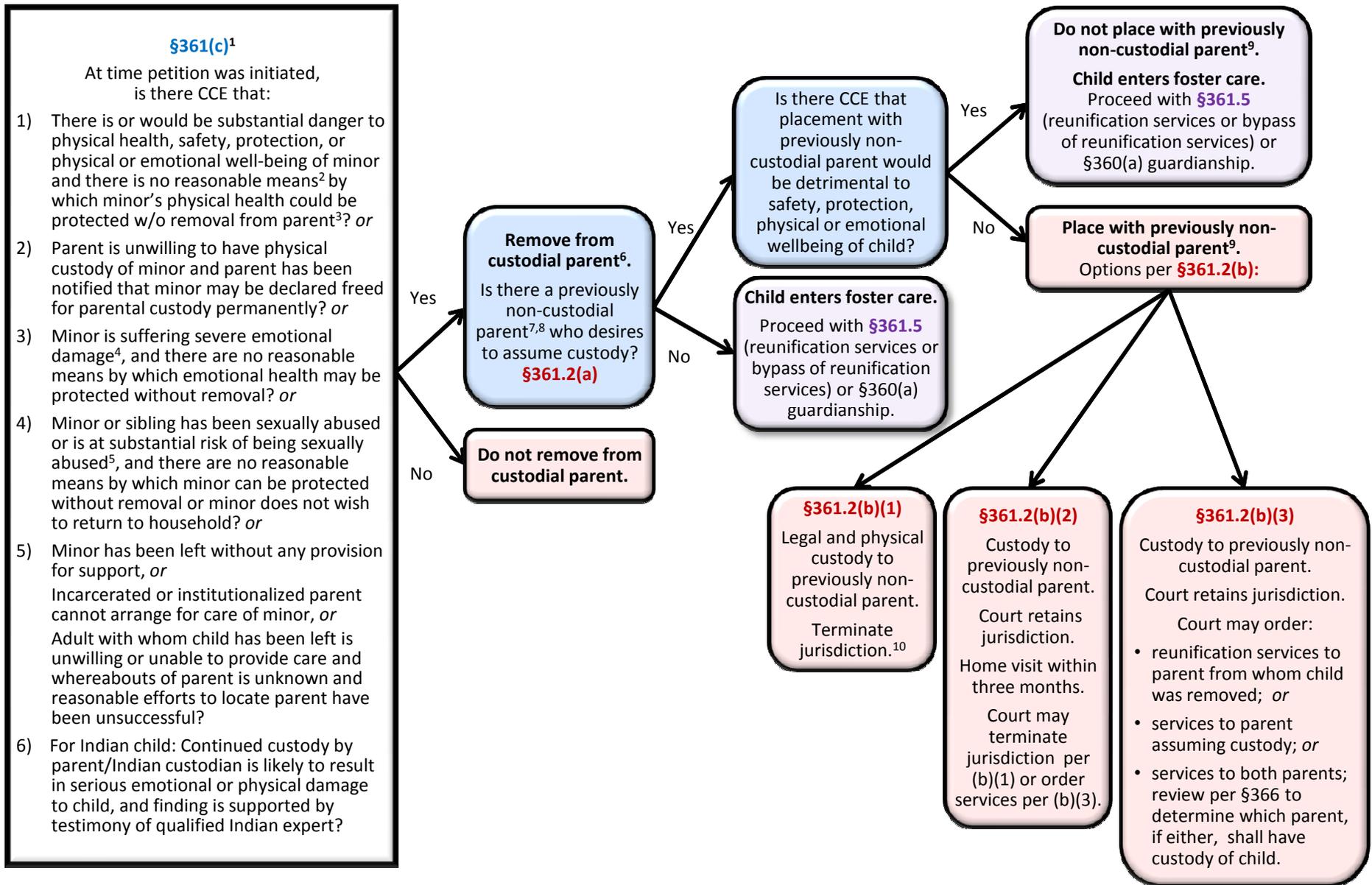


Disposition: custodial vs. non-custodial parents



Endnotes

1	All statutory references are to the Welfare and Institutions Code.	
2	Court shall consider, as reasonable means to protect minor, allowing nonoffending parent to retain physical custody as long as that parent presents a plan acceptable to court demonstrating he/she will be able to protect child from future harm.	§361(c)(1)
3	Parent or legal guardian.	
4	Severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior towards him/herself or others.	§361(c)(3)
5	By parent, guardian or member of household, or other person known to parent	§361(c)(4)
6	Court shall state the facts on which the decision to remove the minor is based.	§361(d)
7	Previously non-custodial parent is a presumed parent with whom child was not residing at time the events or conditions arose that brought child within provisions of §300.	§361.2(a)
8	Case law is split regarding whether parent requesting custody must be non-custodial <i>and</i> nonoffending, with the most recent cases finding that §361.2 does not require a parent to be nonoffending to request custody. Compare <i>In re D'Anthony D.</i> (2014) 230 Cal.App.4th 292, finding that §361.2 does not apply to a nonoffending parent only, and <i>In re Nickolas T.</i> (2013) 217 Cal.App.4th 1492, holding there is no implicit nonoffending parent requirement in section §361.2, with <i>In re A.A.</i> (2012) 203 Cal.App.4th 597, which read a nonoffending requirement into §361.2.	
9	The court shall make a finding either in writing or on the record of the basis for its determination placing or declining to place child with non-custodial parent.	§361.2(c)
10	Standard at dismissal is whether continued supervision under §361.2 is necessary, not §364 (family maintenance standard) whether conditions that justified taking jurisdiction in the first place still exist.	<i>In re Janee W.</i> (2006) 140 Cal.App.4th 1444

Remember:

- It is axiomatic that a court cannot award custody to a noncustodial parent without first removing the child from the custodial parent. Section 361.2 and California Rules of Court, rule 5.695 support this conclusion. (*In re Miguel C.* (2011) 198 Cal.App.4th 965)
- There are two separate statutory tracks for services: one when a child is placed with a noncustodial parent (§361.2), and another when a child is removed from parental custody and placed with someone other than a parent (§361.5). Services ordered under §361.2 are discretionary and are not expressly time-limited because the child remains in the custody of a parent and the goal of placing a child in parental custody has been met. The statutory time limit on reunification services did not begin until the child was removed from **both** parents' custody at disposition. (*In re T.W.*, (2013) 214 Cal.App.4th 1154)