

A photograph of a woman with dark curly hair, wearing a light green sweater, sitting on a patterned couch and reading a book to a young girl with dark curly hair. The girl is looking up at the woman. The book has a yellow cover with a cartoon character. The background is a patterned couch with a red and white geometric design.

# REPRESENTING GRANDPARENTS AND OTHER RELATIVES SEEKING PLACEMENT OF DEPENDENT CHILDREN

**What Family Law Attorneys Need to Know About Navigating Relative Placement in  
Dependency Cases**

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# TOPICS

The Need for Private Practitioners to Represent Relatives

Benefits of Relative Placement & Why It's Important


Overview of Relative and NREFM Placement Provisions

Understanding Relative Placement in the Context of Dependency Court Timelines



## Benefits of Relative Placement:

### What Does the Research Show?

- More Stability in Placement
  - More Frequent and Consistent Contact with Birth Parents and Siblings
  - More Likely to Remain in Familiar Neighborhoods and Schools of Origin
  - Preserves Cultural Identity
  - Less Likely to AWOL
  - Less Stigma and Fewer Negative Emotions about Being in Foster Care than Children in Non-Relative Care
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# Overview of Relative & NREFM Placement Provisions:

## **RELATIVE PLACEMENT PREFERENCE**

Federal law (Adoption and Safe Family Act “ASFA”) and State law prioritize placement with relatives when a child must be removed from parents because of abuse or neglect.

# California's Legislative Intent:

- ~ It is the intent of the Legislature to preserve and strengthen a child's family ties whenever possible....If a child is removed from the physical custody of his or her parents, preferential consideration shall be given whenever possible to the placement of the child with the relative. WIC §16000(a)
- ~ Placement shall, if possible be made in the home of a relative, unless the placement would not be in the best interest of the child. FC §7950(a)
- ~ Legislative intent for children to be placed immediately with a relative **WIC §361.3(b)**
- ~ If a probation officer determines to recommend to the court that a minor...should be removed from the physical custody of his parent or guardian, the probation officer shall give primary consideration to recommending to the court that the minor be placed with a relative of the minor. WIC §281.5

# Preference for Siblings

- When siblings have been removed from their home, *either as a group on one occurrence or individually on separate occurrences*, the siblings will be placed in foster care together, unless it has been determined that placement together is contrary to the safety or well-being of any sibling. WIC §16002(a)(1)

## RELATIVE DEFINED: Who Qualifies as a Relative?

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- **A relative** who is entitled to preferential consideration for placement: An adult who is related to the child by blood, adoption or affinity within the fifth degree of kinship, including stepparents, stepsiblings, and all relatives whose status is preceded by the words, “great,” “great-great,” or “grand,” or the spouse of any of those persons, even if the marriage was terminated by death or dissolution. WIC §319(h)(2) & 361.3(c)(2)
- **“Preferential consideration”** is a specific legal term meaning the home shall be the first placement to considered and investigated. WIC 361.3






# What Is A “NREFM?”

**A “non-relative extended family member” (NREFM)** is defined as an adult caregiver who:


1. Has an established, familial relationship with a relative of the child, or
2. A familial or mentoring relationship with the child


This may include relatives of the child, teachers, medical professionals, clergy, neighbors and family friends. WIC §362.7








INITIAL CLIENT  
INTERVIEW:  
What  
Information to  
Gather and  
Where to Find It:




- **QUESTIONS FOR YOUR RELATIVE CLIENT:**
    - When was the child detained from the parents, if you know?
    - What is the procedural status of the case, if you know? Initial or late stages?
    - Do you have a case number?
    - Have you spoken to a social worker and if so, do you have that worker's name and contact number?
    - Did you tell the social worker that you were interested in placement of the child/children?
    - What did the social worker tell you?
    - If there a court hearing coming up and if so, when is it?
    - Provide information and a detailed history of your relationship to and with the child/children
    - Have you been invited to a Child and Family Team Meeting (CFTM)?
    - Have you told the social worker that you want visits with the child and is that being arranged?
    - Have you submitted an application for placement to the **Resource Family Approval (RFA) Department**?
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# WHAT IS R.F.A. AND WHAT DO I NEED TO KNOW ABOUT IT?



- **RESOURCE FAMILY APPROVAL (RFA):**
    - The Resource Family Approval (“RFA”) program is a statewide foster caregiver process for ALL caregivers (related and non-related). The RFA program has a single approval standard that replaces the previous multiple processes for licensing foster family homes, approving relatives and NREFM’s as foster care providers, and approving families for legal guardianship or adoption.
    - Once caregivers are approved resource families, they will not have to undergo any additional approval or licensure if they choose to adopt or be appointed a guardian for a child in foster care.
    - RFA approval does not guarantee placement of the child in the home
    - Emergency placement can happen *before* full RFA approval but relative must eventually submit an application go through the RFA process
    - ALSO – When a child is placed on an emergency basis or for a compelling reason *before* RFA approval, the applicant/relative is not eligible to receive AFDC/FC benefits until all components of the approval protocol have been successfully completed. WIC 16519.5(e).
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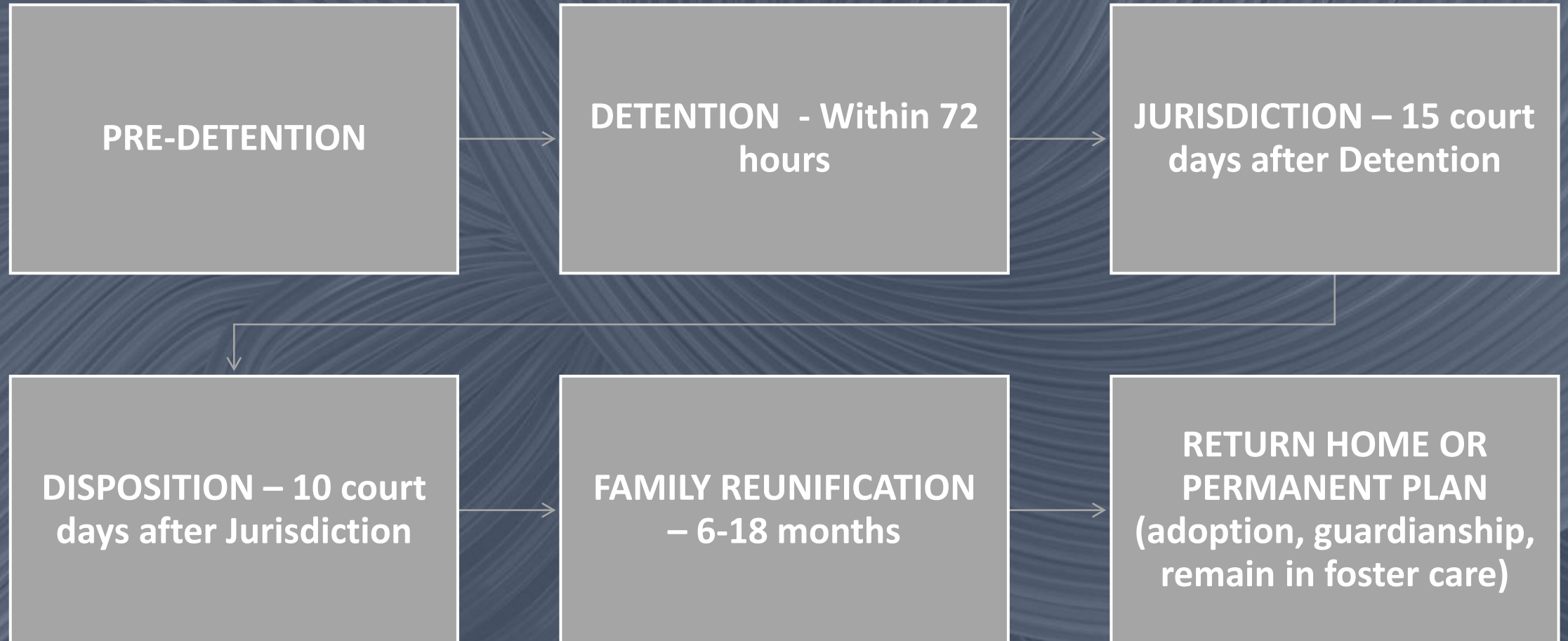
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# WHAT CAN I DO NOW TO HELP MY CLIENT GET INFORMATION AND START THE PROCESS?

- If you know nothing: Call the hotline number **(805) 654-3200** and ask to speak to the Officer of the Day.
- State who you are, your relationship to the child, and that you are interested in placement and would like to be assessed.
- Provide the child's full name and date of birth if you have it.
- Ask how to contact the child's social worker.
- Go to the court hearing and talk to the attorneys (either parents' counsel or minor's counsel) and let them know you are available for placement and provide your contact information.
- File a Relative Information Form [JV285] at the Clerk's Office.
- Find out if there is a Child and Family Team ("CFT") Meeting scheduled and attend.
- Submit the RFA Application and start that process immediately. The RFA Department can be reached at **(805) 654-3405** or on the web at: <https://homewithheartvc.org/become-a-fostering-parent/>
- Do NOT delay.

# DEPENDENCY COURT TIMELINES



# PRE-DETENTION TO DETENTION: WIC §309

CONSIDER RELATIVE FIRST

DUTY TO ASSESS

REQUIRED FOR PLACEMENT

FAMILY FINDING REQUIREMENTS

- If a child is taken into temporary custody, the social worker shall immediately release the child to the custody of the child's parent, guardian, or relative. WIC §309(a)
- If a relative/NREFM requests a temporary placement, the social worker shall initiate an emergency placement assessment pursuant to WIC §361.4.
- Child may be placed on an emergency basis upon completion of an assessment pursuant to WIC 361.4, which includes a CLET'S/Live Scan, CACI and walk-through of the home.
- Within 30 days, social worker shall use due diligence to identify and locate relatives and shall provide all adult relatives notice that the child has been removed from parents and options to participate in the care and placement. WIC 309(e)

# FAQ'S

Can the social worker place with a relative BEFORE the detention hearing?

YES! In fact, the social worker has an obligation to assess relatives/NREFM's immediately and has the authority to release the child to relatives pursuant to WIC 309



# FAQ'S

Does the social worker need to wait for a fingerprint clearance or RFA approval?

No – the background check for an emergency placement only requires a CLETS, a CACI and an in-home inspection to assess the safety of the home and the ability of the relative/NREFM to care for the child's needs. WIC §361.4(a)



# FAQ'S

- What if the CLETS shows that the person has a criminal history?
  - A child cannot be placed if there is a non-exemptible conviction. [See list at HS §1522(g)(2)(A)(i-iii)]
  - A child can be placed for other types of convictions once an exemption has been granted – **exemptions are granted only by the agency**. [See list at HS §1522(g)(2)(B)(i-ii)]







## Take Note of the Following:

- 361.4 (for ER placement) requires a CACI check
- However, in contrast to explicit restrictions regarding criminal convictions, there is nothing in the WIC (nor in the Health and Safety Code) that *prohibits* placement because of the existence of child welfare history
- No exemption is needed due to child welfare history and the court is required to hear the evidence and decide placement where there is only a *history* of child welfare involvement
- A prior child protective services history does not bar a relative from being evaluated and considered for placement of a child under 361.3
- Whether a home will eventually be approved as a resource family home is not a factor in a 361.4 assessment. Making the determination that placement should not occur because the home is not likely to be RFA approved *without* doing the actual assessment denies the relative due process rights

# DETENTION HEARING: WIC §319

- CONSIDER RELATIVES FIRST
- DUTY TO ASSESS
- REQUIRED FOR PLACEMENT
- If the child cannot be returned home, the court shall determine if there is a relative able and willing to care for the child. Relative shall be given preferential consideration for placement
- Per WIC 309, ER placement/361.4 assessment should have already been done for relatives. The detention report must indicate whether there are relatives able/willing to take temporary custody of the child
- The court shall consider the recommendations of the social worker based on an ER placement/361.4 assessment prior to ordering that the child be placed with a relative or NREFM

# FAQ'S

- Can the Court order a child to be placed with a relative if the county welfare agency completes an ER assessment pursuant to WIC 361.4 and “approves” the home [finds no legal barrier to placement] but is still NOT recommending placement with the relative?
- Yes, whether or not the agency approves a relative’s home is just one factor for the Court to consider under WIC 361.3; the court must exercise its own independent judgment. In re Miguel E. (2004) 120 Cal.App.4<sup>th</sup> 521
  - Exception: The Court does NOT have authority to order placement if there is a criminal conviction unless there has been an exemption granted by the agency



# FAQ'S

- What else can happen at the Detention Hearing?
  - Court can order the emergency placement over the objection of the agency (assuming no legal barrier after CLETS, CACI and home inspection); or
  - Court can follow recommendation of the agency but should:
    - Order that a 361.3 assessment be completed for disposition
    - Order an RFA assessment
    - Set up a Visitation Plan



# DETENTION TO DISPOSITION

CONSIDER RELATIVE FIRST

DUTY TO ASSESS

REQUIRED FOR PLACEMENT

- Preferential consideration for placement with relatives continues
- Agency's duty to assess a relative or NREFM's suitability for ER placement continues per WIC 361.4 and WIC 309(d). ALSO – the social worker must start a WIC 361.3 assessment of any relative to be considered for continuing placement. WIC 319
- WIC 361.4/emergency placement assessment if RFA not yet completed

# DISPOSITION HEARING

CONSIDER RELATIVE FIRST

DUTY TO ASSESS

REQUIRED FOR PLACEMENT

- Preferential consideration for placement with relatives continues
- Per WIC 358.1, the Disposition Report must address the appropriateness of any relative pursuant to the factors described in WIC 361.3. In re A.K. (2017) 12 Cal.App.5<sup>th</sup> 492 – The Court does not have a *sua sponte* duty to set a 361.3 hearing, a party needs to request it.
- RFA approval, OR the relative/NREFM has been assessed pursuant to the ER placement assessment in 361.4 OR placement based upon a compelling reason pursuant to WIC 16519.5(e). WIC 361.2(e)(2)-(4)

# FAQ'S

- What can I do at this stage of the dispositional hearing to further my client's request for placement?
  1. Relatives/NREFM's seeking placement should attend court proceedings and advise the Court that they are interested in placement of the child.
  2. Relatives seeking placement may and should file a Relative Information form [JV285] and can advise the Court they are seeking placement on that form.
  3. Relatives seeking placement may and should make a request for visitation with the child.
  4. **Request that the Court set a placement hearing under WIC 361.3**



# FACTORS TO BE CONSIDERED FOR 361.3 ASSESSMENT

- **Best Interest of the Child if the Overarching Consideration. The Following are other Factors to Consider in Deciding What Would be in the Best Interest of the Child:**
  - Wishes of the parent, relative, and child
  - Family Code Part 6 = don't discriminate
  - Siblings and ½ siblings in the same home
  - Good moral character, including criminal record and child abuse or neglect history
  - The relationship between the relative and the child
  - The safety of the child in the relative's home
  - Ability of the relative to provide:
    - Safe, stable environment
    - Care and control of the child
    - Provide necessities of life
    - Protection from the parents
    - Facilitation of reunification
    - Facilitation of visitation with other relatives
    - Facilitation of all elements of the case plan
    - Legal permanence if reunification fails
    - Safe childcare as necessary



# FAQ'S

- **What Is A WIC §388 Motion and Do I have to File in Order to Request Placement?** (Hint: You Do Not).
  - A §388 Motion is the vehicle by which a Petitioner may seek “any conceivable change or modification of an existing order.” §388(a).
  - A 388 Petition can be filed only **AFTER** the Dispositional Hearing following a declaration of dependency.
  - Placement is “at issue” at the Disposition Hearing. The relative is entitled to a hearing under WIC 361.3 without filing a §388 motion. In re Isabella G. (2016) 246 Cal.App.4<sup>th</sup> 708, 722-723





# FAQ'S

**What if the assessment pursuant to 361.3 is not completed by the dispositional hearing date?**

- **Failure to do the investigation is not good cause to continue the dispositional hearing.**
- **However, a relative seeking placement still has a right to be assessed and his/her request for placement must be given preferential consideration. In re R.T. (2015) 232 Cal.App.4<sup>th</sup> 1284, 1300**



# FAQ'S

**What if there are multiple relatives requesting preferential consideration?**

- **The social worker has an obligation to assess all appropriate relatives requesting preferential consideration**
- **This does not limit the social worker's ability to place a child in the home of an appropriate relative or NREFM pending the consideration of other relatives. WIC 361.3**
- **If a relative comes forward, even if the child is already placed with another relative, the new relative must be assessed.**

# DURING FAMILY REUNIFICATION

**Does the Relative Placement Preference/Duty to Assess per WIC 361.3 STILL apply after disposition and into the reunification period?**

- There is a **Split of Authority** (two lines of cases - discussion to follow)...
- It is imperative that relatives who are or MIGHT be interested in placement:
  1. Let the court know as SOON as they learn about the case. One way would be to submit a Relative Information Form (JV285) and possibly a §388 motion
  2. Take steps to prepare the home for placement, and
  3. Maintain a relationship with the child pending placement





# SPLIT OF AUTHORITY

- **In re: Joseph T. (2008) 163 Cal.App.4<sup>th</sup> 787, 797-798:** Relative placement preference applies throughout the reunification period, regardless of whether a new placement is necessary or is otherwise being considered by the dependency court.
  - Nor does 361.3(d) prevent a child welfare department from continuing to search for an appropriate relative placement after the child initially has been placed with a nonrelative.
- **In re: R.T. (2015): 232 Cal.App.4<sup>th</sup> 1284:** Trial court erred in deeming relative placement preference inapplicable to post-disposition proceedings. Temporary placement of an infant does not relieve the agency of the obligation to honor the statutory preference for relative placement. Here, the relatives *invoked* the preference before the dispositional hearing, the agency and the trial court failed to apply it at disposition and the error was timely raised by a 388 motion.



# SPLIT OF AUTHORITY (CONTINUED)

- **In re: Isabella G. (2016) 246 Cal.App.4<sup>th</sup> 708:** Confirmed that the relative placement preference applies after disposition and through reunification, even if no new placement is required. Also applies after reunification has ended, *if the relative came forward during the reunification period* and the agency did not investigate the relative's request.
- **In re: Maria Q. (2018) 28 Cal.App.5<sup>th</sup> 577, 595:** **FOOTNOTE 11:** The issue whether section 361.3 applies *where a relative did not come forward to request placement until after the reunification period* has not been resolved by reviewing courts.
- **In re: M.H. (2018) 21 Cal.App.5<sup>th</sup> 1296:** Section 361.3 was not applicable because case was post-disposition and did not require a new placement.
  - But NOTE: This was a maternal great aunt seeking placement and, at the time the placement decision was made, the statute limited "relatives" entitled to preference to grandparent, aunt, uncle, or sibling only [1-1-2018 Amendment expanded definition of relative entitled to preference].
  - Also – NOTE that, in this case, the placement decision was combined with the contested 366.26 hearing after FR services to the parents were terminated.

# FAQ'S

Is RFA approval required for placement with a relative or NREFM *post-disposition*?

- No, these pre-approval placement options are available:
  - **Emergency Placement / 361.4:** WIC 361.3(a)(8) (A) & 361.45 allow for use of emergency placements post disposition.
  - **Placement based on a Compelling Reason:** Available to any prospective caregiver based on the needs of the child. It requires a home environment approval. WIC 16519.5(e).



# FAQ'S

## What if a change of Placement IS required?

- When a change of placement IS required, the county welfare agency must assess any relative and NREFM requesting placement pursuant to WIC 361.4. Upon completion of the assessment, the child may be placed on an emergency basis. WIC 361.45





# AT THE 366.26 HEARING AND BEYOND

- In re: Maria Q. (2018): 28 Cal.App.5<sup>th</sup> 577, 594-595:
- Confirms prior case law that held that the relative placement preference applies throughout reunification period.
- Confirms prior case law that held the relative placement preference applies after the reunification period has ended where the relative has made a timely request for placement during the reunification period and the agency has not met its statutory obligations to consider and investigate the relative seeking placement.
- Notes in FOOTNOTE 11 that the issue of whether the relative placement preference applies where a relative did not come forward to request placement until *after* the reunification period has ended has not been resolved by reviewing courts.
- Held that the statutory preferences set forth in 366.26 indicate that the relative placement preference does not apply at the permanency plan hearing.
- A relative who seeks placement at post-permanency is seeking to modify the child's permanent plan. To do so, the relative must file a 388 Petition and show a change of circumstances and best interest. 28 Cal.App.5<sup>th</sup> at pg. 597.

# THE 388 PETITION: WHAT IS IT AND WHEN AND HOW TO FILE IT:

Any person who has an interest in a dependent child of the juvenile court can request a hearing before a judge under Welfare and Institutions Code section 388. [Welfare and Institutions Code section 388](#) specifically states any parent or "other person" having an interest in a child who is a dependent child of the juvenile court (even when you are not a party and do not qualify for de facto status) may petition the court for a change of court order using a JV-180 form.

IF I AM A RELATIVE  
OR NREFM  
SEEKING  
PLACEMENT, WHEN  
SHOULD I FILE A  
388?

- **REMEMBER:** Placement is “at issue” at the Dispositional Hearing. A relative seeking placement is entitled to a hearing under 361.3 **without filing a 388 Petition**. If the relative sought placement and submitted an RFA application *before the dispositional hearing*, but the 361.3 assessment was not completed by the time of dispositional hearing, then 388 is not necessary. In re Isabella G. (2016) 246 Cal.App.4<sup>th</sup> 708, 722-723
- If the Dispositional Hearing has already passed, you may file a 388 Petition and request placement. If the case posture is pre-dispositional hearing, you cannot file a 388 Petition yet.
- If the case is beyond the Dispositional Hearing, You could file a 388 Petition [using the form called the JV-180 Request to Change Court Order] if you seek placement of [or even visits or contact with) a dependent child.

# HOW DO I FILE A 388 PETITION:

- [California Rule of Court 5.570](#) outlines the process for petitioning the court to modify an existing order. You must complete, file and serve the following forms:
- [JV-180 Request to Change Court Order](#)
- [JV-510 Proof of Service \(Juvenile\)](#)
- [JV-183 Court Order](#)
- [JV-184 Order After Hearing](#)
- NOTE: If there is more than one foster child involved in the case in which you are making the request, you should file the above-mentioned forms for EACH child. You should serve county counsel, minor's counsel, parents' counsel and tribe (if ICWA case).
- **CAUTION:** When filling out a JV-180, you must include a specific description of the change in circumstance and/or new evidence that has developed to show the court it is in the child's best interest to change the order. Most successful JV-180 petitions include declarations or other attachments that demonstrate the specifics of the change in circumstance and the best interest of the child. *See In re Ramone R.* (2005) 132 Cal.App.4th 1339, 1348 (holding that conclusory claims in a JV-180 petition are insufficient to require a hearing, and that a JV-180 must include a specific description of the change in circumstance or new evidence).

# WHAT SPECIFIC ORDER AM I ASKING THE JUDGE TO MODIFY?

- If the Court made a *specific* Placement Order at the time of the Dispositional Hearing or thereafter, your 388 Petition would ask the Court to modify that *specific* Placement Order.
- What is more likely is that the Court made a *general* Placement Order in which care and custody of the child has been vested with the Human Services Agency [WIC 361.2(e)]. The Human Services Agency then has discretion to place with a relative, NREFM, resource family home, etc. In this case, you would be asking the court to *modify* its general placement order in favor of your specific request for placement.



QUESTIONS??