when it denied a motion to terminate dependency jurisdiction of an orphaned child pursuant to *Welf. & Inst. Code, § 388*, which motion had been made by the child's maternal aunt, who had been nominated as guardian in the deceased mother's will. The court initially determined correctly that the child was a dependent as she was a minor left without any provision for support after both her parents died (*Welf. & Inst. Code, § 300*, subd. (g)). However, once the immediate needs of the child were met, there was no reason for the juvenile court to continue maintaining jurisdiction. By the time the aunt had filed her petition for guardianship in probate court, the juvenile court had already assumed jurisdiction over the child, and thus the probate court lacked jurisdiction. The juvenile court should have withdrawn from this matter earlier; the court's further proceeding to terminate the parental rights of the child's deceased parents pursuant to *Welf. & Inst. Code, § 366.26*, constituted a nonevent. In cases involving the custody of an orphan child, the matter is properly decided in superior court, rather than juvenile court, pursuant to the statutory scheme enacted to govern adoptions (*Fam. Code, § 8600* et seq.) or the appointment of a guardian (*Prob. Code, § 1514*). *In re Vanessa P. (1995, 4th Dist) 38 Cal App 4th 1763, 45 Cal Rptr 2d 760.*

6. Jurisdiction

Adult and juvenile courts exercise concurrent original jurisdiction of minors between the ages of 18 and 21. *G. v Superior Court of San Francisco (1971) 4 Cal 3d 767, 94 Cal Rptr 813, 484 P2d 981.*

The Juvenile Court has exclusive jurisdiction over offenders aged 16 and 17, but the case may, under some circumstances, be transferred to an adult court. *G. v Superior Court of San Francisco (1971) 4 Cal 3d 767, 94 Cal Rptr 813, 484 P2d 981.*

The Juvenile Court exercises exclusive jurisdiction with respect to minors under the age of 16 and may not transfer such a case to an adult court. *G. v Superior Court of San Francisco (1971) 4 Cal 3d 767, 94 Cal Rptr 813, 484 P2d 981.*

Jurisdiction of the juvenile court extends to a person under 21 years of age who comes within certain specified descriptions; the jurisdiction of the court over a minor properly subjected to its jurisdiction continues until the minor reaches 21 years of age or until the juvenile court becomes convinced on the evidence that the protection of the minor no longer requires supervision, at which time it is the duty of the juvenile court to dismiss the proceedings. *In re Francecisco (1971, 2nd Dist) 16 Cal App 3d 310, 94 Cal Rptr 186.*

After a minor had properly been brought within the jurisdiction of the juvenile court pursuant to *Welf & Inst Code, § 600*, subd. (a), providing for juvenile court jurisdiction over children in need of proper and effective parental care or control, the fact that this natural father was exercising care and control over him under the supervision of the appropriate department of public social services did not deprive the court of jurisdiction over the child, where the continuous supervision of the department over both parent and child meant that the father did not have unrestricted care and control

of the child as in a normal parent-child relationship. *In re Francecisco (1971, 2nd Dist) 16 Cal App 3d 310, 94 Cal Rptr 186.*

In a juvenile court proceeding to review and renew the dependency status of a minor, continuing jurisdiction by the court over the minor did not depend solely on whether a parent was capable of exercising proper and effective parental control over him but on whether the best interest of the child would be served by freeing him from further supervision; thus, the burden of showing cause why the jurisdiction of the court should be terminated was not satisfied by a mere showing that the minor had a parent capable of exercising effective parental care and control over him. *In re Francecisco (1971, 2nd Dist) 16 Cal App 3d 310, 94 Cal Rptr 186.*

There was no mandatory duty to furnish child protective services required as a part of the AFDC program under *46 USCS § § 601* et seq., and provided for in *Welf & Inst. Code, § § 16500-16511,* before instituting court proceedings to adjudge minors dependent children of the juvenile court pursuant to *Welf & Inst Code, § 600,* or before removing the children from the custody of their mother. *Welf & Inst Code, § 16506,* states that the services offered shall be voluntary, and applicable regulations of the Department of Social Services indicate that it is within the discretion of the social worker assigned to the case to determine whether the services shall be instituted. The same factors also preclude holding that the juvenile court must automatically order such services in each case before removing a child from the custody of its parents. *In re Jeannie Q. (1973, 2nd Dist) 32 Cal App 3d 288, 107 Cal Rptr 646.*

Under *Welf. & Inst. Code, § 600,* subd. (d), the jurisdiction of the juvenile court extends to any person whose home "is" unfit. The use of the present tense verb indicates an intent that the unfitness exist at the time of the hearing; however, past events can aid in a determination of present unfitness. *In re Melissa H. (1974, 1st Dist) 38 Cal App 3d 173, 113 Cal Rptr 139.*

Under *Welf. & Inst. Code, § 300,* providing that any person under the age of 18 years is within the jurisdiction of the juvenile court and may be adjudged a dependent child of the court, if he is in need of, and lacks, proper and effective parental care or control, the juvenile court had jurisdiction to determine the merits of applications to establish court dependencies for developmentally disabled minors who had been abandoned by their parents. *Health & Saf. Code, § § 416-416.23* and *38000-38500,* providing for guardianships for developmentally disabled minors to be established by the State Director of Health, did not deprive the juvenile court of such jurisdiction, as such statutes did not authorize the care or treatment of any such child without the written consent of his parent or guardian. Accordingly, the juvenile court was required to review the merits of applications requesting a county department of public social services to commence wardship proceedings in juvenile court on behalf of such minors. *Bellino v Superior Court (1977) 70 CA3d 824, 139 Cal Rptr 523.*

The juvenile court has inherent power to entertain a prehearing challenge to a petition to declare a child a dependent child (*Welf. & Inst. Code, § 300*) in order to test the sufficiency of the petition to invoke the jurisdiction of the court. *In re Fred J. (1979, 3rd Dist) 89 Cal App 3d 168, 152 Cal Rptr 327.*

Under *Welf. & Inst. Code, § 300,* subd. (d), providing that a minor whose home is an unfit place for him by reason of neglect, cruelty, depravity or physical abuse of either his parents, his guardian, or any other person having custody or control over him, the jurisdiction of the juvenile court extends to any person whose home is unfit by reason of those conditions. The fitness of the parent is not, under this subdivision, in issue as it might be in a proceeding under § 300, subd. (b), providing that a minor who is destitute, or who is not provided with the necessities of life, or who is not provided with a suitable home may be adjudged to be a dependent child of the court. In addition, under § 300, subd. (d), the unfitness must exist at the time of the hearing. However, past events can aid in a determination of present fitness. The potential return and resumption of residence in the home by the person responsible for making it unfit justifies the determination the best interests of the child would be served by making him or her a ward of the court. *In re Nicole B. (1979, 4th Dist) 93 Cal App 3d 874, 155 Cal Rptr 916.*

Lack of authority or capacity to sue generally does not amount to a jurisdictional defect, depriving the court of power to proceed. Thus, the fact that a petition to declare a minor a dependent child of the juvenile court pursuant to *Welf. & Inst. Code, § 300,* subd. (c), was filed by the minor's parents rather than the probation officer, thereby bypassing the procedure outlined in Welf. & Inst. code, § § 329, 331, did not of itself deprive the court of jurisdiction to entertain the petition, where all necessary parties, the minor, his probation officer, and his parents were before the court in prior proceedings initiated by a wardship petition under *Welf. & Inst. Code, § 602. People v Superior Court (John D.) (1979, 1st Dist) 95 Cal App 3d 380, 157 Cal Rptr 157.*

A juvenile court, in a proceeding under *W & I C, § 602,* to declare the minor a ward of the court, could not exercise jurisdiction over the minor under *W & I C, § 300,* subd (c), providing that the juvenile court may adjudge a minor to be a dependent child of the court when the minor is physically dangerous to the public due to a mental or physical disability or disorder, where, the court found that the minor was not a danger to others. *In re Vicki H. (1979, 5th Dist) 99 Cal App 3d 484, 160 Cal Rptr 294.*

US Const art I § 8, providing that the United States has exclusive jurisdiction over military installations, does not operate as an absolute prohibition against state laws conferring benefits in accord with the policy of the United States. Thus, *W & I C § 300*, providing that a juvenile whose home is unfit by reason of neglect or physical abuse may be declared a dependent child of the court, was properly applied by a state court to a child who resided with his parents on a federal military installation and had suffered injuries as a result of parental abuse and neglect. The statute did not conflict with federal sovereignty where the jurisdiction of military tribunals did not extend to persons, including military dependents who reside on federal enclaves, who were not members of the armed forces, and military personnel actively sought jurisdiction of the state courts in the area of child abuse. *In re Terry Y. (1980, 1st Dist) 101 Cal App 3d 178, 161 Cal Rptr 452.*

A superior court had jurisdiction to hear a *Civ. Code, § 232*, petition to declare a minor free of the custody and control of her parents even though the minor had been declared a dependent child of the juvenile court (*Welf. & Inst. Code, § 300*) and placed under the control of the Department of Public Social Services. A proceeding to declare a child free from parental custody and control is different in nature and purpose from a wardship or dependency proceeding, and does not conflict or interfere with the temporary custodial arrangements which the juvenile court has made in the interests of the child. However, once the superior court denied the petition to declare the minor free from parental custody and control, it lacked jurisdiction to further order the immediate return of the minor to the parents. In so ordering, the superior court directly interfered with the juvenile court's dependency jurisdiction. *In re Christina L. (1981, 2nd Dist) 118 Cal App 3d 737, 173 Cal Rptr 722.*

An unborn fetus is not a person within the meaning of *Welf. & Inst. Code, § 300*, subd. (a) (specifying those minor persons who may be adjudged to be a dependent child of the juvenile court). Accordingly, in a juvenile court proceeding to declare a mother's then unborn child a dependent minor within the meaning of that statute, in which the mother had been certified to receive intensive psychiatric treatment for no more than 14 days, pursuant to *Welf. & Inst. Code, § 5250*, the juvenile court's order sustaining jurisdiction over the unborn fetus lacked statutory authority. However, the court's detention of the unborn fetus, and thus the mother, pending the birth (as the mental health commitment proceedings had been dropped by the district attorney's office) was justified due to the subsequent disappearance of the mother and the alleged father. Thus, reversal was not required and it was necessary to dismiss the appeal as moot due to the child's birth and the fact that there was presently no parent or guardian willing to exercise or capable of exercising care or control of the child. In re Steven S. *In re Steven S. (1981, 2nd Dist) 126 Cal App 3d 23, 178 Cal Rptr 525.*

The juvenile court properly assumed jurisdiction over a child whose siblings had been declared dependent children pursuant to petitions alleging various acts of sexual abuse by the father over a period of years (*Welf. & Inst. Code, § 300*), even though the child was not born at the time the jurisdictional events alleged as to the siblings occurred, where the father's return from incarceration and resumption of residence in the mother's home could not be ruled out, where it was the opinion of the father's treatment team that his motivation in keeping his family intact might be for purposes of continuing his sexual relationship with the children upon his release, and where the mother had failed to take any steps to alleviate the problem with respect to the siblings. *In re In re Michael S. (1981, 2nd Dist) 127 Cal App 3d 348, 179 Cal Rptr 546.*

The appropriate standard of proof at a dependency hearing under *Welf. & Inst. Code, § 300*, depends upon whether the trial court is making a jurisdictional or dispositional determination. At the jurisdictional phase of a dependency hearing the appropriate standard of proof is applied by *Welf. & Inst. Code, § 355*, which requires proof by a preponderance of the evidence. At the dispositional phase of a dependency hearing proof by a preponderance of the evidence is sufficient unless the court awards custody to a nonparent. *In re In re Cheryl H. (1984, 2nd Dist) 153 Cal App 3d 1098, 200 Cal Rptr 789* .

To justify jurisdiction under *Welf. & Inst. Code, § 300*, subd. (d), authorizing exercise of juvenile court jurisdiction over any person under 18 years of age, whose home is an "unfit place" by reason of certain specified acts of misconduct of his or her parents or guardian or other person "in whose custody or care he or she is," there must exist some credible evidentiary demonstration that the custody or care of a minor has, in fact, been put under the authority, or at the disposal, of another person. While this can take place in a variety of ways and no precise definition may be structured, in a family home setting, a child of tender years cannot be charged with having "custody or care" of a younger sibling under the statute by the mere circumstance of the mother's temporary absence from the joint presence of her children. Thus a seven-year-old boy was not a person having "custody or care" of his two-year-old sister merely by virtue of his having bathed with her at a time when the mother was attending to household matters in an adjoining room. *In re In re James B. (1986, 1st Dist) 184 Cal App 3d 524, 229 Cal Rptr 206.*

In a dependency proceeding under *Welf. & Inst. Code, § 300*, the juvenile court lacked jurisdiction, where the minor had become 18 years of age between the time of the detention hearing and the adjudication hearing. If the adjudication

hearing had been held before the minor turned 18, the court could have retained jurisdiction until she was 21. *In re In re Gloria J. (1987, 2nd Dist) 188 Cal App 3d 835, 233 Cal Rptr 690.*

In a dependency proceeding, the juvenile court's finding that the mother did not believe her two-and-one-half-year-old daughter had been molested supported jurisdiction over the mother. There was proof that the daughter had been physically assaulted by the father, and yet the mother adamantly refused to believe that the father had done anything wrong. Since the court's dispositional order allowed the father to resume his living arrangements with the mother and the minors, the mother's disbelief that anything improper had occurred placed the daughter at risk that her need to heal from the past abuse and any reports of future abuse might be ignored by the mother, and, thus, the mother's past conduct played a part in the risk of future harm to the daughter. *In re Katrina W. (1994, 2nd Dist) 31 Cal App 4th 441, 37 Cal Rptr 2d 7.*

Juvenile court jurisdiction of a minor is originally obtained pursuant to the provisions of *W & I C § 300*. While the juvenile court is precluded from initiating jurisdiction over a person who has reached the age of 18, after it has properly obtained jurisdiction, it may retain jurisdiction over any person who is found to be a dependent child of the juvenile court until the ward or dependent child attains the age of 21 years. *In re Robert L. (1998, 2nd Dist) 68 Cal App 4th 78, 80 Cal Rptr 2d 578, 68 Cal App 4th 789, 793,.*

Pursuant to *W & I C § 300*, any minor who has been abused or neglected as therein described comes within the jurisdiction of the juvenile court as a dependent child of the court. And pursuant to *W & I C § § 601* and *602*, any minor who commits a crime or a status offense comes within the jurisdiction of the juvenile court as a ward of the court. When a minor qualifies as both a dependent and a ward of the juvenile court, the Legislature has declared that a minor cannot simultaneously be both. *In re Marcus G. (1999, 1st Dist) 73 Cal App 4th 1008, 1011, 87 Cal Rptr 2d 84.*

The juvenile court lacked personal jurisdiction over the father in dependency proceedings (*W & I C § 300*) where the record plainly demonstrated that the responsible county agency ignored timely information about the father's whereabouts. The unreasonableness of the agency's reliance on a stale address was amply demonstrated by the fact that the agency knew the father's last known address and, despite that knowledge, purported to notify him by sending a hearing notice to an old address. *In re Arlyne A. (2000, 2nd Dist) 85 Cal App 4th 591, 102 Cal Rptr 2d 109.*

California juvenile court's finding that a child who was visiting her noncustodial parent in California had been sexually abused by her custodial parent or was under a substantial risk of sexual abuse as provided under *W & I C § 300* was not authorized under the Uniform Child Custody Jurisdiction and Enforcement Act, *Fam C § 3400* et seq. (Act), to make a true finding of unlimited duration. Because evidence presented at the § 300 hearing duplicated the evidence that could have been received to determine whether an emergency existed under the Act as provided in *Fam C § 3424*, and because California had terminated jurisdiction after the child's home state agreed to hear the disposition of the matter, noncompliance with § 3424(c) by failing to limit the duration of the custody order was not prejudicial to the custodial parent. *In re C. T. (2002, 4th Dist) 100 Cal App 4th 101, 121 Cal Rptr 2d 897.*

In a dependency proceeding, where evidence showed that mother was unable to arrange care for her child, that she was abusing controlled substances, and that the child's siblings had already been removed from the home, the juvenile court had jurisdiction over the matter under *Wel & Inst C § 300 (b)*, (g), and (j). *In re Athena P. (2002, 4th Dist) 103 Cal App 4th 617, 127 Cal Rptr 2d 46.*

Father waived his right to challenge the juvenile court's jurisdictional orders as the father did not demurrer to the department's petition; further, as the petition alleged that the father was incarcerated and unable to take care of his two children, there was sufficient evidence in the petition for the juvenile court to maintain jurisdiction for a dependency proceeding. *In re James C. (2002, 2nd Dist) 104 Cal App 4th 470, 128 Cal Rptr 2d 270.*

In dependency proceedings brought under *Cal. Welf. & Inst. Code § 300(b)*, absent evidence that an Indian Child Welfare Act notice was sufficient under federal law, a tribe's lack of response to a notice could not be deemed tantamount to a determination that the child was not an Indian child; moreover, because the agency failed to file a copy of the notice with the trial court, it could not rely on the presumption under *Cal. Evid. Code § 664* that official duty had been regularly performed. *In re Karla C. (2003, 4th Dist) 113 Cal App 4th 166.*

Trial court's failure to obtain personal jurisdiction over an incompetent mother in a dependency proceeding was harmless beyond a reasonable doubt because time was of the essence, the mother failed to understand the nature of the proceedings due to a mental disorder, the mother had no defense to the dependency proceeding, and the mother was institutionalized for treatment. *In re Daniel S. (2004, Cal App 4th Dist) 2004 Cal App LEXIS 172, 2004 CDOS 1266.*

Reunification plan requirement that mother be drug and alcohol free before visiting her children was reasonable under *W & I C § § 362(c), 362.1(a)(1)(A)*, (B). *Sara M. v Superior Court (2005) 36 Cal 4th 998, 116 P3d 550.*

W & I C § 366.21(e) and *Cal. Rules of Court, Rule 1460(f)(1)* permit a court to terminate reunification services and set the matter for a permanency planning hearing whenever it finds by clear and convincing evidence that a parent has

failed to contact and visit a child for six months after reunification services have begun, whether or not jurisdiction was originally asserted under *W & I C § 300(g). Sara M. v Superior Court (2005) 36 Cal 4th 998, 116 P3d 550.*

Trial court erred in holding separate jurisdictional hearings for a mother and father because jurisdiction in dependency proceedings is over the children, not the parents; moreover, dismissal as to only one parent was also error. *In re Joshua G. (2005, 4th Dist) 129 Cal App 4th 189.*

Legal guardian who was appointed after child was declared a dependant of the court had no right to reunification services and therefore, following the termination of reunification services, she could not challenge their adequacy. In outlining the procedure for terminating the legal guardianship and appointing a new guardian, the court noted that it was not clear that the trial court had to assume jurisdiction through the *W & I C § 300* petition process because a *W & I C § 387* petition would be the appropriate method for obtaining an order detaining the child and placing him in foster care. *In re Carlos E. (2005, 1st Dist) 129 Cal App 4th 1408.*

Because California's child dependency law and proceedings, *W & I C § 300*, were aimed at promoting the best interests of the child, not at prohibiting conduct, custody & adoption proceedings did not fall within California's broad Public Law 280 criminal jurisdiction over Indians. *Doe v Mann (2005, CA9 Cal) 415 F3d 1038.*

If an incarcerated parent can make suitable arrangements for a child's care during his or her incarceration, the juvenile court has no basis to take jurisdiction in the case; there is no 'go to jail, lose your child' rule in California. *In re Isayah C. (2004, Cal App 1st Dist) 2004 Cal App LEXIS 720.*

Juvenile court did not abuse its discretion in granting newspapers' requests for disclosure of the juvenile records of two deceased minors under *W & I C § § 827(a)(2)* and *300*, subject to the juvenile court's review of the relevant records in camera and the redaction of any information that might affect the rights and interests of third parties mentioned in the documents. *In re Elijah S. (2005, Cal App 1st Dist) 2005 Cal App LEXIS 98.*

It is the proponent of disclosure, i.e., the party filing a petition for access to confidential juvenile records under *W & I C § 827* that must make the threshold showing that a given deceased minor is within the jurisdiction of the juvenile court under *W & I C § 300*. *In re Elijah S. (2005, Cal App 1st Dist) 2005 Cal App LEXIS 98.*

Juvenile court has authority and jurisdiction to act to release juvenile case files pertaining to a deceased child under *W & I C § § 827* and *300*, even if a dependency petition has not been filed pursuant to *W & I C § 332*. *In re Elijah S. (2005, Cal App 1st Dist) 2005 Cal App LEXIS 98.*

Where foreign national parents did not withhold medical treatment or neglect their foreign national child in any way, a juvenile court erred in granting de facto parent status to the child's California foster parents under *W & I C § 300(b)*, and California thus lacked subject matter jurisdiction over the dependency proceeding under the Uniform Child Custody Jurisdiction and Enforcement Act. The juvenile court's jurisdictional finding that the parents were unable to provide the intensive medical treatment required for the child's cerebral palsy, spinal cord injury, and respiratory compensation, resulting in a substantial risk that the child would suffer serious physical harm or illness, did not necessarily include a finding under the Act that an emergency existed and that it was necessary to protect the child from actual or threatened mistreatment or abuse, and also did not include a finding of abandonment. *In re A. C. (2005, Cal App 4th Dist) 2005 Cal App LEXIS 1023, 2005* Daily Journal DAR 7909.

Child who is a foreign national can not be made the subject of the California juvenile dependency law simply because California offers better medical care than the child's home state. *In re A. C. (2005, Cal App 4th Dist) 2005 Cal App LEXIS 1023, 2005* Daily Journal DAR 7909.

B. ACTION AND PROCEEDINGS 7. In General

Where a petition under *Welf. & Inst. Code, § 600*, subd. a, is contested, the parents are entitled to a fair hearing with an impartial arbiter and to a referee who does not assume the functions of an advocate. *Lois R. v Superior Court (1971, 2nd Dist) 19 Cal App 3d 895, 97 Cal Rptr 158.*

A minor who has been adjudicated a ward of the juvenile court by proceedings under *Welf. & Inst. Code, § 600*, subd. (b), can be readjudicated a ward for new and different reasons from those litigated in the original proceedings only after proceedings on a supplemental petition alleging grounds on which the readjudication is to be predicated and notice of hearing thereon in the manner required in a proceeding for a change or modification of an order under *Welf. & Inst. Code, § § 775, 776*, and *777* (because of failure to rehabilitate the minor), to insure that parents and other interested parties are apprised of the allegations they must be prepared to meet. *In re Neal D. (1972, 5th Dist) 23 Cal App 3d 1045, 100 Cal Rptr 706.*

An indigent has no right to have counsel appointed and paid for simply because he does not want the services of the public defender. In counties in which there is a public defender, *Welf & Inst Code, § § 517* and *634*, authorize the appointment and compensation of private counsel for persons financially unable to employ counsel only when the public defender has refused to represent them, and a juvenile court, on a petition by an indigent mother of two children under

Welf & Inst Code, § 600, has no authority to appoint private counsel and no jurisdiction to pay that counsel. *In re J. G. L. (1974, 4th Dist) 43 Cal App 3d 447, 117 Cal Rptr 799.*

In proceedings to terminate parental rights to minor children on the ground of voluntary abandonment, the evidence was insufficient to show that a baby girl had been abandoned by her parents, and a judgment terminating parental rights on such ground required reversal, where it appeared the parents had not voluntarily relinquished custody of the baby, who was born addicted to heroin but had left her in the hospital in accord with the hospital's plan for observation for detoxification symptoms, where plans were made by the parents to pick up the baby, but a social worker arranged for a police "hold" to prevent that, where the social worker personally removed the baby and placed her in a foster home without filing a petition as required by *Welf. & Inst. Code, § 600*, which prevented the parents from contesting the baby's removal, and where the parents' subsequent failure to contact the child was due in part to their understandable fear of being arrested for violation of probation arising out of narcotics charges. Moreover, under the circumstances, the requirement that the abandonment statutes be liberally construed to consider the Welfare and best interests of the child, did not justify a finding that the baby was voluntarily abandoned. *In re George G. (1977, 2nd Dist) 68 Cal App 3d 146, 137 Cal Rptr 201.*

In child dependency proceedings under *Welf. & Inst. Code, § 300*, based on allegations that a minor girl's stepfather sexually molested her on numerous occasions, the trial court acted properly in excluding the stepfather during the testimony of the minor, and the stepfather's rights were fully protected, where the minor's testimony was given in the presence of the stepfather's attorney, who thoroughly cross-examined her, and where the testimony was transcribed by the reporter. In such circumstances the stepfather appeared through his attorney and could not have been prejudiced by the procedure. Moreover, the procedure used is expressly authorized in child dependency proceedings, the paramount purpose of which is the protection and welfare of the child. *In re Tanya P. (1981, 2nd Dist) 120 Cal App 3d 66, 174 Cal Rptr 533.*

In proceedings to remove an infant from the custody of her mother on grounds that the mother was incapable of providing proper care (*Welf. & Inst. Code, § 300*, subd. (a)), which resulted in the child's placement in a foster home, the trial court's failure to state the standard of proof employed in deciding the dispositional order was not harmless error where, during the dispositional phase, the trial court had erroneously applied a preponderance of the evidence test. *In re In re Bernadette C. (1982, 3rd Dist) 127 Cal App 3d 618, 179 Cal Rptr 688.*

A dependency hearing conducted under *Welf. & Inst. Code, § 300*, involves two distinct issues which must be addressed by the juvenile court. First, at the "jurisdictional phase" of the hearing, the court must decide whether the minor comes within one of the categories specified in § 300. (*Welf. & Inst. Code, § 355*.) If the court decides this issue in the affirmative, the court may invoke its jurisdiction to declare the minor a dependent child of the court. Second, at the "dispositional phase" of the hearing, the court must decide the appropriate disposition of the minor. (*Welf. & Inst. Code, § § 356, 358*.) The court will hear evidence to determine disposition, which may range from supervised custody (*Welf. & Inst. Code, § 362*) to removal of the child from the home. (*Welf. & Inst. Code, § 361*.) The court's principal concern is a disposition consistent with the best interests of the minor. *In re In re Cheryl H. (1984, 2nd Dist) 153 Cal App 3d 1098, 200 Cal Rptr 789.*

A dependency hearing conducted under *Welf. & Inst. Code, § 300*, must be distinguished from a termination hearing conducted under *Civ. Code, § 232*. In the latter situation the issue is whether the parent-child relationship should be permanently and irrevocably terminated. *In re In re Cheryl H. (1984, 2nd Dist) 153 Cal App 3d 1098, 200 Cal Rptr 789.*

In a dependency hearing under *Welf. & Inst. Code, § 300*, a determination that a minor is a dependent child of the court must be established by proof which is legally admissible in civil trials (*Welf. & Inst. Code, § 355*). Thus, at a dependency hearing, rulings on the admissibility of evidence must comply with the rules prescribed by the Evidence Code (*Welf. & Inst. Code, § 701*.). *In re In re Cheryl H. (1984, 2nd Dist) 153 Cal App 3d 1098, 200 Cal Rptr 789.*

In the case of a minor who was adjudged a dependent child at a jurisdictional hearing in 1988, the trial court did not err in adjudging the child a dependent child of the court pursuant to *Welf. & Inst. Code, § 300*, subd. (j), even though that subdivision only took effect in 1989 and the petition was not amended. *Cal. Rules of Court, rule 1360*, authorized the action by the trial court, and nothing in the rule was inconsistent with the statute or the Constitution. Moreover, although the court did not specifically state that the factual allegations met the new statute, it rendered a sufficient statement and the petition itself was specific as to allegations of abuse to the minor's sibling. Specific findings need not be made in juvenile dependency proceedings. The trial court's failure to read the revised subdivisions to those present at the hearing did not violate due process. The parties had notice of the specific facts on which removal was predicated, and the parent objected to the adjudication of dependency under the new subdivisions only on "technical grounds." *In re Steve W. (1990, 5th Dist) 217 Cal App 3d 10, 265 Cal Rptr 650.*

With respect to prosecutorial immunity of public employees under *Gov. Code, § 821.6*, children's services workers must be entitled to prosecutorial immunity for instituting and processing proceedings under *Welf. & Inst. Code, § 300*,

because the urgent need for the protection provided by such proceedings outweighs the harm that may flow from an erroneous decision to initiate them. The same balance of interests does not affect the separate and distinct functions of supervising the foster care of children who are the subject of dependency proceedings. Thus, there is no policy reason for extending prosecutorial immunity to these nonprosecutorial functions and there is no immunity. *Scott v County of Los Angeles (1994, 2nd Dist) 27 Cal App 4th 125, 32 Cal Rptr 2d 643.*

In balancing the factors governing due process requirements in noncriminal proceedings generally, to determine just what due process requires in proceedings affecting parental rights, there are three principal and sometimes competing concerns: (1) Parents have a fundamental and compelling liberty interest in their relationship with their children and a correspondingly great interest in an accurate and just decision on the issue of termination. (2) The state shares the parents' interest in an accurate and just decision, but has a compelling interest in protecting the child, and also has an interest in proceeding as economically and as informally as is consistent with fairness. Thus, the courts legitimately include in the balance of interests the fiscal and administrative burdens that are entailed by any procedural protections to which it is claimed parents are entitled. (3) The third party in such proceedings, the child, has a fundamental interest in belonging to a family, and consequently shares the parent's interest in assuring that family ties are not erroneously torn apart. At the same time, children must be protected from abuse and neglect perpetrated by those who should be their protectors. Children who are abused or neglected have a clear and compelling right to a new placement that is stable and permanent and allows the caretaker to make a full emotional commitment to the child. The welfare of the child is the paramount concern of the juvenile court law. *Los Angeles County Dep't of Children's Servs. (In re Sade C.) (1995, 2nd Dist) 32 Cal App 4th 1225, 38 Cal Rptr 2d 822.*

A *W & I C § 300*, dependency hearing is bifurcated to address two distinct issues. First, at the jurisdictional hearing, the court determines whether the child falls within any of the categories set forth in *W & I C § 300*. If so, the court may declare the minor a dependent child of the court. Then, at the dispositional hearing, the court must decide where the child will live while under its supervision, with the paramount concern being the child's best interest. *In re Michael D. (1996, 2nd Dist) 51 Cal App 4th 1074, 59 Cal Rptr 2d 575.*

In a juvenile dependency proceeding (*W & I C § 300*) involving a seven-year-old child in which the father sought to discover forensic evidence and various investigative reports compiled during an ongoing criminal investigation into the death of his girlfriend's 21-month-old daughter, who was in his care when she sustained the injuries that led to her death, the trial court abused its discretion in granting a motion to quash without first conducting an in camera review and carefully weighing the parties' respective, colliding interests in disclosure and confidentiality as to each of the requested items. The question of whether items from a police investigative file should be subject to discovery turned on more than the age of the investigation. Application of the conditional privilege for official information (*Ev C § 1040(b)(2)*) required a weighing of interests, and a litigant's interest in prosecuting a civil action for damages paled in comparison to a parent's interest in having custody of his or her child. Further, the mere fact evidence incriminated the father was not enough to prevent disclosure. The government must also show there was a real possibility release of the information would allow the perpetrator to avoid apprehension. *Michael P. v Superior Court (2001, 4th Dist) 92 Cal App 4th 1036, 113 Cal Rptr 2d 11.*

Because a mother demonstrated the ability to arrange for the care of her child during her incarceration, the trial court had no authority to assume jurisdiction over the case under *W & I C § 300(g)*, and the termination of the mother's parental rights was reversed. *In re S. D. (2002, 4th Dist) 99 Cal App 4th 1068, 121 Cal Rptr 2d 518.*

District court properly granted summary judgment in favor of a county social worker in a father's action under *42 U.S.C.S. § 1983*, which alleged constitutional violations resulting from the social worker's allegedly inadequate investigation of allegations that the father abused and neglected his four-year-old daughter and from the social worker's allegedly fabricated evidence in support of a dependency petition under *W & I C § 300*; the social worker was entitled to absolute immunity in performing the quasi-prosecutorial functions connected with the initiation and pursuit of the child dependency proceedings. *Doe v Lebbos (2003, CA9 Cal) 348 F3d 820.*

Juvenile court erred in terminating reunification services under the authority of *Cal. Rules of Court, Rule 1460(f)(1)* based on the mother's failure to contact her children in the six months preceding the review hearing. *W & I C § 366.21(e)* establishes only two situations where the court can schedule a *W & I C § 366.26* hearing at the six-month review: (1) when the child has been removed under *W & I C § 300(g)* and the court finds by clear and convincing evidence the whereabouts of the parent is still unknown or the parent has failed to contact and visit the child; or (2) when the court finds by clear and convincing evidence the parent has been convicted of a felony indicating parental unfitness. *Sara M. v Superior Court (2004, 5th Dist) 123 Cal App 4th 1251.*

There is no conflict between *W & I C § § 366.21(e)* and *366.26(c)(1)*. By invoking the provision of W & I C *§ 366.21(e), W & I C* § 366.26(c)(1) necessarily imports the effect of *W & I C § 300(g)*, which is a foundational re-

quirement for the setting of a *W & I C § 366.26* hearing. *Sara M. v Superior Court (2004, 5th Dist) 123 Cal App 4th 1251.*

8. Pleadings

In a juvenile court proceeding on a petition concerning conduct of the minor's mother, under provision relating to persons subject to adjudication as dependent children, a separate petition alleging a father to be unable, unfit, or unwilling as a parent to exercise proper care and custody of the minor, was not necessary for an adjudication of dependency nor for proof of facts justifying a finding in accordance with *W & I C § 726*, relating to an award of custody and control of a minor or an adjudication of dependency, so long as there was a proper allegation contained in the petition before the court, where the petition was not drawn on the theory that the minor had no parent willing to exercise or capable of exercising care and control, but on the premise that the minor had no parent actually exercising care or control. *In re L. (1968, 2nd Dist) 267 Cal App 2d 397, 73 Cal Rptr 76.*

A petition under *W & I C § 300*, subd. (d), for removal of a four-year-old minor from the custody of his mother for abuse and neglect was so deficient as to violate the notice requirements of due process, where the petition simply recited in the words of the statute that the minor's home was an unfit place for him by reason of neglect, cruelty, depravity or physical abuse of either of his parents, or of his guardians or other persons in whose custody or care he was, and thus failed to give notice of the specific facts on which removal was predicated. Notice of the specific facts on which the petition is based is necessary to enable the parties to properly meet the charges. The requirement of specific facts derives from the recognition that the statutory criteria of improper and ineffective parental care denotes a fairly extreme case. Thus, a bare recital of the conclusionary words of the statute does not suffice as notice. *In re Jeremy C. (1980, 3rd Dist) 109 Cal App 3d 384, 167 Cal Rptr 283.*

In a dependency proceeding, allegations that the minor's mother had observed the father touching the minor on her buttocks and vaginal area when she was a baby in a way that seemed to her inappropriate, and that the father had one year previously been arrested and incarcerated for domestic violence against the mother were insufficient to support a finding of jurisdiction under *Welf. & Inst. Code, § 300*, subd. (b) (failure to protect), and removal of the minor from the father's custody. The pleaded facts alleged only that the father had been incarcerated for spousal abuse and therefore failed to supervise the minor, but the pleading further alleged that the mother was currently living with the father. Further, the pleading did not allege that the violence was perceived by or affected the child and thus did not establish a "failure to protect" her. Furthermore, the pleading did not allege that any lewd touching continued beyond the one incident that had occurred more than a year previously, and thus did not establish that the minor was currently at any risk of serious physical harm. That allegation alone did not establish a reason for state interference with the family. *In re Alysha S. (1996, 3rd Dist) 51 Cal App 4th 393, 58 Cal Rptr 2d 494.*

A challenge to a finding of jurisdiction under *Welf. & Inst. Code, § 300*, is akin to a demurrer. In the analogous civil context, such a claim may be raised on appeal in the first instance. In the civil context, if the party against whom a complaint or a cross-complaint has been filed fails to object to the pleading, either by demurrer or by answer, that party is deemed to have waived the objection unless it is an objection that the pleading does not state facts sufficient to constitute a cause of action (*Code Civ. Proc., § 430.80*, subd. (a)). The same rule applies in a dependency proceeding. The appellate court construes well-pleaded facts in favor of the petition to determine if it sufficiently pleads grounds for the petition. *In re Alysha S. (1996, 3rd Dist) 51 Cal App 4th 393, 58 Cal Rptr 2d 494.*

The mother of a minor appealed from the jurisdictional and dispositional order of the juvenile court adjudging the minor a dependent child pursuant to *W & I C § 300(c)* and (j), and ordering family maintenance services. She alleged that the § 300 petition failed to state a cause of action and that there was insufficient evidence for the court to assume jurisdiction over the minor. The court of appeal held that the mother waived her right to challenge the sufficiency of the allegations of the petition by failing to raise the issue below. Finding that *CCP § 430.80(a)*, which allows claims challenging the sufficiency of the pleadings to be raised for the first time on appeal, does not apply to dependency actions, the court held that juvenile cases are governed by *Penal C § 1012*, which provides that failure to demurrer to defective pleadings waives the defect. *CRC Rules 39* specifically provides that rules governing criminal cases and appeals apply to juvenile proceedings, unless otherwise specified. *In re Shelly J. (1998, 6th Dist) 68 Cal App 4th 322, 328, 79 Cal Rptr 2d 922.*

The juvenile court erred in finding a minor to be a dependent child under *W & I C § 300(b)*, where the allegations in the petition failed to state a basis for jurisdiction under subdivision (b) in that they did not allege a current substantial risk that the child would suffer serious physical harm as a result of his parents' inability to supervise or protect him. There was one allegation of physical abuse by the mother, but no further allegations nor supporting facts to suggest serious physical harm would occur again. Although the father allegedly engaged in inappropriate physicality, he was not

mentioned in any of the petition's factual allegations. *In re Nicholas B. (2001, 6th Dist) 88 Cal App 4th 1126, 106 Cal Rptr 2d 465.*

The allegations in a juvenile dependency petition were insufficient to establish juvenile court jurisdiction, since allegations stating that the mother had failed to ensure the children's school attendance, while serious, did not create a "substantial risk" of suffering "serious physical harm or illness" (*W & I C § 300(b)*), and since neither the petition nor the social workers' reports alleged necessary facts to support the conclusion the children were currently at a substantial risk of serious physical injury or illness because of the mother's alleged mental and emotional problems. Although evidence of past events could have some probative value in considering current conditions, under § 300(b) this was only true if circumstances existing at the time of the hearing made it likely the children would suffer the same type of serious physical harm or illness in the future. The past infliction of physical harm, standing alone, did not establish a substantial risk of physical harm; there must be some reason to believe the acts may continue in the future. *In re Janet T. (2001, 2nd Dist) 93 Cal App 4th 377, 113 Cal Rptr 2d 163.*

In a dependency proceeding based on sexual abuse, the children were properly found to come within *W & I C § 300(d)*, even though the allegations in the *W & I C § 342* petition were all written in terms of what the victim reported, not what the father actually did. Instead of challenging the pleading, the father waived any defects in procedure and litigated the merits. After a hearing on the merits, the focus was necessarily on the substance of the allegations found to be true by the juvenile court, not the idiosyncratic particulars of the petition, which was drafted by a social worker. Here, it was fair to say that the substance of the paragraphs in the § 342 petition found true by the trial court was that there had been actual child abuse, not just the fact that a child believed she had been abused. It followed, therefore, that the trial court's order was based on actual sexual abuse. *In re Jessica C. (2001, 4th Dist) 93 Cal App 4th 1027, 113 Cal Rptr 2d 597.*

Conclusive marital presumption did not preclude consideration of a stepfather's motion for presumed father status because the child had no contact with or support from the biological/marital father for 13 years, while she called the stepfather "Dad," used his name, was close to his extended family, and was close to him. The court noted that even though the stepfather had been granted reunification services in a dependency proceeding under *W & I C § 300*, the issue of his status was not moot because his status could have consequences for his future standing with regard to services. *In re Angela A. (2005, Cal App 2nd Dist) 2005 Cal App LEXIS 858.*

9. Parent's Right to Notice and Opportunity To Be Heard

A parent cannot be deprived of his or her interest in the companionship, care, custody and management of his or her children without being afforded notice and an opportunity to be heard. Thus, at a hearing under former W & I C § 600(a), the trial court's refusal to consider an offer of proof by the natural father that he was willing and capable of exercising control over the minor before declaring the minor to be a dependent of the court deprived the father of due process of law. Although the minor's parents had never married, natural father was also the presumed father under *CC § 7004(a)(4)*, as he had received the minor into his home and had openly held him out as his son. *In re Kelvin M. (1978, 1st Dist) 77 Cal App 3d 396, 143 Cal Rptr 561.*

The alleged biological father of a child who was the subject of a dependency petition (*W & I C § 300*), himself a minor, was not denied his due process right to notice. Substantial evidence supported the trial court's findings concerning proper notice by mail and by publication, where the Department of Human Services sent notices addressed to the father at several different addresses and published notice in a local newspaper of general circulation. These efforts were reasonably calculated under the circumstances to apprise him of the proceedings. Nor was the father entitled to the appointment of a guardian ad litem (*CCP § 372*), since he was not a party to the action until he appeared and asserted a position; he was simply an "interested person" entitled to notice. *In re Emily R. (2000, 5th Dist) 80 Cal App 4th 1344, 1351, 96 Cal Rptr 2d 285.*

Before the appointment of a guardian ad litem (*CCP § 372*) for a parent in a *W & I C § 300* proceeding, the parent's right to due process requires an informal hearing and an opportunity to be heard. At a minimum, the court should make an inquiry sufficient to satisfy it that the parent is, or is not, competent: i.e., whether the parent understands the nature of the proceeding and can assist the attorney in protecting his or her rights. The court cannot completely rely on the attorney, acting as an agent for the client, to ensure the parent's rights are protected. If a court can transfer the direction and control of the litigation from a parent without due process, the remaining protections provided by § 300 seem hollow. *In re Sara D. (2001, 5th Dist) 87 Cal App 4th 661, 104 Cal Rptr 2d 909.*

Judgment terminating parental rights was reversed, and the trial court was ordered to hold a special jurisdictional hearing where a social service agency attempted to contact the father, who lived in Mexico, via ordinary mail and telephone; however, the agency failed to establish that service of process was proper under the Convention on the Service Abroad

of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, *20 U.S.T. 361;* T.I.A.S. No. 6638. and Mexican law. *In re Alyssa F. (2003, 4th Dist) 112 Cal App 4th 846.*

The social service agency attempted to contact the father, who lived in Mexico, via ordinary mail and telephone; however, the agency failed to establish that service of process was proper under the Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters, Nov. 15, 1965, *20 U.S.T. 361;* T.I.A.S. No. 6638. and Mexican law. The judgment terminating parental rights was reversed, and the trial court was ordered to hold a special jurisdictional hearing. *In re Alyssa F. (2003, 4th Dist) 112 Cal App 4th 846.*

Mother's absence at a dependency jurisdictional hearing because of her incarceration did not violate her statutory right to be present because the language of *Pen C § 2625(d)* did not cover *W & I C § 300(g)*, under which it was alleged that the mother was incarcerated and unable to make a proper plan for the children. The allegation under § 300(g) was the only allegation to be adjudicated. *In re Iris R. (2005, 2nd Dist) 131 Cal App 4th 337.*

Although a juvenile court's finding of proper notice in a proceeding on a *W & I C § 300* petition was plainly erroneous because nothing in the hearing notice served on the father identified the nature of the hearing, as expressly required by *W & I C § 291(d)(2)*, because the father had the opportunity to present the issue to the juvenile court due to his participation with counsel in a number of hearings after the improperly noticed jurisdictional hearing but failed to do so, the appellate court refused to exercise its limited discretion to consider the matter on appeal. *In re Wilford J. (2005, 2nd Dist) 131 Cal App 4th 742.*

In a dependency proceeding under *W & I C § 300*, due process was violated by the appointment of a guardian ad litem for the mother because the court failed to adequately inquire as to the mother's competence and the only evidence to suggest her incompetence was a report that she had cerebral palsy and was a client at a clinic for developmental disabilities. The court also did not explain what the appointment meant in general or to the mother, and it did not inquire whether the mother's attorney had discussed the situation with her. *In re C. G. (2005, Cal App 2nd Dist) 2005 Cal App LEXIS 722.*

9.5. Siblings

Nonadoptive siblings made a sufficient showing to entitle them to participate in a termination hearing relating to siblings who were to be adopted because there were positive indicators of the bonded nature of the sibling relationships including: (1) all six of the children had lived had together and shared experiences of homelessness and their mother's substance abuse; (2) the oldest child looked after the younger children; and (3) the children had enjoyed visiting with each other since being placed in two separate foster homes. However, the nonadoptive siblings were not prejudiced by the denial of their participation because the juvenile court fully considered the ramifications of the sibling relationships. *In re Hector A. (2005, Cal App 1st Dist) 2005 Cal App LEXIS 17.*

Permanent plan of legal guardianship, rather than adoption, was properly selected for a dependant child because sufficient evidence supported application of the sibling relationship exception, even though the child had been removed from the home shortly after birth, pursuant to a *W & I C § 300* petition, and had never lived with her three older siblings. The evidence supporting use of the exception included testimony from the three older children, who were described by the juvenile court as having happy, joyful expressions on their faces when they talked about the child, and the fact that the siblings had been a constant thread in the child's life. *In re Naomi P. (2005, Cal App 2nd Dist) 2005 Cal App LEXIS 1432.*

10. Evidence

Although in juvenile court delinquency proceedings pursuant to *Welf & Inst Code, § 602*, in which the commission of a crime is a fact necessary to the jurisdiction of the court, it may be erroneous for the court to receive a social study report concerning the child during the jurisdictional hearing, in dependency proceedings pursuant to *Welf & Inst Code, § 600*, the jurisdictional fact is the lack of parental control and the unfitness of the minor's home, and the proceeding, being civil in nature, presents no problem of the constitutional right of confrontation; therefore, it was not erroneous for the juvenile court in a dependency proceeding to review the social worker's investigation and social study report concerning the child before determining the issue of dependency. *In re Biggs (1971, 2nd Dist) 17 Cal App 3d 337, 94 Cal Rptr 519.*

In a hearing to adjudicate child dependency under *Welf & Inst Code, § 600*, as distinguished from child delinquency under *Welf & Inst Code, § 602*, the applicable standard of proof is the civil standard of proof by preponderance of the evidence. *In re George S. (1971, 2nd Dist) 18 Cal App 3d 788, 96 Cal Rptr 203.*

In a proceeding to declare minors dependent children of the juvenile court, it was not error to admit a doctor's testimony as to malnutrition over the objection of the mother of violation of the physician-patient privilege. *Evid. Code, § 1004*, providing that there is no privilege in a proceeding to commit a patient or otherwise place him under the control

of another because of his alleged mental or physical condition is applicable in a proceeding under *Welf & Inst Code, § 600*, to have a minor declared to be a dependent child of the court when the child's physical or mental condition is in issue. *In re Jeannie Q. (1973, 2nd Dist) 32 Cal App 3d 288, 107 Cal Rptr 646.*

The exclusionary rule was not applicable to proceedings under former Welf. and Inst. Code, § 600, to declare a minor a dependent child of the court, and the trial court therefore properly admitted into evidence testimony and photographs relating to the condition of the mother's apartment, over objections that such evidence was obtained in an unlawful search and seizure. *In re Robert P. (1976, 1st Dist) 61 Cal App 3d 310, 132 Cal Rptr 5.*

W & I C § § 5328, 5328.1-5328.9, which impose a general limitation on disclosure of mental health records and provide exceptions to the limitation, are not related to the admissibility of the records as evidence. Thus, in a proceeding to declare two minors to be dependent children of the court (W & I C Code, § 300, subds. (a) and (d)), the trial court erred in overruling the mother's objection to the admissibility of her records based on the psychotherapist-patient privilege (*Ev C § 1012*), on the ground that *W & I C § 5328*, subd. (f), authorized disclosure of records to the courts. *In re S. W. (1978, 2nd Dist) 79 Cal App 3d 719, 145 Cal Rptr 143.*

The standard of proof necessary to support the factual allegations of dependency under *W & I C § 300*, is proof by a preponderance of the evidence (*W & I C § 355*). More stringent standards do not arise until a finding of dependency results in a disposition severing the parent-child relationship. *In re D. (1978, 2nd Dist) 81 Cal App 3d 192, 146 Cal Rptr 178.*

The exclusionary rule is inapplicable in civil dependency proceedings under *W & I C § 300*. The potential harm to the children in allowing them to remain in an unhealthy environment outweighs any deterrent effect that will result from application of the rule. *In re Christopher B. (1978, 3rd Dist) 82 Cal App 3d 608, 147 Cal Rptr 390.*

The proper standard of proof in *W & I C § 300* cases (dependency), where the child is not removed from parental custody, is proof by a preponderance of the evidence. Clear and convincing proof is required only where the final result is to sever the parent-child relationship and award custody to a nonparent. *In re Christopher B. (1978, 3rd Dist) 82 Cal App 3d 608, 147 Cal Rptr 390.*

Consent to a search may be limited in scope and, once given, may be subsequently withdrawn. *In re Christopher B. (1978, 3rd Dist) 82 Cal App 3d 608, 147 Cal Rptr 390.*

In civil dependency proceedings under *W & I C § 300*, the trial court did not err in finding that the mother had given her implied consent to a search of her home by a deputy sheriff, where the deputy testified that the mother had expressly consented to her entry and to an examination of the house, and the mother testified that she had consented to entry but that the deputy had not asked permission to go into other rooms. *In re Christopher B. (1978, 3rd Dist) 82 Cal App 3d 608, 147 Cal Rptr 390.*

In proceedings to modify a dependency order under Welf. & Inst. Code, § 300, a preponderance of the evidence standard applies to a petition for modification under *Welf. & Inst. Code, § 388*, while a clear and convincing evidence standard applies to a supplemental petition under *Welf. & Inst. Code, § 387*. *In re Fred J. (1979, 3rd Dist) 89 Cal App 3d 168, 152 Cal Rptr 327.*

Clear and convincing evidence was the proper standard to be applied to a proceeding by the juvenile probation department under *Welf. & Inst. Code, § 300*, subd. (b), wherein the juvenile probation department alleged a 12-year-old boy was not provided with the necessities of life and requested that he be declared a dependent child of the court for the special purpose of insuring that he receive cardiac surgery for a congenital defect. *In re Phillip B. (1979, 1st Dist) 92 Cal App 3d 796, 156 Cal Rptr 48.*

Welf. & Inst. Code, § § 355.1, 355.2, 355.3 and *355.4*, create presumptions as to the need of proper and effective parental care, neglect, cruelty and physical abuse, respectively. In dependency proceedings, the presumptions are rebuttable and affect only the burden of producing evidence. By making one fact prima facie evidence of another fact, the statutes allow the Department of Public Social Services to easily establish its case and the court to create a dependency under *Welf. & Inst. Code, § 300*, subd. (a) and (d), where it is necessary to quickly remove a neglected or battered child from an unfit home. When a minor has been neglected or abused by either parent, the statutes support a judicial finding that the minor is a person described by *Welf. & Inst. Code, § 300*. Thus, when there are two parents with separate homes, the child can be removed from the home of the unfit parent at the adjudication hearing without prejudicing the other parent's right to gain custody of the child at the disposition hearing on a sufficient showing that he or she is capable of providing proper parental care. *In Re In re La Shonda B. (1979, 2nd Dist) 95 Cal App 3d 593, 157 Cal Rptr 280.*

In proceedings to remove a four-year-old child from the custody of his mother for abuse and neglect pursuant to *Welf. & Inst. Code, § 300*, subd. (d), it was error for the trial court to foreclose the mother from presenting evidence that her home was at the time of the disposition hearing a nondetrimental environment for the child and to apply only the standard of the best interests of the child in removing him from his mother's custody. A specific finding of detriment to the

child resulting from parental custody must be established by clear and convincing evidence before custody may be awarded to a nonparent. *In re Jeremy C. (1980, 3rd Dist) 109 Cal App 3d 384, 167 Cal Rptr 283.*

In a proceeding to maintain the placement of a minor in a foster home, due to allegations regarding sexual abuse by the child's father, the trial court did not err in admitting evidence concerning the father's prior sexual conduct with his stepdaughter, regardless of the admissibility of this type of testimony in a criminal prosecution, since the admissibility was governed by *Welf. & Inst. Code, § 355.5*, which provides that proof of physical abuse, neglect or cruel treatment to a child by a parent shall be admissible in evidence in placement proceedings. *In re Marianne R. (1980, 2nd Dist) 113 Cal App 3d 423, 169 Cal Rptr 848.*

The standard of proof required in a hearing to declare a minor a dependent child of the juvenile court under *Welf. & Inst. Code, § 300*, is the preponderance of the evidence. If there is any substantial evidence to support the findings of the juvenile court, a reviewing court must uphold the trial court's findings. All reasonable inferences must be drawn in support of the findings and the record must be viewed in the light most favorable to the juvenile court's order. *In re Amos L. (1981, 2nd Dist) 124 Cal App 3d 1031, 177 Cal Rptr 783.*

The correct standard of proof to be applied at a dispositional hearing with respect to a minor who has been declared a dependent child of the juvenile court under *Welf. & Inst. Code, § 300*, is clear and convincing evidence. However, on appeal, the substantial evidence test applies to determine the existence of the clear and convincing standard of proof. *In re Amos L. (1981, 2nd Dist) 124 Cal App 3d 1031, 177 Cal Rptr 783.*

In proceedings to remove an infant from the custody of her mother on grounds the mother was incapable of providing proper care (*Welf. & Inst. Code, § 300*, subd. (a)), the trial court erred in employing a preponderance of the evidence standard of proof in sustaining jurisdiction and finding the infant to be a dependent child. A § 300 hearing which may result in the removal of a child from its parents requires application of the clear and convincing evidence standard. *In re In re Bernadette C. (1982, 3rd Dist) 127 Cal App 3d 618, 179 Cal Rptr 688.*

A juvenile court may rely on a social study report, furnished by a probation officer or social worker upon court order, in determining whether a minor falls within its jurisdiction under Welf. & Inst., $ 300, even though the report contains hearsay. The report is admissible for purposes of providing the court with a coherent picture of the child's situation. The jurisdictional fact in a Welf. & Inst., $ 300, hearing is the lack of parental control and the unfitness of the minor's home. The social study report is directly relevant to the issue to be determined by the juvenile court at the adjudication hearing. *In re Basilio T. (1992, 4th Dist) 4 Cal App 4th 155, 5 Cal Rptr 2d 450.*

In jurisdictional proceedings to declare two children dependents of the court under *Welf. & Inst. Code, § 300*, the trial court, in finding that the mother suffered from a mental illness under *Welf. & Inst. Code, § 300*, subd. (b), was not required to receive evidence from two expert witnesses as provided by *Civ. Code, § 232*, subd. (a)(6), which requires such evidence prior to terminating parental rights based on a parent's mental incapacity. The Legislature omitted evidentiary requirements in *Welf. & Inst. Code, § 300*, subd. (b), with respect to mental illness, and requires jurisdictional grounds to be proved only by the preponderance of the evidence. If the Legislature had intended to require *Welf. & Inst. Code, § 300*, subd. (b), to adhere to a specific evidentiary scheme, it would have expressly designated one within the statute. The purpose of *Welf. & Inst. Code, § 300*, subd. (b), is merely to obtain jurisdiction over and thereby protect children who are currently being neglected or exploited, and to protect children who are at risk of that harm, assist the parents in eliminating the risk to their children through a reunification plan, and subsequently reunite the family. To impose a higher evidentiary standard would ignore this legislative intent. *In re Khalid H. (1992, 4th Dist) 6 Cal App 4th 733, 8 Cal Rptr 2d 414.*

In a dependency proceeding premised on an allegation that the father had sexually abused the subject minor's half sister and therefore there was a substantial risk he would abuse the minor (*Welf. & Inst., Code, § 300*, subd. (j)), the juvenile court did not err in granting the *in limine* motion of the county department of social services to exclude the father's proposed expert testimony concerning psychological and physiological testing of his propensity to molest children. Although such evidence is in principle admissible at the jurisdictional hearing under § 300, subd. (j), on the issue of the parent's mental condition, the father did not sustain his burden of showing the substance, purpose, and relevance of the expert testimony. He made no written opposition to the motion or offer of proof, and the juvenile court had not been given any meaningful information about the various standardized tests involved in the evaluation of the father. *In re Mark C. (1992, 4th Dist) 7 Cal App 4th 433, 8 Cal Rptr 2d 856.*

Welf. & Inst. Code, § 300, subd. (c), sanctions intervention in child dependency proceedings by the dependency system in two situations: (1) when parental action or inaction causes the emotional harm, i.e., when parental fault can be shown; and (2) when the child is suffering serious emotional damage due to no parental fault or neglect, but the parent or parents are unable themselves to provide adequate mental health treatment. In a situation involving parental "fault," the petitioning party must prove three things: The offending parental conduct, causation, and serious emotional harm or

the risk thereof, as evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior. *In re Alexander K. (1993, 1st Dist) 14 Cal App 4th 549, 18 Cal Rptr 2d 22.*

In a child dependency proceeding, in which it was alleged that the child had been sexually abused by her father (*Welf. & Inst. Code, § 300*, subd. (d)), the juvenile court did not err in admitting into evidence out-of-court statements of the child for the purpose of showing her mother's understanding of whether she had been molested. Although the child had been found incompetent to testify at the jurisdictional hearing because of an inability to understand the duty to tell the truth, the evidence was admitted for a permissible nonhearsay purpose, since the petition alleging that the child needed juvenile court protection had named the child's mother as well as her father and had included a failure to protect allegation under *Welf. & Inst. Code, § 300*, subd. (b). *In re Clara B. (1993, 4th Dist) 20 Cal App 4th 988, 25 Cal Rptr 2d 56.*

In a child dependency proceeding, in which it was alleged that the child had been sexually abused by her father (*Welf. & Inst. Code, § 300*, subd. (d)), the juvenile court erred in admitting into evidence out-of-court statements of the child for the purpose of showing her precocious sexual knowledge. The child had been found incompetent to testify at the jurisdictional hearing because of an inability to understand the duty to tell the truth, and the evidence was admitted for an impermissible hearsay purpose, since it tended to prove there had been molestation. However, any error was harmless, since the issue in the case was not whether the child had been molested (there having been ample evidence of such), but who had committed the molestation, and the evidence of precocious sexual knowledge was cumulative to the properly admitted medical evidence that she had been molested. *In re Clara B. (1993, 4th Dist) 20 Cal App 4th 988, 25 Cal Rptr 2d 56.*

In a child dependency proceeding, in which it was alleged that the child had been sexually abused by her father (*Welf. & Inst. Code, § 300*, subd. (d)), the juvenile court erred in admitting into evidence out-of-court statements of the child for the purpose of showing that she feared her father. The child had been found incompetent to testify at the jurisdictional hearing because of an inability to understand the duty to tell the truth, and the evidence was admitted for an impermissible hearsay purpose, since evidence of the child's fear of her father could only have been relevant if offered to prove the contested fact alleged in the petition--that her father had molested her. The child's fear of her father had no relevance to the jurisdictional portion of the proceedings unless it tended in some way to prove or disprove that he had molested her. *In re Clara B. (1993, 4th Dist) 20 Cal App 4th 988, 25 Cal Rptr 2d 56.*

In a child dependency proceeding (*Welf. & Inst. Code, § 300*), out-of-court statements by the child, who is determined to be incompetent to testify because of an inability to understand the duty to tell the truth, are inadmissible for the truth of the matters asserted but may be admitted for other purposes. *In re Clara B. (1993, 4th Dist) 20 Cal App 4th 988, 25 Cal Rptr 2d 56.*

In the disposition portion of a child dependency proceeding involving a parent's alleged molestation of the child (*Welf. & Inst. Code, § 300*, subd. (d)), even though the child is found to be incompetent to testify because of an inability to understand the duty to tell the truth, his or her out-of-court statements indicating fear of the parent, are admissible as relevant nonhearsay evidence. Out-of-court declarations can be used as circumstantial evidence of the declarant's own state of mind, and such statements by a child that he or she was molested by a particular person are admissible not to prove the person molested the child, but as circumstantial evidence the child believed he or she did. The purpose of a dependency hearing is to determine the best interests of the child and to protect those interests, and a child's belief that he or she was harmed by a parent and the child's fear of the parent is relevant evidence tending to prove it is not in the child's best interest to permit continued contact with the parent. *In re Clara B. (1993, 4th Dist) 20 Cal App 4th 988, 25 Cal Rptr 2d 56.*

In a child dependency proceeding, in which it was alleged that the child had been sexually abused by her father (*Welf. & Inst. Code, § 300*, subd. (d)), the father waived his right to challenge the admissibility of the opinion of the child's therapist that the father was the person who had molested the child, since he had not objected to the testimony at the time of trial. Moreover, any error in admitting the therapist's opinion was harmless, since the juvenile court explicitly said it was not relying on the opinions of lay witnesses and since the therapist was not an expert in the identification of perpetrators but only qualified as an expert in the treatment of victims and perpetrators of child sexual molestation. *In re Clara B. (1993, 4th Dist) 20 Cal App 4th 988, 25 Cal Rptr 2d 56.*

In considering whether to sustain a dependency petition based on the parent's failure to protect the child (*Welf. & Inst. Code, § 300*, subd. (b)), evidence of past conduct may be probative of current conditions, and in some cases a risk to a child's physical health and safety is inherent in the absence of adequate supervision and care. *In re Kristin H. (1996, 6th Dist) 46 Cal App 4th 1635, 54 Cal Rptr 2d 722.*

Hearsay evidence contained in the social worker's report is admissible in a dependency proceeding. *In re Kristin H. (1996, 6th Dist) 46 Cal App 4th 1635, 54 Cal Rptr 2d 722.*

In a dependency proceeding concerning four minors who were adjudged dependents and placed in foster care, the juvenile court's procedural errors in making jurisdictional findings during a settlement conference and accepting the

social worker's findings without conducting a full jurisdictional hearing were harmless beyond a reasonable doubt. The juvenile court proceeded as it did because both parents failed to appear at the settlement conference (although their appointed counsel did appear), and the court found them to be "in default." Although the propriety of entering a "default" under these circumstances was questionable, the mother failed to demonstrate prejudice. Her counsel was present at the hearing, and he did not object to the summary adjudication or assert that he was taken by surprise or needed more time to proceed to a full hearing. Moreover, the mother did not seek relief from her default in the trial court, and she failed to indicate what evidence she might have presented at the jurisdictional hearing. Indeed, the social worker's report indicated that the mother was homeless at the time the court made its jurisdictional finding, and it was proper for the court to rely on this report to support its finding as long as there was an opportunity for cross-examination. Although no such cross-examination did occur, the mother's counsel did not request cross-examination, and the mother did not demonstrate how cross-examination would have resulted in a different outcome. *In re Brian W. (1996, 1st Dist) 48 Cal App 4th 429, 56 Cal Rptr 2d 1.*

At a child dependency jurisdictional hearing, a finding that the minor is a person described in *Welf. & Inst. Code, § 300*, must be supported by a preponderance of the evidence. *In re Heather A. (1996, 2nd Dist) 52 Cal App 4th 183, 60 Cal Rptr 2d 315.*

In proceedings initiated pursuant to *Cal. Welf. & Inst. Code § 300* because of the father's abuse of the children, the trial court erred in ordering the mother to attend parenting education classes, where no evidence, let alone substantial evidence, supported the trial court's conclusion; the father's rampage toward the children was an isolated incident perpetrated by only him, during which the mother immediately interceded, physically restrained and calmed the father, and directed that police be called. *In re Jasmine C. (2003, 2nd Dist) 106 Cal App 4th 177, 130 Cal Rptr 2d 558.*

Only requirement under *Cal. Welf. & Inst. Code § 300(e)* is that parents reasonably should have known, not whether they actually knew, their child was being injured by someone else; where there is no identifiable perpetrator, only a cast of suspects, jurisdiction under the statute is not automatically ruled out, and a finding may be supported by circumstantial evidence. *In re E. H. (2003, 2nd Dist) 108 Cal App 4th 659, 133 Cal Rptr 2d 740.*

Sister established a presumption of maternity as to her 8-year-old brother, whom she had cared for since birth; his belief that she was his mother was compelling evidence that he was held out to the community as a son, regardless of the sister's truthful statements to officials. Therefore, the juvenile court was directed to order a plan of reunification with services, in relation to a dependency petition. *In re Salvador M. (2003, Cal App 5th Dist) 2003 Cal App LEXIS 1423.*

11. --Sufficiency

In a juvenile court proceeding to review and renew the dependency status of a child, the finding that it was in the best interest of the child that he remain under the supervision of the court was supported by the evidence, where the child, who was illegitimate, had been living with his natural father under the supervision of the appropriate department of social services, and the child's social worker testified that he preferred to live with his father, that he was progressing in his father's home, and that he was no longer a behavior problem, where there was background information that the child's maternal relatives had exerted pressures on the child creating a great deal of confusion in his mind and that if dependency were discontinued, further difficulties would be encountered as a result of these pressures, and where the judge apparently considered how a change of environment might affect the child, in view of the fact that the mother had married and had had two smaller children. *In re Francecisco (1971, 2nd Dist) 16 Cal App 3d 310, 94 Cal Rptr 186.*

In a hearing to adjudicate children dependents of the court under *Welf & Inst Code, § 600*, the finding that the children's welfare required that their custody be taken from their mother was adequately supported by evidence that the mother was ill with epilepsy, had been treated for cancer and hospitalized many times, was dependent upon several drugs, was existing on welfare, was without the help of the father or any male, and was unable to cope with or provide needed discipline for her active teenage children. *In re George S. (1971, 2nd Dist) 18 Cal App 3d 788, 96 Cal Rptr 203.*

The evidence was sufficient to support the juvenile court's order adjudging an 8-year-old girl and a 4-year-old boy to be dependent children of the court and directing their removal from the parents' home on petitions under *Welf. & Inst. Code, § 600*, subds. (a), (b), alleging that they had no parent or guardian actually exercising proper and effective parental care or control and that the home was an unfit place by reason of the cruelty of the father and the neglect of the mother, where, though not all of the factual allegations of each petition were proven, there was testimony that the father hit the boy with a stick, inflicting serious bruises, that the boy had other older bruises, and that the father had fired shots from a B-B gun in the direction of the girl that came within two or three feet of her head, where the social report recommended the disposition adopted by the court and stated that the mother had been previously counseled as to the disciplining of the girl and that the father had two children by a different mother who had been made dependent children at one point, and where it further indicated that the father's attitude was such that the endangering of the children would continue to exist. *In re Luwannna S. (1973, 2nd Dist) 31 Cal App 3d 112, 107 Cal Rptr 62.*

The evidence in a juvenile court proceeding was sufficient to support an order declaring a 12-year-old girl to be a dependent child of the juvenile court (*W & I C § 300*, subds. (a) and (d)), where it was shown that the girl lived with her mother and her mother's boyfriend and, over a period of several months, had been sexually molested by the mother's boyfriend on an almost daily basis, and that the mother was aware of the situation but refused to rectify it and instructed the girl not to tell anyone about it. *In re D. (1978, 2nd Dist) 81 Cal App 3d 192, 146 Cal Rptr 178.*

The evidence in a juvenile court proceeding was sufficient to support an order declaring an eight-year-old boy to be a dependent child of the juvenile court (*W & I C § 300*, subds. (a) and (d)), where it was shown that the boy lived with his twelve-year-old sister, his mother and his mother's boyfriend, that the boyfriend had sexually molested the sister on almost a daily basis for several months, that the boy had witnessed the molestation on one occasion, and that the mother had been aware of the situation but refused to rectify it. There was also evidence of further mistreatment of both children by the boyfriend. *In re D. (1978, 2nd Dist) 81 Cal App 3d 192, 146 Cal Rptr 178.*

In civil dependency proceedings under *W & I C § 300*, the evidence was sufficient, even without photographs of the home taken without a warrant, to support a finding that the parents did not provide a suitable place of abode for the children, where a deputy who had entered with consent testified to the condition of the children and the house, and this testimony was confirmed in large measure by the parents themselves. *In re Christopher B. (1978, 3rd Dist) 82 Cal App 3d 608, 147 Cal Rptr 390.*

There was sufficient evidence, as a matter of law, to support the juvenile court's assumption of jurisdiction over a minor and its adjudication of the minor to be a dependent child of the court within the meaning of *Welf. & Inst. Code, § 300*, subd. (d), providing that a child whose home is an unfit place by reason of physical abuse of either his parents or any other person having care or custody of him or her may be adjudged to be a dependent child of the court. The stipulated facts indicated a male companion who had lived with the mother and daughter for three months had severely beaten the daughter with his closed fist. It was also stipulated the physical abuse described was the type contemplated in the statute, and the mother had no knowledge of this physical abuse. At the time of the hearing, the male companion no longer resided with the mother and was not allowed to come in or about the residence. However, there was nothing in the record indicating he had expressed the willingness not to return, and the close association with the mother in the past provided a basis for inferring that he might return. *In re Nicole B. (1979, 4th Dist) 93 Cal App 3d 874, 155 Cal Rptr 916.*

At a jurisdictional hearing on a petition under *Welf. & Inst. Code, § 300*, to declare a five-month-old boy a dependent child of the court, substantial evidence supported the juvenile court's sustaining of allegations that a male companion of the mother of the child inflicted injuries to the child and that the mother had left the child in the man's care while he was intoxicated. A social worker testified the man told her in the mother's presence that he was "high" when he burned the baby's hand. Since the man's statement implied the mother was negligent in leaving the child with him when he was "high" and she made no effort to refute the implication, the statement, though hearsay, was admissible under *Evid. Code, § 1221*, as an adoptive admission. The trial judge also viewed photographs of scars on the child's legs, and concluded that, though it was possible the scars were caused by tight socks as stated by the mother, it was a more reasonable and probable conclusion that they were caused by something else. The social worker's testimony also supported the court's sustaining of an allegation concerning the mother's drug use during pregnancy as amended by the court to one of posing a potential hazard to the minor. Thus, the record supported the court's finding of dependency under the three allegations. *In re Amos L. (1981, 2nd Dist) 124 Cal App 3d 1031, 177 Cal Rptr 783.*

In a proceeding to declare two boys dependent children and to remove the boys from the custody and control of their parents (*Welf. & Inst. Code, § § 361, 362*), substantial evidence of actual and imminent physical and psychological harm supported the trial court's findings that the minors were dependent children who had no parents willing to exercise, or capable of exercising, proper and effective parental control (*Welf. & Inst. Code, § 300*, subd. (a)), and that their return to the physical custody of their parents would have been detrimental to their welfare. The evidence showed that the father had engaged in severe, repeated beatings of the boys' eight-year-old sister for such childhood infractions as bedwetting and inability to remember a Sunday school lesson, and there was evidence that the boys not only watched the vicious treatment of their sister, but were admonished that the beatings were on command of the *Lord. In re In re Edward C. (1981, 1st Dist) 126 Cal App 3d 193, 178 Cal Rptr 694.*

In proceedings to remove an infant from the custody of her mother on grounds that the mother was incapable of providing proper care (*Welf. & Inst. Code, § 300*, subd. (a)), the trial court's jurisdictional and dispositional orders, which found the infant to be a dependent child and ordered her placed in foster care, were not supported by sufficient evidence as a matter of law under the applicable clear and convincing standard of proof. There was no evidence of any physical abuse, conflicting evidence as to the cleanliness of the home, and no substantial evidence that the mother might take the child, while ill with pneumonia, from the hospital. *In re In re Bernadette C. (1982, 3rd Dist) 127 Cal App 3d 618, 179 Cal Rptr 688.*

The juvenile court properly found two children to be dependent children of the court under Welf. & Inst. Code, $ 300, subd. (b), where it was reasonable to infer that the children were at substantial risk of serious physical harm. Even though there was no evidence that the minors had suffered physical harm, the evidence indicated a pattern of violent behavior in the household that had not been corrected. Although the evidence was not overwhelming, given the deference that must be accorded to a juvenile court's factual findings, there was substantial evidence to support the jurisdictional finding. *In re Basilio T. (1992, 4th Dist) 4 Cal App 4th 155, 5 Cal Rptr 2d 450.*

In child dependency proceedings, the evidence was sufficient to sustain the finding that a child sustained severe physical abuse (*Welf. & Inst. Code, § 300,* subd. (e)), even if the eight rib fractures inflicted on the child by his mother's boyfriend resulted from a single act, and no one of the injuries would have caused permanent physical disfigurement, disability, or death. The evidence, directly and circumstantially supported a conclusion that the boyfriend committed "more than one act of physical abuse" on the child, "each of which caused" either "deep bruising" or "bone fracture," as set out in § 300, subd. (e). The "single act of abuse" provision of the statute is an alternate ground. *In re Joshua H. (1993, 6th Dist) 13 Cal App 4th 1734, 17 Cal Rptr 2d 291.*

The juvenile court erred in entering a jurisdictional order that a child suffered severe emotional damages as a result of the conduct of his father (*Welf. & Inst. Code, § 300,* subd. (c)), where there was sufficient evidence to sustain the specific facts the juvenile court found concerning emotional harm, but none of the facts were substantial evidence of abusive maltreatment on the father's part. The allegations sustained focused on the child's behavior and reactions, not the father's behavior. Incidents of the father physically picking up his son in order to facilitate a visit the son resisted could not support a finding of emotional abuse perpetrated by the father. Testimony by a doctor that the father had a "probable" disorder and the son was frightened of him was not evidence of abusive conduct. The Legislature did not intend that in the absence of proof of abusive parental acts, certain emotional disturbances in a child, under certain circumstances, will nevertheless be attributed to the fault of the parent. *In re Alexander K. (1993, 1st Dist) 14 Cal App 4th 549, 18 Cal Rptr 2d 22.*

In a child dependency proceeding, in which it was alleged that the child had been sexually abused by her father (*Welf. & Inst. Code, § 300,* subd. (d)), there was sufficient evidence to sustain the jurisdictional finding the father had sexually abused the child. Although the juvenile court, after having found the child was incompetent to testify at the jurisdiction hearing because of an inability to understand the duty to tell the truth, erred in admitting out-of-court statements of the child indicating she had a precocious knowledge of sex and feared her father, there was undisputed medical evidence that the child had been sexually molested and substantial evidence that the father was the molester. Thus, given the deference that must be accorded a juvenile court's factual findings, there was substantial evidence even when the child's inadmissible statements were eliminated to support the jurisdiction finding under the preponderance of evidence standard required in a dependency hearing pursuant to *Evid. Code, § 355. In re Clara B. (1993, 4th Dist) 20 Cal App 4th 988, 25 Cal Rptr 2d 56.*

There was sufficient evidence to support the juvenile court's finding that a minor was a dependent child for the parents' failure to provide support (*Welf. & Inst. Code, § 300,* subd. (g)). The mother had left the child with a nonrelative babysitter without any means of support, and diligent efforts to contact her had failed. Also, the father was incarcerated at the time of the hearing and was to remain so for three more months. There was also sufficient evidence to find that the father could not arrange for the care of the minor. The father indicated that he wanted the child to be adopted by his sisters, but he stated that his sisters were "ambivalent" about adopting the child. Further, although the father wanted the child to be placed with the mother's half brother and his wife, and they were willing to do so, they had not been in contact with the mother and they worked full-time and employed a babysitter to care for their own five children. Thus, the minor had been left without any means of support, and that at the time of the jurisdictional hearing the father had not made, and was unable to make, suitable arrangements for the child. *In re Luis G. (1995, 1st Dist) 37 Cal App 4th 458, 43 Cal Rptr 2d 744.*

In dependency proceedings, the evidence failed to support the juvenile court's finding that a minor was at risk of physical harm (*Welf. & Inst. Code, § 300,* subd. (b)) due to his mother's emotional problems stemming from her delusions with violent themes involving the minor. There was no evidence that the minor had suffered, or that there was a substantial risk that he would suffer, serious physical harm or illness from his mother's supervision. Also, despite a finding that the mother failed to properly fill out an application for public assistance, there was no showing of harm from failure to provide food, clothing, or shelter. Aside from going to a urologist to make sure the minor was not harmed after the mother had a delusion, she was an excellent mother. The minor expressed no fear of her, she had a well-kept home, provided. meals, and consistently obtained medical treatment for him. She voluntarily participated in therapy and there was no evidence of substance abuse. A doctor and a social worker also found no evidence of neglect. Although the court found true the allegation that there was no provision for support (*Welf. & Inst. Code, § 300,* subd. (g)), in that the

father was in Brazil and the family order gave the mother primary physical custody, there was no evidence that the minor was left without provision for support. *In re Matthew S. (1996, 2nd Dist) 41 Cal App 4th 1311, 49 Cal Rptr 2d 139.*

In dependency proceedings, there was substantial evidence to support the juvenile court's finding that a minor was at risk of developing severe emotional problems (*Welf. & Inst. Code, § 300*, subd. (c)) as a result of his mother's delusions about his health, notwithstanding notable positive aspects in the home environment. While the minor and his sister had not as yet suffered harm at their mother's hands, substantial evidence pointed to potential serious emotional harm. The minor had already suffered the indignity and embarrassment of a medical examination stemming from the mother's delusion that his penis had been mutilated. Despite the doctor's assurance to the contrary, the mother still believed he had been mutilated and would consequently die. Although the minor had thus far been able to deal with his mother's delusions, he was confused by them, and he had been forced to shoulder a tremendous burden. His reticence to speak about his feelings reflected withdrawal and pointed to the need for court supervision. He neglected his own emotional needs because of his fear of aggravating his mother's condition. Thus, there was a substantial risk he could suffer serious emotional damage. *In re Matthew S. (1996, 2nd Dist) 41 Cal App 4th 1311, 49 Cal Rptr 2d 139.*

In a dependency proceeding, sufficient evidence was presented to support the juvenile court's jurisdictional finding that there was a substantial risk that the child would suffer serious physical harm due to inadequate supervision because of the mother's mental illness and substance abuse (*Welf. & Inst. Code, § 300*, subd. (b)). In addition to diagnosing the mother with a borderline personality disorder, the mother's treating psychologist and psychiatrist had both stated to the social worker that the mother was in crisis, that the child should not be in her care, and that the mother's drug abuse exacerbated her condition and impaired her already poor judgment and her ability to function as a mother. The mother had twice taken illicit drugs to the point of becoming incapacitated without providing for the child's care, she would not regularly take medications which could have been helpful in stabilizing her mood swings, and she exhibited the classic symptoms of the substance abuser. Thus, the petition was sustained on evidence supported by all of the allegations that indicated a pattern of behavior resulting in inadequate supervision. *In re Kristin H. (1996, 6th Dist) 46 Cal App 4th 1635, 54 Cal Rptr 2d 722.*

Before courts and agencies can exert jurisdiction under *Welf. & Inst. Code, § 300*, subd. (b) (failure to protect minor), there must be evidence indicating that the child is exposed to a substantial risk of serious physical harm or illness. In determining what constitutes a substantial risk of serious physical harm, some general guidance may be drawn from *Welf. & Inst. Code, § 300*, subd. (a), which uses the same language to authorize jurisdiction where the minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian. For purposes of that subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated infliction of injuries on the minor or the minor's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. *In re Alysha S. (1996, 3rd Dist) 51 Cal App 4th 393, 58 Cal Rptr 2d 494.*

The evidence was sufficient to support the juvenile court's decision that a father's two daughters were minors described by *Welf. & Inst. Code, § 300*, subd. (b), based on allegations that the minors were periodically exposed to violent confrontations between the father and the minors' stepmother that endangered their physical and emotional safety. There was substantial evidence of continuing violence, the stepmother stating that there were five instances of such violence, one occurring in front of the children while the others occurred when the children were elsewhere in the home. The children were put in a position of physical danger from this violence, since, for example, they could wander into the room where it was occurring and be accidentally hit by a thrown object, by a fist, arm, foot or leg, or by the stepmother falling against them. It is clear that domestic violence in the same household where children are living is neglect; it is a failure to protect the minors from the substantial risk of encountering the violence and suffering serious physical harm or illness from it, and such neglect causes the risk. *In re Heather A. (1996, 2nd Dist) 52 Cal App 4th 183, 60 Cal Rptr 2d 315.*

In dependency proceedings in which a father's two daughters were found to be minors described by *Welf. & Inst. Code, § 300*, subd. (b), based on allegations that the minors were periodically exposed to violent confrontations between the father and the minors' stepmother that endangered their physical and emotional safety, there was sufficient evidence to support removing the minors from the father's custody. The profile study performed by a court-appointed expert, as well as other evidence, showed the father was prone to hostility and violence in his relationships with others, including his relationships with women. There was evidence that his wife was not the only wife he battered. Further, at the time of the disposition hearing, the father admitted there was currently a pending spousal abuse charge against. Additionally, the evidence showed he moved from one domestic relationship to another and the expert's report referred to the father's "long history of disruptive emotional relationships with women." Therefore, even if the father never had any further contact with his wife or with the minor's mother, there was good reason to believe he would enter into another

domestic relationship with someone else and his pattern of domestic abuse would continue. The minors were, or were in danger of becoming, victims of "secondary abuse," from the domestic abuse (battered women's syndrome) because, as the expert testified, "children are affected by what goes on around them as well as what is directly done to them." *In re Heather A. (1996, 2nd Dist) 52 Cal App 4th 183, 60 Cal Rptr 2d 315.*

The mother of a minor appealed from the jurisdictional and dispositional order of the juvenile court adjudging the minor a dependent child pursuant to *W & I C § 300(c)* and (j), and ordering family maintenance services. She alleged that the § 300 petition failed to state a cause of action and that there was insufficient evidence for the court to assume jurisdiction over the minor. The court held that a psychologist's evaluations provided substantial evidence on which the juvenile court could conclude the minor should be adjudged a dependent pursuant to § 300(c). The petition stated that the minor was suffering severe anxiety, depression, withdrawal, or untoward aggressive behavior toward herself or others. This description was evidenced by her running away from home, hiding from the police, and stealing a wallet from her mother. The psychologist attributed this "acting out" behavior to the deplorable unhealthy, unsafe, and embarrassing home conditions created by the mother and her husband. There was also substantial evidence that the minor had no parent capable of providing appropriate care. *In re Shelly J. (1998, 6th Dist) 68 Cal App 4th 322, 329, 79 Cal Rptr 2d 922.*

A child who was the focus of an extended custody dispute between his parents was improperly found to be a dependent child (*W & I C § 300*), where the county failed to proffer substantial evidence showing that at the time of the hearing the child was seriously emotionally disturbed or that he was in substantial danger of suffering serious emotional damage. The evidence showed that he was a reasonably well adjusted nine-year-old who performed well in school and displayed no serious behavioral problems, but who despised his father and desperately sought to avoid visiting him. Standing alone, this circumstance was insufficient to support a finding that the boy was seriously emotionally damaged. *Fresno County Dep't of Social Services v Sonia C. (In re Brison C.) (2000, 5th Dist) 81 Cal App 4th 1373, 97 Cal Rptr 2d 746.*

A child was properly declared a dependent of the court (*W & I C § 300(b)*) and she was properly removed from the custody of her developmentally disabled mother (*W & I C § 361*). Substantial evidence supported the trial court's finding that the mother was a current risk to her daughter and also showed that she was unable to provide proper care for her. There was an express finding that reasonable efforts were made to prevent or eliminate the need for removal, but the record showed the mother could not safely parent her child, despite receiving extensive services for many years. Nor did the trial court abuse its discretion in denying her reunification services under *W & I C § 361.5(b)(10),* where the mother failed to reunify with her other children and her lack of success, in spite of her reasonable efforts, showed she was unlikely to benefit from further services. *In re Diamond H. (2000, 4th Dist) 82 Cal App 4th 1127, 98 Cal Rptr 2d 715.*

Substantial evidence supported the juvenile court's finding that defendant abused his oldest daughter by touching her in a sexual way on several occasions and proposing oral sex to her, even though there were some inconsistencies in her retelling of the incidents, since the testimony of a single witness can be sufficient to uphold a judgment and the juvenile court observed the girl and her parents. In addition, the evidence presented at the jurisdictional hearing supporting a finding that there was a risk of future harm. The oldest girl came within *W & I C § 300(c)* and (d), since she had been placed at risk for physical harm and emotional damage and continued to be at risk for future misbehavior by the father and lack of protection by the mother. The circumstances surrounding the abuse also supported a finding under § 300(j) as to the girl's younger sister, since it was reasonable to conclude that in the older girl's absence, the father's sexual offenses were likely to focus on his only other daughter. However, as to the sons, there was no showing of a substantial risk that they would be abused or neglected. *In re Rubisela E. (2000, 2nd Dist) 85 Cal App 4th 177, 101 Cal Rptr 2d 760.*

In a dependency proceeding arising out of a father's beating and rape of his daughter, substantial evidence supported the juvenile court's finding that a younger male sibling was at substantial risk of sexual abuse (*W & I C § 300(d)*). Although no act of sexual abuse occurred in the boy's presence, the abuse that did take place in his presence was clearly sufficient to warrant the conclusion that a normal child in his position would have been greatly disturbed at having witnessed these events. Thus, the juvenile court could properly conclude he personally had been the victim of child molestation and thus had been sexually abused within the meaning of § 300(d). Moreover, the sexual abuse of a female child could be harmful to a male sibling. Additionally, a father who had committed two incidents of forcible incestuous rape reasonably could be said to be so sexually aberrant that both male and female siblings of the victim were at substantial risk of sexual abuse if left in the home. *In re Karen R. (2001, 2nd Dist) 95 Cal App 4th 84, 115 Cal Rptr 2d 18.*

In a dependency proceeding arising out of a father's beating and rape of his daughter, substantial evidence supported the juvenile court's finding that a younger male sibling was at substantial risk of sexual abuse (*W & I C § 300(d)*). Although no act of sexual abuse occurred in the boy's presence, the abuse that did take place in his presence was clearly sufficient to warrant the conclusion that a normal child in his position would have been greatly disturbed at having wit-

nessed these events. Thus, the juvenile court could properly conclude he personally had been the victim of child molestation and thus had been sexually abused within the meaning of § 300(d). Moreover, the sexual abuse of a female child could be harmful to a male sibling. Additionally, a father who had committed two incidents of forcible incestuous rape reasonably could be said to be so sexually aberrant that both male and female siblings of the victim were at substantial risk of sexual abuse if left in the home. *In re Karen R. (2001, 2nd Dist) 95 Cal App 4th 84, 115 Cal Rptr 2d 18.*

Where mother's seven children were all declared dependents because father was abusive and mother was unable to protect them, there was substantial and sufficient evidence supporting the jurisdictional finding of dependency under *Cal. Welf. & Inst. Code § 300(b)*, since there was a risk that the mother would let the father see the youngest child without supervision. *In re S. O. (2002, 4th Dist) 103 Cal App 4th 453, 126 Cal Rptr 2d 554.*

Sufficient evidence existed to adjudge the children dependent under subdivision (g) as the father was incarcerated and unable to take care of the children, and the children exhibited signs of head lice, severe tooth decay, and sexual abuse while in the care of their mother. *In re James C. (2002, 2nd Dist) 104 Cal App 4th 470, 128 Cal Rptr 2d 270.*

Because (1) the parents' child suffered severe physical abuse, and (2) the child was never left alone in the household, which included several other family members, the only reasonable conclusion was that someone in the home was causing the child's injuries, and the parents reasonably should have known the identity of the perpetrator, which brought the child within the language of *Cal. Welf. & Inst. Code § 300(e)*, and this argument was sustained without resorting to the presumption of *Cal. Welf. & Inst. Code § 355.1*; while the trial court erred in concluding that Cal. Welf. & Inst. Code required actual knowledge on the part of the parents as to the perpetrator's identity, the court noted that nothing in its decision affected the ability of the trial court to order reunification services for the parents pursuant to *Cal. Welf. & Inst. Code § 361.5(b)(5)*, (6). *In re E. H. (2003, 2nd Dist) 108 Cal App 4th 659, 133 Cal Rptr 2d 740.*

12. Findings, Orders, and Judgment

It would be unjust to allow a defendant in a paternity suit to assert an order of the juvenile court relating to the determination of the minor child's status as a dependent child as res judicata on the very issue of paternity that was then pending before another department of the same court. *Gravert v De Luse (1970, 3rd Dist) 6 Cal App 3d 576, 86 Cal Rptr 93.*

In dependency proceedings (*W & I C § 300*), involving two minor children, the evidence supported the trial court's finding under *W & I C § 726*, subd. (a), that the parents were incapable of providing maintenance, training, and education for the minors and that the welfare of the children required that custody be taken from their mother, where, though the evidence showed the financial and physical needs of the children were well met by the mother, and that the children were not physically abused, it also clearly established that the mother suffered from an extreme emotional disability involving her fear of persecution and harassment, and such disability prevented her children from living in a healthy environment. *In re Carrie W. (1978, 5th Dist) 78 Cal App 3d 866, 144 Cal Rptr 427.*

The record of a dispositional hearing with respect to a minor who had been declared a dependent child of the juvenile court under *Welf. & Inst. Code, § 300*, contained clear and convincing evidence supporting the trial court's order placing the child in a foster home and allowing the mother visitation rights. The court's order was based on its findings that foster home placement was in the best interests of, and would prevent further detriment to, the minor, which findings were based on a social study report received without objection from the mother of the child and an agreement between the county department of public social services and the mother that the minor might visit his mother every other weekend for three months with a view towards a subsequent extended visit with the mother and eventual return to her home. *In re Amos L. (1981, 2nd Dist) 124 Cal App 3d 1031, 177 Cal Rptr 783.*

A dispositional order placing an infant in foster care pursuant to a finding that her mother was incapable of providing proper care (*Welf. & Inst. Code, § 300*, subd. (a)), was defective, where there was no plan for the reunification of mother and child, as required by *Cal. Rules of Court, rule 1376(b). In re In re Bernadette C. (1982, 3rd Dist) 127 Cal App 3d 618, 179 Cal Rptr 688.*

Parents' challenges to the applicability of *Welf. & Inst. Code, § 300*, subd. (e) (minor under age of five who has suffered severe physical abuse by parent is subject to jurisdiction of juvenile court), were not cognizable on appeal from a dispositional order declaring the parents' child to be a dependent child, where the parents had pleaded no contest to the *Welf. & Inst. Code, § 300*, subd. (e), allegation at the jurisdiction hearing. In criminal proceedings, a plea of guilty or nolo contendere to a charge renders the defendant's challenge as to guilt not cognizable on appeal. A plea of "no contest" or an admission under *Cal. Rules of Court, rule 1449(e)*, is the juvenile court equivalent to a plea of nolo contendere or guilty in criminal court. A plea of "no contest" to allegations under *Welf. & Inst. Code, § 300*, at a jurisdiction hearing admits all matters essential to the court's jurisdiction over the minor. Accordingly, by their knowing and voluntary acquiescence to the allegations of the petition, the parents waived their right to challenge on appeal the legal appli-

cability of *Welf. & Inst. Code, § 300*, subd. (e), to their conduct. *In re Troy Z. (1992) 3 Cal 4th 1170, 13 Cal Rptr 2d 724, 840 P2d 266.*

In a dependency proceeding based on a child's half sibling's earlier abuse and the substantial risk that the child would also be abused (*Welf. & Inst. Code, § 300*, subd. (j)), the juvenile court properly ruled that the father could not relitigate the earlier dependency proceeding that established the father's serious physical and sexual abuse of the half brother. Since there was a final judgment on the merits in the half brother's dependency proceedings, the child's father had been a party in both proceedings, and the issue decided was identical to the first prong of a determination pursuant to § 300, subd. (j) (sibling abuse), the father's attempts to relitigate the issue were properly rejected by the juvenile court under the collateral estoppel aspect of the principles of res judicata. The father wanted only to relitigate whether or not the child's half brother had been abused, as there was no offer of proof of the abuse occurring under a scenario (for example, drugs) that no longer existed. In any event, any error was harmless: given the serious nature of the half brother's injuries, the father's mental condition, and reports of the father's recent threats, there was an abundance of evidence to establish juvenile court jurisdiction under § 300, subd. (j), including the second prong required under the statute, the substantial risk of abuse to the child. *In re Joshua J. (1995, 4th Dist) 39 Cal App 4th 984, 46 Cal Rptr 2d 491.*

Where the Kings County Human Services Agency submitted no evidence beyond dependency petitions from the son's siblings' dependency proceedings and the Agency failed to show what part of the case plans the father had no complied with and how that noncompliance impacted the son, there was no basis for the determination under *Cal. Welf. & Inst. Code § 300(j)* that the father's son was a dependent based on similar risks posed to him by the father's failure to comply with the case plan in the siblings' dependency proceedings. *In re Ricardo L. (2003, Cal App 5th Dist) 2003 Cal App LEXIS 836, 2003 CDOS 4964.*

Record supported the juvenile court's decision under *W & I C § 361.5(b)(5)* to deny reunification services after finding that a daughter was the victim of severe physical abuse; the juvenile court properly denied services pursuant to § 361.5(b)(7) to a sibling of the daughter who was the subject of § 361.5(b)(5). *W & I C § § 361.5(b)(5), 300(e)* do not require identification of the perpetrator. *In re Kenneth M. (2004, 3rd Dist) 123 Cal App 4th 16.*

13. --Parental Care or Control; Custody

In a proceeding pursuant to former Welf. & Inst. Code, § 600, subd. (a), (now § 300), to declare a minor having no parent to properly care for him a ward of the juvenile court, the court, after determining the question of jurisdiction, properly made the finding that parental custody was detrimental to the minor at the dispositional hearing held some 18 days later, before making a nonparent award of custody. Former Welf. & Inst. Code, § 702, (now § 356), expressly authorizes a delay between the jurisdictional and dispositional stages of the proceeding, and *Civ. Code, § 4600*, requires only that the finding that parental custody is detrimental be made prior to the award of custody. *In re Randy B. (1976, 3rd Dist) 62 Cal App 3d 89, 132 Cal Rptr 720.*

In proceedings to have a minor adjudged a dependent of the court (*W & I C § 300*), the mere fact that a parent left a child alone for one night does not evidence a lack of parental control. *In re Carrie W. (1978, 5th Dist) 78 Cal App 3d 866, 144 Cal Rptr 427.*

In dependency proceedings (*W & I C § 300*) involving two minor children, the juvenile court, by making an express finding, pursuant to *W & I C § 726*, that the children's mother was incapable of providing, or had failed and neglected to provide, proper maintenance, training, and education for her children, and that the welfare of her children required that custody be taken from her, also impliedly made a finding, required by *CC § 4600*, subd. (c), that custody by the mother would be detrimental to the children. The record contained ample evidence, including evidence of the mother's extreme emotional disability, to support a finding of such detriment. Furthermore, the orders of the juvenile court did not permanently sever the parent-child relationship, but, as required by *W & I C § 366*, the juvenile court provided for another hearing in the matter of the children's custody. *In re Carrie W. (1978, 5th Dist) 78 Cal App 3d 866, 144 Cal Rptr 427.*

In a proceeding to declare two children dependents of the court (*W & I C § 300*, subds. (a) and (d)), uncontradicted evidence that the mother's drinking seriously impaired her ability to care for her 14-year-old and 3-year-old sons, that the 14-year-old had been absent from school for 79 days in one school year, and that the father's location was unknown, was sufficient to uphold a determination that she was unfit for custody. *In re S. W. (1978, 2nd Dist) 79 Cal App 3d 719, 145 Cal Rptr 143.*

In a proceeding to modify a juvenile court dependency order (*Welf. & Inst. Code, § § 300, 387*), the trial court's findings that the minors came within the provisions of *Welf. & Inst. Code, § 387*, and that their welfare required removal from parental custody, were adequate, even though there was no express finding that the factual allegations of the petition were true or that the previous disposition had not been effective (*Cal. Rules of Court, rule 1392(d)(1)(a)*). *In re Fred J. (1979, 3rd Dist) 89 Cal App 3d 168, 152 Cal Rptr 327.*

In proceedings to declare a minor a dependent child for parental abuse or neglect (*Welf. & Inst. Code, § 300*), the Department of Public Social Services is not required to prove two petitions, one against the mother and one against the father, in order for the court to properly sustain a petition or adjudicate a dependency. The dual purpose of dependency proceedings is to protect the welfare of the minor and to safeguard parents' right to properly raise their own child. A petition is brought on behalf of the child, not to punish the parents. The interests of both parent and child are protected by the two-step process of a dependency proceeding, with its separate adjudication and disposition hearings. Thus, when the department makes a prima facie case under *Welf. & Inst. Code, § 300*, by proving the jurisdictional facts at the adjudication hearing, it is not improper for the trial court to sustain the petition; not until the disposition hearing does the court determine whether the minor should be adjudged a dependent. At the disposition hearing, however, the minor may not be taken from the physical custody of a parent unless the court makes the required findings. *In Re In re La Shonda B. (1979, 2nd Dist) 95 Cal App 3d 593, 157 Cal Rptr 280.*

The trial court abused its discretion in dismissing a petition in a dependency proceeding arising out of the physical abuse of a two-month-old girl by her nonmarried mother (*Welf. & Inst. Code, § 300*, subd. (d)), who lived apart from the father, and releasing the minor to the custody of the father. Such disposition left the minor, who had almost been killed by her mother, still under the joint custody of that mother and father, without any possibility of protection that the Department of Public Social Services might otherwise provide. Under *Welf. & Inst. Code, § § 361* and *362*, the trial court had the power to adjudicate a dependency and place the child with her father or grandmother, limiting parental control and making all reasonable orders for the child's care and support. *In Re In re La Shonda B. (1979, 2nd Dist) 95 Cal App 3d 593, 157 Cal Rptr 280.*

In proceedings for the removal of a four-year-old child from the custody of his mother for foster placement for neglect and abuse pursuant to *Welf. & Inst. Code, § 300*, subd. (d), it was reversible error for the trial court to remove the minor from his mother's custody without requiring and exploring a plan for reunification of the minor with his mother under *Welf. & Inst. Code, § 280*, requiring the probation officer to prepare a social study for every dispositional hearing. The probation officer had an affirmative duty to suggest a plan for reunifying the family, and it was the trial court's duty to see that pertinent laws and rules were followed. *In re Jeremy C. (1980, 3rd Dist) 109 Cal App 3d 384, 167 Cal Rptr 283.*

Independency proceedings in which a father's two daughters were found to be minors described by *Welf. & Inst. Code, § 300*, subd. (b), based on allegations that the minors were periodically exposed to violent confrontations between the father and the minors' stepmother that endangered their physical and emotional safety, the juvenile court did not err in not permitting the father to retain custody of the minors (*Welf. & Inst. Code, § 361*, subd.(c)) "on the condition that [father] not invite a domestic partner into the home with the minors." Such an arrangement would not have dealt with the minors' obvious fear and anxiety about being around the father. The father's psychological profile showed he was a person who, among other negative traits, tended to overreact to minor problems with anger or hostility and blamed others for his problems. There was no indication that those characteristics were only manifest when the father was interacting with a domestic partner. The court adequately stated the factual basis for its disposition when it spoke at length about its concerns over having custody remain with the father, including the violence in the minors' lives, the secondary impact it had on them, and the father's denial of the depth of that violence and his part in it. *In re Heather A. (1996, 2nd Dist) 52 Cal App 4th 183, 60 Cal Rptr 2d 315.*

A mother appealed the termination of her parental rights arguing that legal guardianship was the appropriate permanent plan because her daughter was placed with a relative, the paternal grandmother, who could provide a stable home. The Court of Appeal held the trial court appropriately ordered adoption. Family preservation had not been achieved because both mother and father failed to reunify with the child. Pursuant to *W & I C § 366.26(c)(1)* absent one of four specific exceptions, the court must order adoption as the permanent plan for a child found likely to be adopted. The fact that a potential adoptive parent is a relative does not constitute an exception, allowing the court to order legal guardianship. *In re Jasmine T. (1999, 2nd Dist) 73 Cal App 4th 209, 213, 86 Cal Rptr 2d 128.*

Where, after a minor testified that his father had been sexually molesting him, the juvenile court declared the minor a dependent child and stripped the father of custody, the father's appeal of that order was dismissed since, at a six-month review hearing, the father stipulated, pursuant to *W & I C § 364(c)*, that conditions still existed that would justify initial assumption of jurisdiction. This was more than a mere accession to a disposition order, as in In re Jennifer V. *(1988) 197 CA3d 1206.* On behalf of his client, the father's counsel not only agreed that placing custody with his client would be detrimental to the minor, he specifically acknowledged that conditions still existed that would justify initial assumption of jurisdiction under *W & I C § 300*. In plain English, that meant that at the time of the six-month review, the father conceded that the allegations in the petition were true. By agreeing that the juvenile court's initial assumption of jurisdiction was justified by conditions that still existed, the father waived his right to complain about the court's action on appeal. *In re Eric A. (1999, 4th Dist) 73 Cal App 4th 1390, 1394, 87 Cal Rptr 2d 401.*

Where the evidence showed the father's children's relationship with their siblings was manifestly important to them and that relationship could not be maintained if they moved out-of-state with the father, the trial court properly evaluated the appropriateness of keeping the siblings together and to consider the siblings' relationships as one factor, among many, when determining detriment for purposes of its placement decisions. Because the state had a right and a duty to protect the father's children's well-being, the trial court had to consider whether they would suffer detriment if placed with the father instead of with their aunt and uncle, pending reunification with the mother. *In re Luke M. (2003, 4th Dist) 107 Cal App 4th 1412, 132 Cal Rptr 2d 907.*

At an 18-month review hearing, the record supported a finding, under a preponderance-of-evidence standard, that reasonable reunification services had been provided for a child who was removed from the home under *W & I C § 300* because of the mother's substance abuse. The mother's case plan required her to undergo counseling and substance abuse treatment, which were reasonable services that addressed the pertinent issues; the mother appeared to lack the initiative to consistently take advantage of the offered services in that, for certain periods of time, she stopped taking her medications, failed to attend therapy, and missed visits. *Katie V. v Superior Court (2005, 4th Dist) 130 Cal App 4th 586.*

14. Appellate Review

While an order directing that a minor be made a ward of the juvenile court is necessarily predicated upon circumstances existing at the time of adjudication, it does not end there; wardship, or jurisdiction over the person of a minor, is a continuing condition or status for the welfare of the child, and changed circumstances must be considered in any proceeding concerning the child's status, even though such changed circumstances may develop during the pendency of an appeal. *In re Katherine R. (1970, 5th Dist) 6 Cal App 3d 354, 86 Cal Rptr 281.*

An appeal from a wardship order of the juvenile court is not necessarily rendered moot by termination of the wardship, where the order appealed from is predicated on criminal guilt of the minor. *In re Katherine R. (1970, 5th Dist) 6 Cal App 3d 354, 86 Cal Rptr 281.*

An appeal from a juvenile court order of wardship of a minor was moot, where the complaint on appeal was that the trial court's order imposed probationary terms severely restricting the minor's liberty, where the order was not predicate on a finding that the minor had committed a criminal act but on a finding that she was in need of supervision because she ran away to another state and lived for a time with a man to whom she was not married, and where the wardship had been terminated when the minor married and no longer needed to reside with her mother or remain a ward of the court for her own protection or the protection of society. *In re Katherine R. (1970, 5th Dist) 6 Cal App 3d 354, 86 Cal Rptr 281.*

An indigent mother whose minor daughter had been declared a dependent child of the juvenile court under *Welf. & Inst. Code, § 600*, subd. (a), as a person having need of proper and effective parental care or control and having no parent or guardian willing to exercise, capable of exercising, or actually exercising such care or control, was entitled to the appointment of counsel to represent her on appeal. Provisions of *Welf. & Inst. Code, § § 634, 679, 700*, relating to the right to counsel in juvenile proceedings, viewed in conjunction with *Gov. Code, § 27706*, subd. (e), relating to the duties of the public defender to represent indigent persons on order of the court in proceedings under *Welf. & Inst. Code, § 500* et seq., and *Pen. Code, § 11241*, providing for payment of fees to counsel appointed to represent "a party to any appeal or proceeding" compel that conclusion. *In re Simeth (1974, 2nd Dist) 40 Cal App 3d 982, 115 Cal Rptr 617.*

A ward of the juvenile court who had been committed to a state hospital was entitled, through habeas corpus proceedings, to be released therefrom and to be remanded to the juvenile court, where the commitment had not been in accordance with the Lanterman-Petris-Short Mental Health Act (*Welf & Inst Code, § § 5000-5401*), and, thus, was unlawful. *In re E. (1975) 15 Cal 3d 183, 123 Cal Rptr 103, 538 P2d 231.*

On appeal from both a jurisdictional order declaring a minor to be a dependent of the court (former W & I C § 600(a)), (a)), and a subsequent dispositional order, the fact that the notice of appeal from the jurisdictional order was not timely did not preclude consideration of errors occurring at the jurisdictional phase, where the appeal from the dispositional order was timely. *In re Kelvin M. (1978, 1st Dist) 77 Cal App 3d 396, 143 Cal Rptr 561.*

If there is any substantial evidence to support the findings of a juvenile court in dependency proceedings under *W & I C, § 300*, a reviewing court is without power to weigh or evaluate such findings, must make all reasonable inferences to support such findings, and must view the record in the light most favorable to the juvenile court order. *In re Carrie W. (1978, 5th Dist) 78 Cal App 3d 866, 144 Cal Rptr 427.*

On appellate review of proceedings removing a minor child from the custody of his mother for abuse and neglect pursuant to *Welf. & Inst. Code, § 300*, subd. (d), an appellate court is bound by the trial court's determination removing the child from the mother's custody if the finding of dependency is supported by substantial evidence in the absence of other reversible error. *In re Jeremy C. (1980, 3rd Dist) 109 Cal App 3d 384, 167 Cal Rptr 283.*

Cal. Rules of Court, Rule 1435(b) provides that a judgment in a dependency proceeding under *W & I C § 300*, appeal can be sought in the same manner as any final judgment as specified in *W & I C § 395*. *In re Rachael C. (1991, 3rd Dist) 235 Cal App 3d 1445, 1 Cal Rptr 2d 473* (disapproved on other grounds *In re Kieshia E., 6 Cal 4th 68, 23 Cal Rptr 2d 775, 859 P2d 1290).*

In dependency jurisdiction proceedings (*Welf. & Inst. Code, § 300*, subds. (c) & (d)), the juvenile court's order dismissing the dependency petition was an appealable order. A judgment in a proceeding under *Welf. & Inst. Code, § 300*, may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment (*Welf. & Inst. Code, § 395*; *Cal. Rules of Court, rule 1435(b)*). *Code Civ. Proc., § 904.1*, subd. (a), also allows an appeal to be taken "from a judgment." The conclusion that an order dismissing a dependency petition is appealable satisfies the underlying principle of the final judgment rule, since nothing follows a dismissal order; it is the end of the matter. In the present case, a contested hearing was held, after which the juvenile court rendered a decision concluding that the allegations had not been sustained. The resulting order dismissing the petition was therefore a judgment on the merits. The dismissal was thus with prejudice, and it was a final judgment for res judicata purposes. *In re Sheila B. (1993, 6th Dist) 19 Cal App 4th 187, 23 Cal Rptr 2d 482.*

The rule that provides that upon the filing of a no-merit brief by appointed counsel for an indigent criminal defendant, an appellate court has an obligation in accordance with procedural requirements established by the United States Supreme Court to conduct an independent review of the record, is not applicable to appeals from orders adjudicating dependency (*Welf. & Inst. Code, § 300*) and terminating parental rights (*Welf. & Inst. Code, § 366.26*). Although indigents in dependency proceedings have a right to appointed counsel, it does not necessarily follow that there is a right to such an independent review of the record in such cases. The procedures required by the Supreme Court are relevant only when a litigant has a previously established constitutional right to counsel, and there is no such right to counsel in proceedings affecting parental rights. The automatic right to counsel that is afforded in California proceedings affecting parental rights is only statutory. Since the procedures do not apply in contexts other than direct appeals in criminal cases, or other cases in which an individual's physical liberty is at stake, and the independent review rule is based entirely on those procedures, the rule does not apply beyond the criminal arena. *Los Angeles County Dep't of Children's Servs. (In re Sade C.) (1995, 2nd Dist) 32 Cal App 4th 1225, 38 Cal Rptr 2d 822.*

With respect to appeals from orders adjudicating dependency (*Welf. & Inst. Code, § 300*) and terminating parental rights (*Welf. & Inst. Code, § 366.26*), general constitutional principles of equal protection and due process do not create a right to an independent review of the record by the appellate court where appointed counsel for an indigent appellant has filed a brief raising no issues. In contexts other than criminal trials or a criminal defendant's first appeal as a matter of right, distinctions between poor and rich are not prohibited as long as an invidious discrimination, amounting to a denial of due process, does not result. A balancing of the competing interests that determine due process requirements in proceedings affecting parental rights leads to the conclusion that the extreme procedural solicitude afforded a criminal defendant need not be provided to parents in dependency adjudication and parental rights termination proceedings. The balance weighs particularly strongly against an independent review of the record because such reviews would not avoid a serious risk of parental rights being erroneously restricted or terminated so as to justify the delay necessary to perform them. Also, sufficient procedural safeguards have been built into the dependency scheme to negate the need for independent reviews. *Los Angeles County Dep't of Children's Servs. (In re Sade C.) (1995, 2nd Dist) 32 Cal App 4th 1225, 38 Cal Rptr 2d 822.*

On review of a determination that a minor comes within the jurisdiction of the juvenile court under *Welf. & Inst. Code, § 300*, subd. (g), the reviewing court determines whether there is substantial evidence to support the juvenile court's finding, viewed in the light most favorable to the judgment. The reviewing court notes that any relevant information could be used by the juvenile court to make such a determination, including social studies prepared by the county department of social services. *In re Luis G. (1995, 1st Dist) 37 Cal App 4th 458, 43 Cal Rptr 2d 744.*

Welf. & Inst. Code, § 395, provides that any judgment under *Welf. & Inst. Code, § 300* (minors subject to jurisdiction of juvenile court), and any subsequent order may be appealed. Under *Welf. & Inst. Code, § 300*, a dispositional order is a judgment. *McClatchy Newspapers v Keisha T. (In re Keisha T.) (1995, 3rd Dist) 38 Cal App 4th 220, 44 Cal Rptr 2d 822.*

The standard of review in juvenile dependency cases is the same as in other appeals on grounds of insufficiency of the evidence. The appellate court reviews the record to determine whether there is any substantial evidence, contradicted or not, which supports the trial court's conclusions. All conflicts must be resolved in favor of the respondent and all legitimate inferences indulged in to uphold the verdict, if possible. *In re Kristin H. (1996, 6th Dist) 46 Cal App 4th 1635, 54 Cal Rptr 2d 722.*

Generally, a parent can appeal the judgment in a juvenile dependency matter (*CRC Rule 1435(b)*). However, as in any appeal, the parent must also establish that he or she is a party aggrieved to obtain a review of a ruling on its merits (*CCP*

§ 902). To be aggrieved, a party must have a legally cognizable immediate and substantial interest which is injuriously affected by the court's decision; a nominal interest or remote consequence of the ruling does not satisfy this requirement. Here, a mother lacked standing to challenge a juvenile court order dismissing a juvenile dependency petition after a contested jurisdictional hearing. The juvenile court's dismissal of the petition did not alter the minor's custody status. Even had the juvenile court sustained the petition, the proposed case plan of the county social services agency (SSA) would have altered that status only slightly by limiting the father to monitored visitation. The dismissal in fact eliminated the necessity for the mother to participate in counseling and parenting classes. Nor was a parent left without a remedy in this situation. Issues concerning custody and visitation could also be dealt with in a family law proceeding. Indeed, here the mother contacted SSA only after the family law court denied an ex parte request to limit the father's visitation. *In re Carissa G. (1999, 4th Dist) 76 Cal App 4th 731, 734, 90 Cal Rptr 2d 561.*

Tribe could not challenge the dispositional placement of children following a six-month review hearing at which that placement was continued. The orders were final following the dispositional hearing, and at the six-month hearing, the Tribe put forth no new evidence, but merely requested the court reconsider the placement decision; therefore the Tribe had waived the issue of the placement. *In re Liliana S. (2004, Cal App 4th Dist) 2004 Cal App LEXIS 142, 2004 CDOS 1053.*

In dependency proceedings pursuant to *Cal. Welf. & Inst. Code § 300(a),* (b), the Department of Children and Family Services (DCFS) complied with the notice requirement of *25 U.S.C.S. § 1912*(a) where it sent the required form SOC 319 to the Blackfeet Tribe and to the Bureau of Indian Affiars (BIA), and then while an appeal was pending, provided the Blackfeet Tribe with the names of the children's paternal grandfather and great-grandfather, using form SOC 318. Notice to the Cherokee Tribes was sufficient, even though notice of the proceedings was given to only two of the three federally recognized Cherokee Tribes, because the DCFS did not know which Cherokee Tribe the children's mother was descended from and it gave notice of the proceedings to the BIA. In re *C. D. (2003, Cal App 2nd Dist) 2003* Cal App LEXIS 1020.

Court dismissed grandparents' appeal of an order removing three children from the grandmother; because the grandparents did not seek de facto parent status in a timely manner, they did not have standing to appeal. *In re Miguel E. (2004, Cal App 4th Dist) 2004 Cal App LEXIS 1089.*

Where a child's injuries were not shown to have been caused by abuse, voluntary dismissal of an appeal from a jurisdictional and dispositional order under *W & I C § 300* returning the child to the mother under a plan of family maintenance was proper; a jurisdictional and dispositional order was subject to modification pursuant to a proper showing of changed circumstances under *W & I C § 388*, and the basis for the requested dismissal was evidence of which the court could take judicial notice pursuant to *Ev C § 452*. *In re Karen G. (2004, Cal App 4th Dist) 2004 Cal App LEXIS 1456.*

Appellate court dismissed for lack of jurisdiction appeals by a mother and her two sons that challenged a juvenile court's jurisdictional findings relating to the sons, which were issued after the San Diego County Health and Human Services Agency filed a supplemental petition on the sons' behalves under *W & I C § 387*, because the jurisdictional findings on a § 387 petition were interlocutory and nonappealable, and because issues pertaining to the findings could be challenged on appeal of the dispositional order. An argument by the mother and the sons that the sons' removal from the mother's custody would be improper under § 387 was premature because the jurisdictional finding did not concern removal, and there was no evidence in the record pertaining to removal, and because the appeals were brought before conclusion of the § 387 hearing, there was nothing yet to appeal. *In re Javier G. (2005, Cal App 4th Dist) 2005 Cal App LEXIS 1045.*

15. Tort Actions by Dependent Children

Action by a foster child against the county for alleged molestation by another child could potentially be timely under the equitable doctrine of delayed discovery if the child could truthfully amend his complaint to allege his lack of a real awareness, until his mother's discovery, that what happened to him between the ages of five and eight was wrong. The original complaint alleged that the foster parent saw the molestation but failed to stop it. *Curtis T. v County of Los Angeles (2004, 2nd Dist) 123 Cal App 4th 1405.*

SUGGESTED FORMS

Petition for Judicial Determination of Status of Minor as Dependent and Neglected Child Based on Physical Abuse of Child
Petition by Probation Officer to Declare Minor a Dependent Child of the Court
Petition by Probation Officer Requesting Continued Detention of Minor Pending Dependency Hearing

PETITION FOR JUDICIAL DETERMINATION OF STATUS OF MINOR AS DEPENDENT AND NEGLECTED CHILD BASED ON PHYSICAL ABUSE OF CHILD

[Title of court and cause]
Petitioner, ------, residing at ------ [address], City of ------, County of ------, State of California, and ------ [state petitioner's status or interest in minor child, for example: being a juvenile probation officer for the County of ------, State of California] respectfully represents and states to the court:
1. ------ [Minor] is a minor child, ------ [6 years of age or as the case may be], having been born on ------ [date], and resides at ------ [address], City of ------, County of ------, State of California.
2. The names and residence addresses of the parents, guardians or custodians of the child are as follows: ------ [insert names and residence addresses].
3. The child comes within the provisions of Section 300, ------ [specify subdivision], of the Welfare and Institutions Code.
4. The child is without proper parental care necessary for the physical, mental, and emotional health of the child, and the deprivation of that care is not due primarily to the lack of financial means of his parents, guardian or other custodian.
5. On ------ [date], at approximately ---- o'clock --.m., ------, petitioner, received a call from ------, of the ------ [name of clinic or hospital or as the case may be], to report that the above-named child was evidently the victim of parental abuse.
6. On ------ [date], at approximately ---- o'clock --.m., petitioner telephoned Dr. ------, the physician who had previously examined and treated the child, and was advised by Dr. ------ that the child could not have inflicted his wounds on himself and that there was good reason to believe that the child had been abused.
7. Dr. ------ also stated to petitioner that the child had been brought to him on ------ [date], and at that time was suffering from ------ [an ear infection and numerous bruises].
8. Information has been received in the office of petitioner that the child had received a ------ [chemical burn to his esophagus and possibly to his stomach], indicating that there is further reason to believe that ------ has been abused and is a dependent and neglected child.
9. ------ [Minor] is a dependent and neglected child and the causes of the dependency and neglect of the child are likely to continue and will not be remedied.
10. By reason of the above neglect, the child has suffered and will probably continue to suffer serious physical, mental, and emotional harm if the child is permitted to remain in the care, custody, and control of respondents.
11. Petitioner believes that the child is dependent and neglected and that it is in the best interest of the child and of the State of California that a further investigation be conducted on the above-described matter, that a hearing be had on that matter, and that a determination be made concerning the care, custody, and control of the child.
12. Petitioner believes that all parental rights of respondents and the relationship of parent and child with reference to the above-named child should be forever terminated.
13. Notice is hereby given to ------ [parent, parent's spouse, or other person liable for support of child] that pursuant to Welfare and Institutions Code Sections 903, 903.1, and 903.2 respectively, you, your estate, and the Estate of ------ [minor] are jointly and severally liable for: the cost of the care, support, and maintenance of ------ [minor] in any county or other

institution or any other place in which ------ [minor] is placed, detained, or committed pursuant to an order of the juvenile court; the cost to the county of legal services rendered to ------ [minor] by a private attorney or the public defender appointed pursuant to an order of the juvenile court; and the cost to the county of the probate supervision of ------ [minor] by the probation officer pursuant to the order of the juvenile court.

14. The child ------ [is or is not] detained. ------ [If child is detained, add: The child was taken into custody on ------ (date) at ---- (time).]

Wherefore, petitioner prays that this petition be ordered and filed, a summons be issued on the petition, and the petitioner be promptly heard; the court make appropriate findings of fact and Order of Deposition, including an order forever terminating all parental rights as to ------ [minor] of respondents, ------ and ------ [names], and the relationship of parent and child with reference to that child, thereby terminating all the rights and obligations of respondents with respect to the child and of the child as to the respondents arising from their parental relationship; the court make such determinations as are necessary concerning the care, custody, and control of the child; and the court grant petitioner and the child such other and further relief as it may deem proper.

Dated ------.

[Signature]

[Verification]

PETITION BY PROBATION OFFICER TO DECLARE MINOR A DEPENDENT CHILD OF THE COURT

[Title of court and cause]

1. Petitioner, ------, is a probation officer in the County of ------, State of California.

2. ------ [Name] is a minor child, born on ------ [date], who now resides at ------ [address] City of ------, County of ------, State of California.

3. The ------ [name or names] and ------ [address or addresses] of the ------ [parent or parents or guardian or guardians or adult relative or adult relatives] of the minor are: ------.

4. The minor comes within the provisions of Section 300 ------ [specify subdivision] of the Welfare and Institutions Code of the State of California.

5. ------ [Set forth facts bringing minor within the provision of the code section; for example: The minor's home is an unfit place for her because of her father's verbal cruelty and physical abuse of the minor].

6. Notice is hereby given to ------ [parent, parent's spouse, or other person liable for support of minor] that pursuant to Welfare and Institutions Code Sections 903, 903.1, and 903.2, respectively, you, your estate, and the Estate of ------ [minor] are jointly and severally liable for: the cost of the care, support, and maintenance of ------ [minor] in any county institution or any other place in which ------ [minor] is placed, detained, or committed pursuant to an order of the juvenile court; the cost to the county of legal services rendered to ------ [minor] by a private attorney or the public defender pursuant to an order of the juvenile court; and the cost to the county of the probate supervision of ------ [minor] by the probation officer pursuant to an order of the juvenile court.

7. The minor is ------ [not detained in custody or being detained in custody, having been taken into custody on ------ [date], at ---- o'clock -- p.m.].

Wherefore, petitioner prays that the court inquire into the truth of the

statement alleged in this petition and make an order for the disposition of ------ [minor] as the court may deem in the best interest of the child

Dated ------.

[Signature]

[Verification]

PETITION BY PROBATION OFFICER REQUESTING CONTINUED DETENTION OF MINOR PENDING DEPENDENCY HEARING

[Title of court and cause]

1. Petitioner, ------, a probation officer in the County of ------, State of California, has filed a verified petition alleging that ------ [minor] comes within the provisions of Section 300 ------ [specify subdivision] of the Welfare and Institutions Code of the State of California in that ------ [state facts, such as: the minor is not provided with a home or a suitable place of abode].

2. The minor is in the temporary custody of the petitioner and has been held in juvenile hall since ---- o'clock -- p.m., ------ [date].

3. Continued custody and detention of ------ [minor] pending a hearing on the above described petition is a matter of necessity in that ------ [specify reasons as set forth in *Section 309 of the Welfare and Institutions Code*, for example: continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor].

4. ------ [Name], the minor's ------ [parent or guardian], was notified of the time and place of the detention hearing.

Wherefore, petitioner requests that the court order continued detention of ------ in ------ [juvenile hall] pending a hearing on the petition, pursuant to the provisions of *Section 300 of the Welfare and Institutions Code* of the State of California.

Dated ------.

[Signature]

[Verification]

*** THIS SECTION IS CURRENT THROUGH THE 2006 SUPPLEMENT ***
(ALL 2005 LEGISLATION)

WELFARE AND INSTITUTIONS CODE
DIVISION 2. Children
PART 1. Delinquents and Wards of the Juvenile Court
CHAPTER 2. Juvenile Court Law
ARTICLE 6. Dependent Children--Jurisdiction

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Wel & Inst Code § 300.1 (2005)

§ 300.1. When family reunification services not provided

Notwithstanding subdivision (e) of Section 361 and Section 16507, family reunification services shall not be provided to a child adjudged a dependent pursuant to subdivision (h) of Section 300.

HISTORY:
Added Stats 1987 ch 1485 § 6, operative January 1, 1989. Amended Stats 1998 ch 1054 § 3 (AB 1091).

NOTES:
Former Sections:
Former W & I C § 300.1, similar to the present section, was added Stats 1982 ch 977 § 2.5, effective September 13, 1982, operative October 1, 1982, amended Stats 1987 ch 1485 § 5, and repealed operative January 1, 1989, by its own terms.Amendments:
1998 Amendment:
Substituted "child" for "minor".

Editor's Notes:
Subdivision (e) of Section 361 cited in the statute is now subdivision (d). See note 2 following § 300.Related Statutes & Rules:
Findings required when dependent minor has been taken from custody of parents or guardians: *W & I C § 361(d).*
Family reunification services: *W & I C § § 16500* et seq.Collateral References:
Cal Jur 3d (Rev) Delinquent and Dependent Children § 176.

Law Review Articles:
Review of selected 1987 legislation. *19 Pacific LJ 650.*

WELFARE AND INSTITUTIONS CODE
DIVISION 2. Children
PART 1. Delinquents and Wards of the Juvenile Court
CHAPTER 2. Juvenile Court Law
ARTICLE 6. Dependent Children--Jurisdiction

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Wel & Inst Code § 300.2 (2005)

§ 300.2. Provision of maximum safety and protection for children

Notwithstanding any other provision of law, the purpose of the provisions of this chapter relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm. This safety, protection, and physical and emotional well-being may include provision of a full array of social and health services to help the child and family and to prevent reabuse of children. The focus shall be on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child. The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment. In addition, the provisions of this chapter ensuring the confidentiality of proceedings and records are intended to protect the privacy rights of the child.

HISTORY:
Added Stats 1996 ch 1084 § 2 (SB 1516). Amended Stats 1999 ch 346 § 2 (SB 518).

NOTES:
Amendments:
1999 Amendment:
Added the last sentence.Collateral References:
Law Review Articles:
Ethics Year in Review. *41 Santa Clara LR 1159.*

Notes of Decisions:

A county and its employees did not have a mandatory duty to prevent an adolescent from running away from a children's center where he was placed after being taken into protective custody, and thus there was no statutory basis to impose negligence liability (*Gov C § 815.6*) after the boy was struck by a car and seriously injured when he darted onto a street. *W & I C § 300.2*, which recited legislative goals and policies of the juvenile dependency law to be implemented through a public agency's exercise of judgment, could not reasonably be interpreted to impose a mandatory duty on public agencies to guarantee the safety of dependent children in all circumstances. In addition, under *W & I C § 206*, re-

garding the placement of dependent minors in nonsecure facilities, the public agency's control over the ingress and egress of juvenile dependents was characterized as being no greater than that exercised by a prudent parent. Nor did the center's employee manual constitute an administrative regulation within the meaning of the Tort Claims Act; accordingly, the manual imposed no mandatory duties on the county or its employees. *Wilson v County of San Diego (2001, 4th Dist) 91 Cal App 4th 974, 111 Cal Rptr 2d 173.*

As *W & I C § 300(d)* makes clear, child dependency proceedings stemming from sexual abuse rely on the criminal definition but are ultimately separate from criminal actions brought by the state under its penal laws. The purpose of these provisions is to provide maximum safety and protection for children, with the focus on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child, *W & I C § 300.2. Doe v Mann (2003, ND Cal) 285 F Supp 2d 1229.*

Where a juvenile court conducted delinquency proceedings in the absence of the parents, it failed to take into account the public policy considerations expressed in *W & I C § § 202, 300.2,* and *Cal. Rules of Court, Rule 1412(a). In re Claudia S. (2005, 4th Dist) 131 Cal App 4th 236.*

In a dependency case arising from one incident of leaving children at home alone, substantial evidence did not support a finding under *W & I C § 366.22(a),* based on the mother's occasional marijuana use, that returning the children to her custody would be detrimental; pursuant to *W & I C § 300.2,* the focus was on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the children. *Jennifer A. v Superior Court (2004, Cal App 4th Dist) 2004 Cal App LEXIS 613.*

5 of 5 DOCUMENTS

*** THIS SECTION IS CURRENT THROUGH THE 2006 SUPPLEMENT ***
(ALL 2005 LEGISLATION)

WELFARE AND INSTITUTIONS CODE
DIVISION 2. Children
PART 1. Delinquents and Wards of the Juvenile Court
CHAPTER 2. Juvenile Court Law
ARTICLE 6. Dependent Children--Jurisdiction

GO TO CALIFORNIA CODES ARCHIVE DIRECTORY

Cal Wel & Inst Code § 300.5 (2005)

§ 300.5. Minor provided medical care through prayer alone

In any case in which a child is alleged to come within the provisions of Section 300 on the basis that he or she is in need of medical care, the court, in making that finding, shall give consideration to any treatment being provided to the child by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof.

HISTORY:
Added Stats 1978 ch 539 § 2.
Amended Stats 1998 ch 1054 § 4 (AB 1091).

NOTES:
Amendments:
1998 Amendment:
Substituted **(1)** "child" for "minor"; and **(2)** "that" for "such".Collateral References:
Cal Jur 3d (Rev) Delinquent and Dependent Children § § 45, 153.

Law Review Articles:
Walker v. Superior Court: Religious convictions may bring felony convictions in California (prayer treatment as not being defense to manslaughter or child endangerment). *21 Pacific LJ 1069.*

Notes of Decisions:

Welf. & Inst. Code, § 300.5, which provides that the court, in all dependency proceedings under *Welf. & Inst. Code, § 300*, in which it is alleged that the minor needs medical care, shall give consideration to any treatment being provided to the minor by spiritual means through prayer alone under the tenets and practices of a recognized church or religious denomination by an accredited practitioner, serves a limited purpose. It simply identifies one factor to be considered by the juvenile court and declares one component of the decisionmaking process where applicable. It is content-neutral and nonsubstantive, and does not specify what conclusion shall be drawn from the fact of spiritual treatment. It does not preclude the court, in the exercise of its discretion, from concluding that spiritual treatment alone is insufficient to arrest a danger that otherwise requires a dependency finding in order that the minor can receive conventional medical treatment deemed more likely to succeed. *In re Eric B. (1987, 1st Dist) 189 Cal App 3d 996, 235 Cal Rptr 22.*