



Demystifying Relative Placement Issues & Identifying Remedies In and Out of Court

*Beyond the Bench
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WHY THE FOCUS ON RELATIVE PLACEMENT?

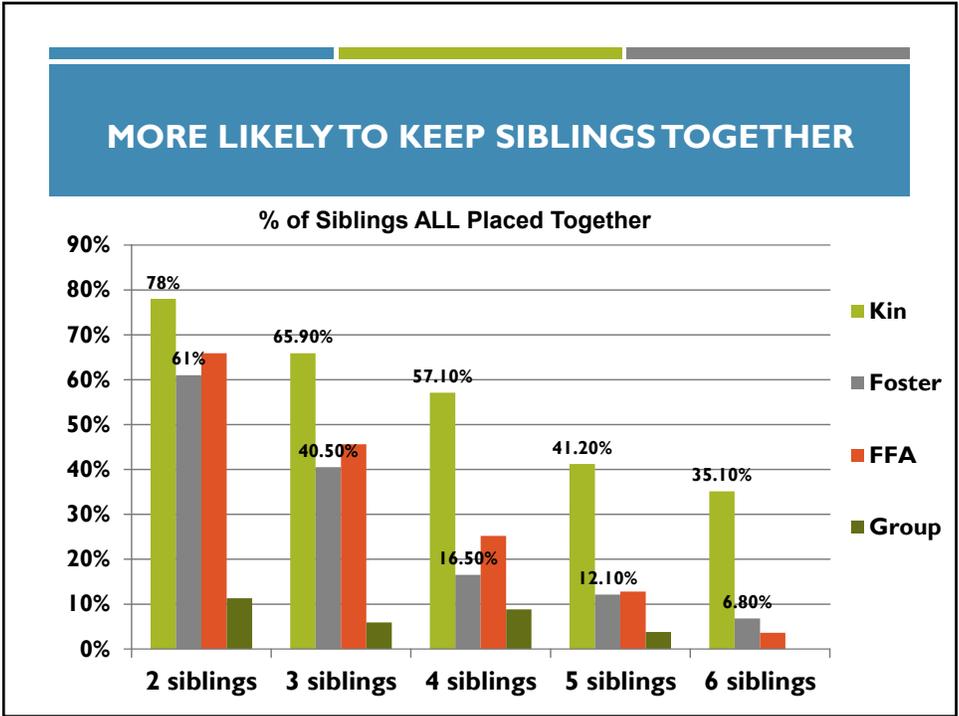
WHAT THE RESEARCH TELLS US:



- More stability in care
- More frequent and consistent contact with birth parents and siblings
- More likely to remain in neighborhoods & schools of origin
- More likely to graduate from high school
- Less likely to run away
- Fewer negative emotions about being placed in foster care than children placed with non-relatives

Citations: Edwards, L., "[Relative Placement in Child Protection Cases](#)," *Juvenile and Family Court Journal*, Vol. 61, No. 2, 2010, at pp. 10-13

Time for Reform: Support Relatives in Providing Foster Care and Permanent Families for Children.
<http://www.kidsarewaiting.org/tools/reports/files/0004.pdf>.



THE LAW

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 RELATIVE PREFERENCE

- **WIC 309/319** – preference for emergency placement with relatives
- **WIC 361.3** – relative preference for placement/considerations for relative placement
- **WIC 361.4** – assessment requirements for emergency placement
- **Leg intent language:**
 - Intent of the Legislature to preserve and strengthen a child's family ties whenever possible. If a child is removed, **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...****FC 7950(a)**
 - Legislative intent for children to be placed **immediately** with a relative. **WIC 361.3(b)**
 - If a probation recommends that a minor should be removed, the probation officer shall give primary consideration that the minor be placed with a relative. **WIC 281.5**
 - **In re Esperanza C. 165 Cal.App. 4th at p. 1060**, “Placement with a suitable relative is presumptively in the child's best interest”

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

- A relative entitled to preferential consideration for placement: **An adult 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 these 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 be considered and investigated. *WIC 361.3*
- AB 404 (effective 1/1/18): Preferential consideration no longer limited to grandparent, aunt, uncle, or sibling – now any relative within 5th degree

NREFM DEFINED

- A “**nonrelative extended family member**” (**NREFM**) is defined as an adult caregiver who:
 - Has an established familial relationship with a relative of the child, or
 - 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](#)



UNDERSTANDING RELATIVE PLACEMENT REQUIREMENTS AT EACH HEARING

PRE-DETENTION TO DETENTION: WIC 309	
Consider Relative First	<ul style="list-style-type: none"> If a child is taken into temporary custody, the social worker <u>shall</u> immediately release the child to the custody of the child's parent, guardian, or relative. WIC 309(a)
Duty to Assess	<ul style="list-style-type: none"> If a relative/NREFM requests temporary placement, the social worker shall initiate an emergency placement assessment pursuant to WIC 361.4.
Required for Placement	<ul style="list-style-type: none"> Child may be placed on an emergency basis upon completion of an assessment pursuant to WIC 361.4, which includes a CLETs/Live Scan, CACI and walk-through of the home.
Family Finding Requirements	<ul style="list-style-type: none"> 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)

FAQS	
<ul style="list-style-type: none"> Can the agency place with relative/NREFM before the detention hearing? 	<ul style="list-style-type: none"> Yes, the social worker has an obligation to assess relatives/NREFMs immediately and has the authority to release a child to relatives pursuant to WIC 309.
<ul style="list-style-type: none"> Does the agency need to wait for a fingerprint clearance? Or RFA? 	<ul style="list-style-type: none"> No, the background check for emergency placement requires CLETs, CACI and in-home inspection to assess safety of home and ability of relative/NREFM to care for the child. WIC 361.4(a) The social worker must ensure a fingerprint clearance check is done within 10 calendar days of the CLETs or 5 business days of making an emergency placement, whichever is sooner. WIC 361.4(c)

EMERGENCY PLACEMENT OPTION FOR PROBATION

- AB 819 (CCR cleanup bill) passed this year
- Takes effect January 1, 2020
- Among other provisions, adds new code section - WIC 727.05
 - Explicitly authorizes a probation agency to make an emergency placement with a relative or NREFM prior to RFA
 - Mimics WIC 361.4 – requires CLETS, CACI and in-home inspection

PRE-DETENTION TIPS FOR PARENT'S COUNSEL...

- Start discussing relative placement with your client
- Make it clear to the client that now is the time to ask for relative placement – not some time in the future when reunification fails
- Discuss with the client those factors that will make the relative more likely to be approved
- Ask broad enough questions to ensure you discuss all possible NREFMs or anyone the client may want caring for their child
- Find out if there are relatives your client does not want the child with and why

CRIMINAL HISTORY

- If the CLETS indicates the person has a criminal history:

- A child cannot be placed on an emergency basis if there is a non-exemptible conviction
- A child can be placed for any other conviction once an exemption has been granted – exemptions are granted only by the agency
- As of 1/1/2018 a child can be placed pending exemption **if** the deputy director/director of the agency, or his or her designee, determines that the placement is in the best interests of the child and a party to the case does not object *WIC 361.4*

- **NOTE:** These are convictions and actual court orders, not arrests. Arrest record cannot be used unless agency obtains evidence to establish conduct that would pose a risk to the child. If denial is based on criminal records, get the court file to ensure it was an actual conviction.

REMINDER: SB 213 (2017)

- Re-structured exemption process to create 3 categories:

1. Crimes that are non-exemptible for emergency placement or for RFA
2. Crimes that exemptible after consideration of all of the factors listed in *HS 1522(g)(2)(B) & (C)*
3. All other crimes that can be exempted just based on person's state or federal criminal history *HS 1522(g)(2)(D)*

- NOTE: Dept/county discretion to require investigation of factors in category 2 as necessary to protect health & safety of a child

- Also enabled emergency placements **prior** to an exemption as described in prior slide.



**Children's Law Center
of California**
Excellence in Advocacy

Criminal Records Assessment & Exemption Requirements
As of January 1, 2018 (per changes in AB 404 & SB 213)

FOR EMERGENCY PLACEMENT

Who must submit to a criminal records check?

1. All persons over 18 living in the home excluding a NMD
2. Any person over 18 regularly present in the home other than those providing professional services (at the discretion of the county welfare department)
3. Any person over 14 who the department believes may have criminal record (at the discretion of the county welfare department), but this does not apply to children under the jurisdiction of the juvenile court. WIC §861.4(a)(2)

How is the check done? California Law Enforcement Telecommunications System ("CLETS") WIC §861.4(a)(2)
Within 10 days of CLETS or 5 days of emergency placement (whichever is sooner), the social worker shall ensure that a fingerprint clearance check is obtained through the DOJ. WIC §861.4(a)

If there is no criminal record... a child may be placed on the home on an emergency basis. WIC §81.4(b)(3)

If there are arrests... an arrest record shall not be used to deny or restrict an approval unless the department investigates the incident and secures evidence to establish conduct by the person that may pose a risk to the health and safety of any person who is or may become a client. §§81.2(b)(1)

However, if a prospective caregiver has been arrested for any of these crimes, there may be an investigation and a child cannot be placed until the agency & courts have considered the investigation results when determining whether placement is in the best interests of a child. WIC §861.4(b)(4)

Any crime listed in Penal Code 260; sex offender registry
Penal Code 245; assault with a deadly weapon
Penal Code 272(a); willful injury to a child 8 years of age or younger
Penal Code 273.5; corporal injury to spouse
Penal Code 273(b)(1); misdemeanor willful injury to a child
Penal Code 273.5; paragraph 2 (prior to 1994)

If there are convictions other than minor traffic violations...

For convictions in Category 1 (see chart), a child cannot be placed in the home. WIC §861.4(b)(3)

For all other convictions, a child cannot be placed until an exemption has been granted. WIC §81.4(b)(2)

EXCEPTION: A child can be placed pending an exemption if the deputy director or director of the county welfare department, or his or her designee, determines that the placement is in the best interests of the child and a party to the case does not object. WIC §861.4(b)(3)

EXCEPTION TO THE EXCEPTION: No child can be placed pending an exemption for a misdemeanor conviction for statutory rape, indecent exposure or financial abuse of an elder. Due to a drafting error, SB 213 also inadvertently prohibits placement pending an exemption for misdemeanor convictions within the last five years. This will likely be fixed by state policy or in clean-up legislation. WIC §861.4(b)(3)

Revised by Joe Abrams, 10/22/17

DETENTION HEARING: WIC 319

Consider Relative First	<ul style="list-style-type: none"> • If the child cannot be returned home, the court shall determine if there is a relative able and willing to care for child. Relatives shall be given preferential consideration for placement.
Duty to Assess	<ul style="list-style-type: none"> • Per WIC 309, emergency placement/361.4 assessment should have been done for relatives. The report must indicate whether there are relatives able/willing to take temporary custody of the child.
Required for Placement	<ul style="list-style-type: none"> • The court shall consider the recommendations of the social worker based on an emergency placement/361.4 assessment prior to ordering that the child be placed with a relative or NREFM.
Family Finding Requirements	<ul style="list-style-type: none"> • The court shall order the parents to disclose to the social worker names, residences and any identifying information of maternal/paternal relatives.

DETENTION TIPS FOR PARENT'S COUNSEL...

- Make a specific request on the record for detention, if you have a specific choice make it known
- Object to there being discretion to place for detention or placement with someone you disagree with
 - 361.3(a)(2) lists the wishes of the parent as a factor in placement so you can litigate placement with one relative over another
- If there is someone out of state to evaluate, even if you might eventually object to the out of state placement request an ICPC evaluation and that the results be reported back to the court

HYPOTHESIS #1

- David and Rachel were removed from their parents home because of substance abuse. They are placed in separate foster homes. The maternal grandmother comes to the detention hearing and tells their attorney that she has been asking for the kids to be placed with her, and the social worker told her to come to the hearing. There is no information about the maternal grandmother in the detention report.

HYPO #1: NEXT STEPS

1. Court needs to make findings required by WIC 319!
 - Continue detention hearing to the afternoon or next day to get results of CLETS/CACI/in-home inspection
 - Set a hearing on emergency placement (sometimes called emergency placement hearing or “PRI” – pre-release investigation)
2. Grant the agency discretion to place with the relative pending the hearing
3. Set up visitation plan pending emergency placement hearing
4. Order that a 361.3 assessment be completed for disposition

HYPO #2

The court sets a PRI one week after the detention hearing. The report indicates that the agency completed the 361.4 assessment, but is not recommending placement because grandma’s child abuse history shows a substantiated allegation of neglect. This resulted from an allegation that she was unable to meet mother’s needs as a teenager due to substance abuse and mental health issues. The report also states grandma will not be approved as a resource family because she lives in a one-bedroom apartment. She would have to sleep in the living room and the kids (who are different genders) would have to share a room.

SO MUCH TO UNPACK! FIRST THE CHILD WELFARE HISTORY...

- 361.4 requires a CACI check
- However, in contrast to explicit restrictions regarding criminal convictions, there is nothing in the code that prohibits emergency placement because of child welfare history
- Nothing in Health and Safety Code 1522 either
- No exemption is needed 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 history does not bar a relative from being evaluated and considered for placement of a child under section 361.3
- Cesar V. v. Superior Court 91 Cal.App.4th 1023
- Antonio G. 159 Cal.App.4th 369
- In re N.V. 189 Cal.App.4th 25

SECOND, THE RESOURCE FAMILY APPROVAL ISSUE...

- Whether a home will be approved as a resource family is not a factor in a 361.4 assessment
- Also, making that determination without doing the actual assessment denies grandma due process rights
- Finally, not necessarily true that grandma won't be approved because of space issues
 - More to come on this...

HYPO #2: NEXT STEPS

- Court can order the emergency placement over the objection of the agency
- 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

- Continuing preferential consideration for placement with relatives.

Duty to Assess

- Continuing obligation to assess a relative or NREFM's suitability for emergency placement pursuant to *WIC 361.4. WIC 309(d)(1)*
- In addition, social worker must initiate a *WIC 361.3* assessment of any relative to be considered for continuing placement. *WIC 319*

Required for Placement

- *WIC 361.4*/emergency placement assessment if RFA not yet completed.

Family Finding Requirements

- Continuing obligation to identify and locate relatives, and to provide notice of the child's removal and information about becoming a caretaker. *WIC 309 (e)(1)*

FAQ

- What does it mean for a social worker to exercise “due diligence” in identifying, locating, and notifying relatives?
 - Examples listed in statute (*WIC 358(b)*):
 - Asked the child
 - Reviewed the case file
 - Telephoned, emailed, or visited all identified relatives
 - Asked located relatives for the names/locations of other relatives
 - Used Internet search tools to locate relatives identified as supports
 - This list is not all-inclusive. Juvenile court retained wide latitude when making a finding of due diligence. *ACL 17-65*

FACTORS TO BE CONSIDERED FOR 361.3 ASSESSMENT

- Best interest of the child
- Wishes of the parent, relative, and child
- Family Code Part 6=don't discriminate
- Siblings and half siblings in the same home
- Good morale character, including criminal record and child abuse or neglect history
- The relationship between the relative and the child
- The safety of the relatives 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 child care as necessary

DISPOSITION HEARING	
Consider Relative First	<ul style="list-style-type: none"> Continuing preferential consideration for placement with relatives. <i>WIC 361.3</i> If court does not place with a relative, shall state for the record the reasons placement was denied.
Duty to Assess	<ul style="list-style-type: none"> Per <i>WIC 358.1</i>, report must address appropriateness of any relative pursuant to the factors described in <i>WIC 361.3</i>.
Required for Placement	<ul style="list-style-type: none"> Resource family approval, OR the relative/NREFM has been assessed pursuant to the emergency placement assessment in <i>WIC 361.4</i>, OR placement based on a compelling reason pursuant to <i>WIC 16519.5(e)</i>. <i>WIC 361.2(e)(2-4)</i>
Family Finding Requirements	<ul style="list-style-type: none"> The court shall make a finding regarding whether the social worker exercised due diligence in identifying, locating & notifying relatives. <i>WIC 358(b)</i>

HYPOTHESIS #3
<p>The court did not release the children to grandma at the PRI, but did order a visitation plan and a 361.3 assessment. At disposition, the agency submits the 361.3 assessment, which describes how bonded the kids are to grandma, how much they cry after their visits and that the parents want the children placed with grandma. However, the agency is still not recommending placement because of the RFA (space) issues. In addition, during the agency's family finding efforts, they locate a paternal aunt. The report mentions the aunt, but there has been no placement assessment under <i>WIC 361.3</i>, nor has there been an assessment of the safety of her home under <i>WIC 361.4</i>.</p>

HYPO 3: NEXT STEPS

1. The court can order the children be placed with grandma despite the recommendation by the agency
2. Order a 361.3 assessment on aunt and set a hearing date
 - Failure to do 361.3 investigation is not good cause to continue the dispositional hearing
 - However, a relative requesting placement still has a right to be assessed
In re R.T. (2015) 232 Cal.App.4th 1284, 1300
 - Relative is entitled to a hearing under WIC 361.3 without filing a section 388 petition
In re Isabella G. (2016) 246 Cal.App.4th 708, 722-723

HYPO 3: NEXT STEPS

- The 361.3 assessment on aunt should be ordered regardless of whether the children are placed with grandma
 - Agency must assess all relatives requesting preferential consideration. This does not limit the agency's ability to place a child in the home of a relative/NREFM pending 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, but significant weight should be given to the stability and benefits of the current placement in placement decisions. *ACL 17-65, p. 3*

RELATIVE PREFERENCE AFTER DISPO

- Some ambiguity regarding when the relative placement preference/duty to assess per WIC 361.3 applies
- It is imperative that relatives who are interested in placement:

- 1) Let the court know as soon as they learn about the case (**JV-285 Relative Form**)
- 2) Take steps to prepare the home for placement, and
- 3) Maintain a relationship with the child pending placement

JV-285 Relative Information

As the relative of a child who has been removed from the home, you may give written information to the court about the child at any time on this form or in a letter. After filling out this form, give it to the clerk of the court.

Please note that other people involved in the case, including the parents, will see your answers on this form. If you prefer to keep your contact information private, fill out the Confidential Information form (JV-287) and do not write your address or telephone number below.

1 Your name: _____
Your address: _____
Your telephone number: _____
 Check here if contact information is confidential and form JV-287 is attached.

2 Your relation to the child: maternal paternal
 grandparent brother/sister aunt/uncle cousin
 family friend
 tribal extended family member
 other (specify): _____

3 Child's name: _____

4 I would like to talk to the judge at the next court hearing.

Clear stamp date here when form is filed

To keep other people from seeing what you entered on your form, please press the Clear This Form button at the end of the form when finished.

Social services file in court name and street address
Superior Court of California, County of _____

Social services file in court name and date of birth
Child's Name: _____
Date of Birth: _____
Social services file in case number
Case Number: _____

ONE LINE OF CASES

- *In re Isabella G.* (2016) 246 Cal.App.4th 708, 721: Relative placement preference applies after disposition and through reunification, even if no new placement is required. Left open the issue of whether the preference applies even after reunification services have been terminated.
- *In re R.T.* (2015) 232 Cal.App.4th 1284 :The temporary placement of an infant does not relieve the agency of the obligation to honor the statutory preference for relative placement.
- *In re Joseph T.* (2008) 163 Cal.App.4th 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.
- *ACL 17-65, p. 3-4*: Counties reminded that relative assessments are not, by statute, limited to a particular timeframe prior to the Termination of Parental Rights (TPR). Relative assessment requirements of WIC 361.3 apply until court has approved a permanent plan for adoption or TPR.

THE OTHER LINE OF CASES

- *In re Maria Q.* (2018) 28 Cal.App.5th 577: Placement request by a relative after permanency hearing must be heard under WIC 366.26, 366.3, which favor relative placement only if child in continued foster care and adoption/guardianship not available.
- *In re M.H.* (2018) 21 Cal.App.5th 1296: WIC 361.3 not applicable because case was post-dispo and did not require a new placement.
- *In re K.L.* (2016) 248 Cal.App.4th 52, 65-67: WIC 361.3 established a relative preference that applies in selecting a temporary placement when a child is removed from parental custody, or a new placement is necessary. Does not apply where the agency is seeking an adoptive placement for whom the court has selected the permanent placement goal of adoption.
- *In re Lauren R.* (2007) 148 Cal.App.4th 841, 854: Where adoption has been identified as the permanent plan, the relative preference under WIC 361.3 did not apply because no new placement was necessary and the caretaker preference under 366.26(k) applied.

HYPOTHESIS #4

- The court does not place the children with grandma at dispo, but does order the agency to complete a WIC 361.3 assessment on the aunt. The court sets a 30 day hearing to get the results of the assessment. The report indicates that the aunt has a 20 year old conviction for petty theft. She explains that she was arrested in her early 20s for stealing food when she was struggling financially. She had to complete community service hours, which she did, and has not had any contact with law enforcement since.
- The report states that because of the criminal conviction, the children cannot be placed with the aunt until she is approved as a resource family.

CAN THE COURT ORDER PLACEMENT WITHOUT AN EXEMPTION OR RFA? WHAT IF THE EXEMPTION OR RFA IS DENIED?



WHAT WE DO KNOW...

- Court may make any and all reasonable orders for the care, supervision, custody...of the child. *WIC 362(a)*
- However, prior case law indicates-
 - 1) Court can't order an exemption or an approval
 - 2) Court can't order agency to grant an exemption or approval
 - 3) Court can't order placement without an exemption
 - 4) Court can't order a placement to be funded
- However, now we have RFA and WIC 309, 361.3 & 361.4 have since been amended...
 - Changes in statute could impact these prior cases – specifically whether court can order placement without an exemption or approval if not an “emergency placement”

HYPO #4: NEXT STEPS

- Another option - set another hearing and ask for information regarding:
 - Why the agency is not using its discretion to place pending an exemption per *WIC 361.4(b)(3)*?
 - Why the agency is not using its discretion to fast-track the exemption per *HS 1522(g)(2)(D)*?

- A status that indicates “RFA is still pending” is insufficient!

POST-PERMANENCY

- For children 16 and up in another planned permanent living arrangement (APPLA), per federal law efforts must include the use of technology including social media to find biological or other family members of the child. Codified in *WIC 16501.1(g)(15)(C)*

- When a change in placement is required, the county welfare department must assess any relative/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*

FAQ

■ Is resource family approval required for placement with a relative or NREFM post-disposition?

No, the following pre-approval placement options are available...

1. **Emergency placement/361.4:** *WIC 361.3(a)(8)(A) & 361.45* allow for use of emergency placements post-disposition.
2. **Placement based on a compelling reason:** This option is available to any prospective caregiver based on the needs of the child. It requires a home environment approval. *WIC 16519.5(e)*

EMERGENCY CAREGIVER (EC) FUNDING

- EC funding provided to families caring for a child before approved as a resource family
- Eligibility Criteria:
 1. Child/NMD placed on an **emergency basis or based on a compelling reason**
 2. Caregiver submitted an **RFA application**
 3. Emergency Assistance (EA) application was submitted (by the county), AND
 4. The child or nonminor is **placed in California**



RFA BASICS



THE VISION

- A family-friendly and child-centered caregiver approval process
- ONE PROCESS: streamlines and eliminates duplication of existing processes
- ONE STANDARD: unifies approval standard for all caregivers
- Prepares families to meet the needs of children in foster care
- Allows seamless transition to permanency

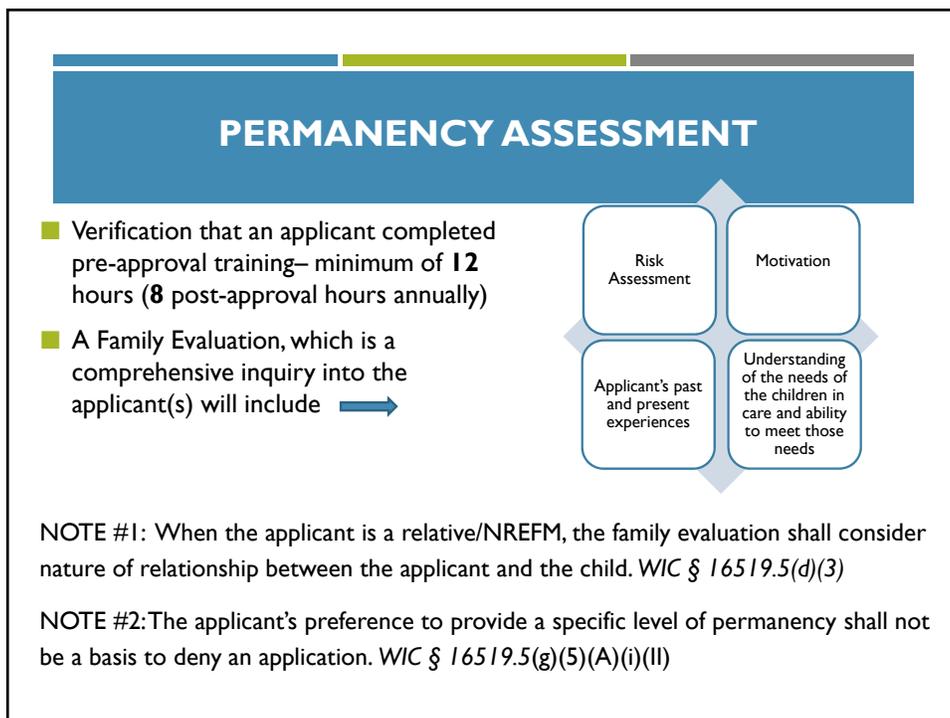
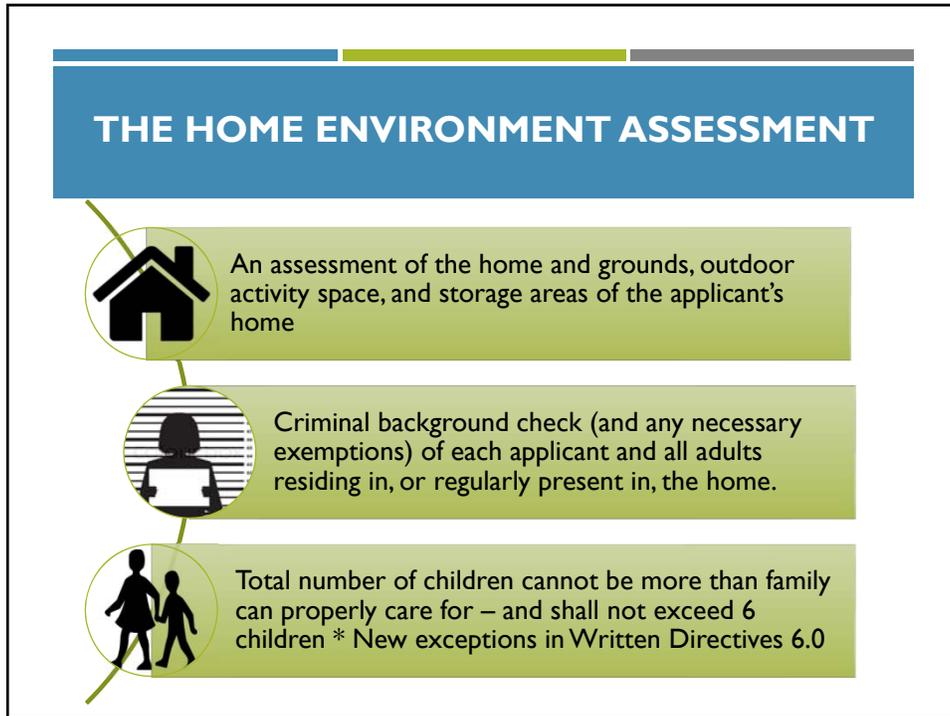
ASFA OR RFA?

- All prospective relative, NREFM & foster families after 1/1/2017 must go through RFA
- Current caregivers with a child in placement during 2017 have until **12/31/2020** to begin the conversion process (*WIC § 16519.5(p)(5)*)
 - Until they convert, ASFA approval rules apply
- A legal guardian must convert unless:
 - ✓ Guardianship is finalized & jurisdiction has been terminated; OR
 - ✓ Guardianship is finalized and the case JTs before 12/31/20; OR
 - ✓ Legal guardian completed an adoption home study before 1/1/18.

RFA REQUIREMENTS

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    graph TD
      A[Receive a RFA orientation] --> B[Undergo criminal clearances and background checks]
      B --> C[Undergo home environment assessment]
      C --> D[Participate in 12 hours preapproval training and 8 additional hours within the first year (some counties/ FFAs may require additional training)]
      D --> E[Complete a health questionnaire or screening for applicants]
      E --> F[Participate in a family evaluation (previously called Psychological Assessment)]
      F --> G[Receive a written report of the resource family]
    
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CONFIDENTIALITY ISSUES WITH RFA

- **In re Charlotte C. 33 Cal.App.5th 404 (2019)**
- Minor's counsel entitled to receive a copy of client's case file, including any RFA-related information, upon request pursuant to WIC 317(f) and 827
- If minor's counsel determines additional confidential info is necessary to fulfill duties and responsibilities, on a showing of good cause, counsel may petition the court for access under WIC 827 & Rules of Court 5.552
 - Notice must be provided to the relative
 - Court may disclose only what is necessary if:
 - Records are necessary and have substantial relevance to the legitimate need of the child, and
 - Child's needs to inspect those records outweigh the resource family's interests in confidentiality of the information

ADDITIONAL RFA REQUIREMENTS

Health Questionnaire or Screening

First Aid and CPR certification- to be completed within 90 days post-approval

1 face to face interview with all other residents in the home including children

2 personal references

DMV check on applicant and all adults in the home

JUDGE MATHEWS... RFA PROBLEMS AND SOLUTIONS

A VIEW FROM THE BENCH



COMMON PROBLEMS AND SOLUTIONS

- “Grandma was referred to RFA but hasn’t followed up...”
 - Set pre-release investigation/progress hearing or issue self-executing order that child be released to grandma upon CLETS/CACI/walkthrough.
 - Order agency to assist grandma with RFA process
- “That house will NEVER pass RFA!”
 - If no actual safety hazards, can still release upon CLETS/CACI/walkthrough, and order agency to access any/all sources of funds to assist family pending RFA [so they have money to move or do repairs].
 - Order agency to explore CAP (Corrective Action Plan), or DAP (Documented Alternative Plan) for RFA issues that are not safety hazards (square footage, number of bedrooms, etc.)

...CONTINUED

- “Grandpa has a nonwaivable conviction.”
 - Really? Rules are complex. Order supplemental report with specific information about the crime, whether felony or misdemeanor, date of conviction ...
- The waiver process takes forever!
 - Order agency to determine if relative is eligible for expedited waiver.
 - If no action on waiver for several months, order appropriate agency staff to appear and explain delay.
 - If waiver is denied, applicant can appeal – these can take a really long time – order appropriate staff to appear and explain.
- Child already in stable placement and multiple moves would be harmful.
 - If it’s not clear whether the relative/NREFM will get RFA, this may be good reason to keep child in current placement, order visits, and have relative complete RFA before placement.

RFA AFTER RELEASE/PLACEMENT

- “Grandma hasn’t done her training classes or turned in her paperwork...she must not really want to care for the child...”
 - Relatives, unlike other resource parents, have to do RFA process while already caring for children.
 - Most relatives have little time to plan and prepare for placement (request time off from work, child-proof the home, research child care, schools, etc.)
 - RFA process was designed for ‘typical’ resource parent applicants, not relatives who may be older, have health problems, be less affluent, and who are often already caring for children.
- Order agency to provide any available funds to assist with cost of caring for child, referrals to affordable child care/preschool; reimbursement for transportation to school of origin, etc.

RFA DELAYS AND BARRIERS – HOW TO HELP

- Order agency to meet with relatives and ensure they understand RFA process
- If child is already in relative's home, order agency to provide any available funds to assist with cost of caring for child, referrals to affordable child care/preschool; reimbursement for transportation to school of origin; any available funds for children's sports/activities, etc.
- Consider setting progress hearing – especially for out-of-county RFA.

RFA DENIAL

- Relatives have limited time to complete RFA process – make sure they understand time limits.
 - Sometimes better not to initiate RFA process too soon [e.g. if relative needs to find new housing that would meet RFA standards] so they do not run out of time.
- Applicants can appeal denial of RFA
 - Administrative, not court process
 - Court may issue do-not-remove order pending outcome of appeal [but can't order funding].



MORE ON RFA DENIALS...



DUE PROCESS



- Applicant for approval or for a criminal record exemption may file written appeal within 90 days of service of Notice of Action + 30 days additional time for good cause
- Resource family, excluded individual or individual subject to criminal record exemption **rescission** must file written appeal within 25 days of notice of action or exclusion order + 30 days additional time for good cause
 - The department may issue an exclusion order requiring the immediate removal of an individual if, in the opinion of the department, the action is necessary to protect a child from physical or mental abuse, abandonment, or any other substantial threat to his or her health or safety

REAPPLYING FOR RFA

- County shall cease further review of any RFA application if:
 - There has been a denial within the preceding year
 - There has been a rescission, revocation, exemption denial or exemption rescission within the previous 2 years

UNLESS...

County may continue to review an application if it has determined that the reasons for the previous denial, rescission, or revocation were due to circumstances or conditions which the applicant shows have either been corrected or are no longer in existence

WHAT HAPPENS WITH PLACEMENT IF RFA IS DENIED?



WHAT WE DO KNOW...

- *In re Cheryl M.* (2003) 112 Cal.App.4th 509: no obligation to remove because nothing in the statute limits the court's discretion to leave a child in a home when an existing license is revoked
- *In re Miguel E.* (2004) 120 Cal.App.4th 521: whether or not the county approves a relatives home under 361.3 is just one factor for the Court to consider at a 387 hearing
- *In re M.L.*, (2012) 205 Cal.App.4th 210: criminal exemption required to place under 361.4; juvenile court may not substitute its own independent judgment on the exemption for that of the Agency

RESOURCES

WRITTEN DIRECTIVES

- Written Directives provide more detailed guidance based off the statute. Lay out exceptions for NREFMs/relatives/sibling sets/etc.
 - Documented alternative plans (DAPs)
 - Child-specific approval
- Have the same force and effect as regulations until regs adopted.
- Written Directive 6.0-
<http://www.cdss.ca.gov/Portals/9/CCR/RFA/V6%20RFA%20WD-4.11.19final2.pdf?ver=2019-04-11-150949-357>
- Provides specific guidance for RFA implementation, processes, requirements, oversight and due process.

RESOURCE: RFA TOOLKIT

- Step by step instructions for families navigating RFA
- Vetted with relative caregivers
- Available online at www.stepupforin.org
- **Best Practice:** Providing Guides to families at first court hearing
- **Available in Spanish!**

