



# Dependency Case Law Update

Hon. Shawna Schwarz  
Santa Clara County Superior Court

Beyond the Bench  
Dec. 17, 2019

## January 1 – December 6, 2019

<b>ICWA</b>	<b>UCCJEA / Hague</b>	<b>Parentage</b>
<ul style="list-style-type: none"> <li>• In re L.D.</li> <li>• Brackeev. Burnhardt</li> <li>• In re A.W.</li> </ul>	<ul style="list-style-type: none"> <li>• In re E.W.</li> <li>• In re D.R.</li> </ul>	<ul style="list-style-type: none"> <li>• Riverside v. Estabrook</li> <li>• County of LA v. Christopher W.</li> </ul>
<b>Jurisdiction</b>	<b>Disposition / Bypass</b>	<b>Restraining Orders</b>
<ul style="list-style-type: none"> <li>• In re Auger S.</li> <li>• In re L.W.</li> <li>• In re L.C.</li> <li>• In re J.M.</li> <li>• In re I.I.</li> </ul>	<ul style="list-style-type: none"> <li>• In re Harley C.</li> <li>• In re A.E.</li> <li>• In re I.A.</li> <li>• In re M.S.</li> <li>• In re Adam H.</li> <li>• In re J.A.</li> </ul>	<ul style="list-style-type: none"> <li>• N.T. v. H.T.</li> <li>• In re A.M.</li> <li>• IRMO Ankola</li> </ul>
<b>Reasonable Services</b>	<b>Visitation</b>	<b>NMD</b>
<ul style="list-style-type: none"> <li>• In re M.F.</li> </ul>	<ul style="list-style-type: none"> <li>• In re J.P.</li> </ul>	<ul style="list-style-type: none"> <li>• In re Nicole S.</li> </ul>
<b>Placement</b>	<b>388 Petition</b>	<b>366.26 / TPR</b>
<ul style="list-style-type: none"> <li>• In re Charlotte C.</li> <li>• In re K.T.</li> </ul>	<ul style="list-style-type: none"> <li>• M.L. v. Superior Court</li> <li>• In re J.F.</li> </ul>	<ul style="list-style-type: none"> <li>• In re Caden C.</li> <li>• In re B.D.</li> <li>• In re L.M.</li> <li>• In re H.D.</li> </ul>
<b>Term of Jurisdiction, Custody</b>	<b>Evidence</b>	<b>Benefits: AAP / IEP</b>
<ul style="list-style-type: none"> <li>• In re N.O.</li> <li>• In re C.W.</li> <li>• In re J.R.</li> <li>• In re C.M.</li> </ul>	<ul style="list-style-type: none"> <li>• In re D.D.</li> <li>• In re A.C.</li> <li>• People v. Keo</li> </ul>	<ul style="list-style-type: none"> <li>• BH v. Manhattan Beach</li> <li>• CA Dept. of Social Svcs v. Marin</li> </ul>



## Topics....

ICWA	UCCJEA / Hague	Parentage	Jurisdiction	Disposition / Bypass
Restraining Orders	Reasonable Services	Visitation	NMD	Placement
388 Petition	366.26 / TPR	Term of Jurisdiction, Custody	Evidence	Benefits: AAP / IEP

## In re L.D.

**ICWA**

- Child may be Alaskan
- Finding: notice proper
- Later RO
- Gun surrender hearing
- Mom appealed from gun hearing
- Appellate brief: ICWA
- Dept concedes bad notice

**§224.3(a):**  
ICWA notice is required for “hearings that may culminate in order for foster care placement, TPR, preadoptive placement, or adoptive placement.”

## In re L.D.

**ICWA**

But don't forget notice before .26...

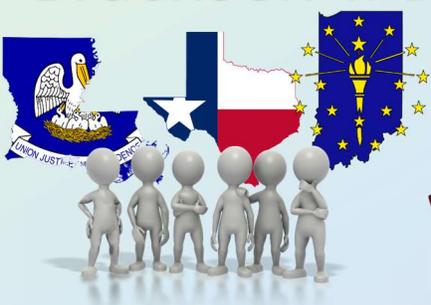
**Gun surrender hearing not premised on ICWA.**

**ICWA challenge was untimely.**

ICWA notice is not required for restraining order hearing.

Appeal dismissed

# Brackeen v. Bernhardt



VS.



**ICWA**



Dist Ct: summary judgment for plaintiffs. ICWA & 2016 Final Rule violate:

Equal protection

Nondelegation doctrine

Tenth Amendment

Administrative Procedures Act



# Brackeen v. Bernhardt

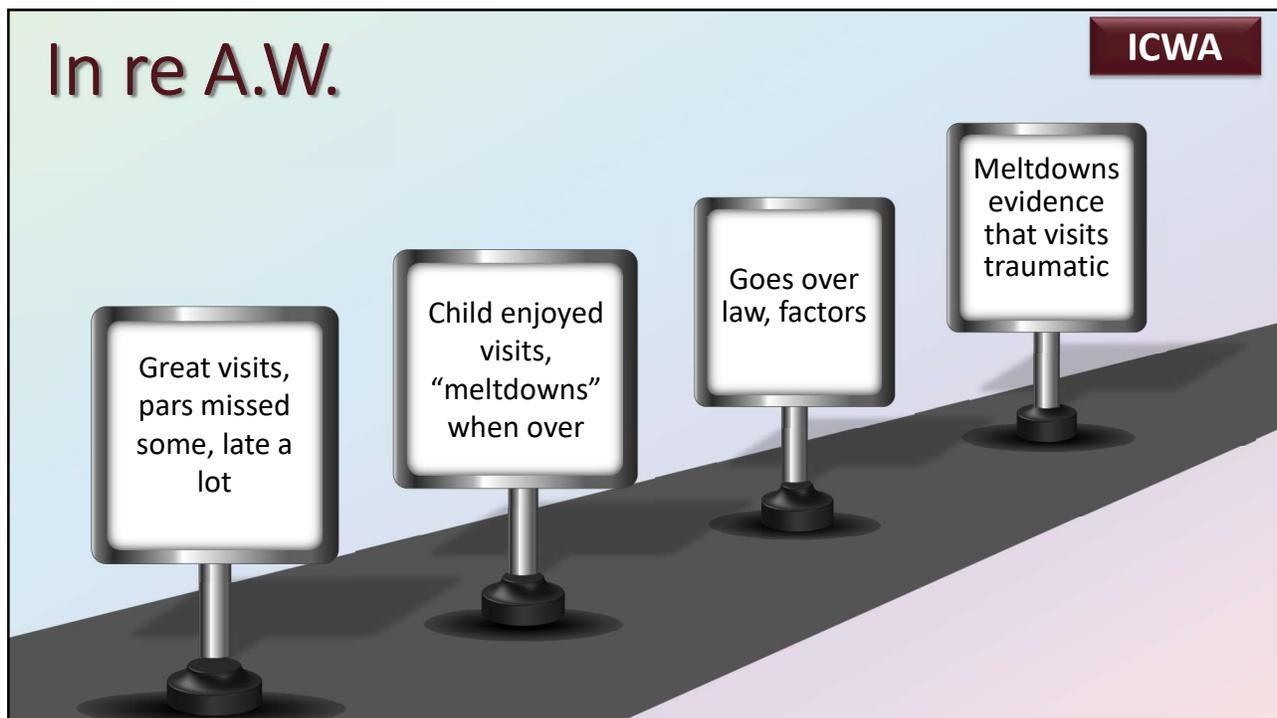
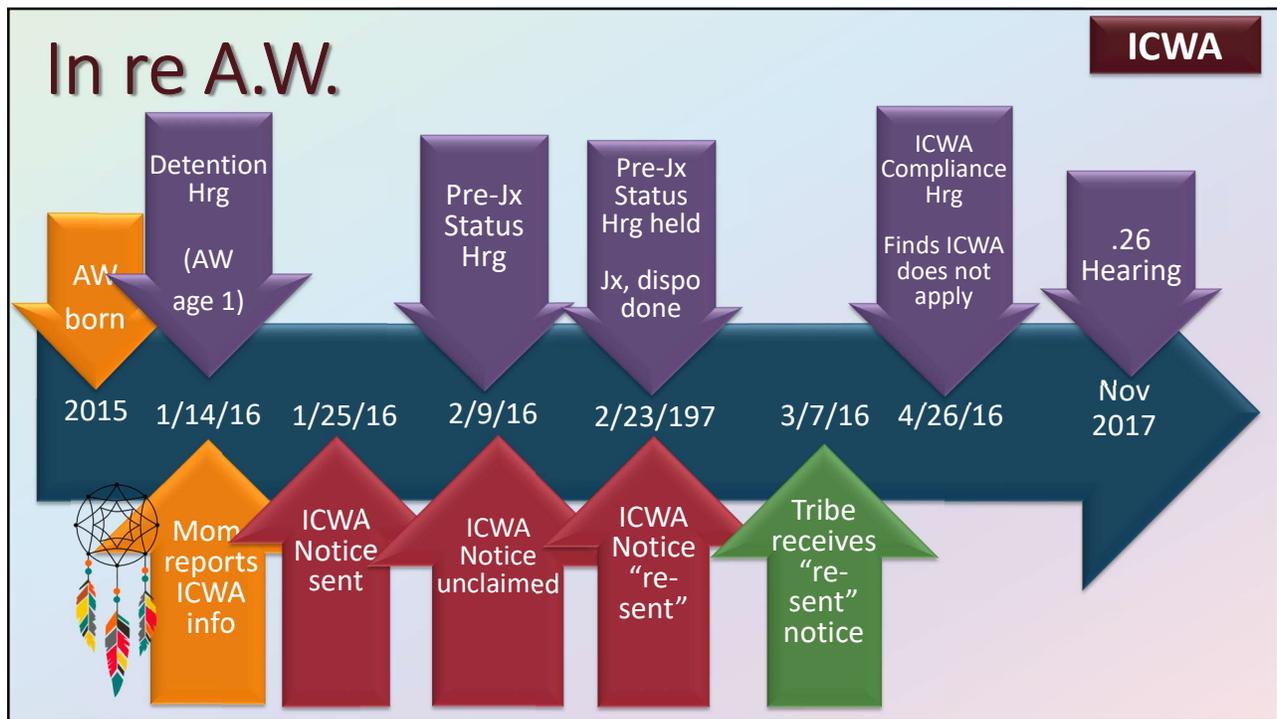
**ICWA**

**Affirmed** → Plaintiffs have standing to appeal

**Reversed** ← Reverse grant of summary judgment; judgment for defendants

- “Indian child” – political classification; rational basis review; no Equal Protection violation
- ICWA preempts conflicting state law
- Tribe’s different placement order is not unconstitutional delegation of legislative power

ICWA is constitutional.



**In re A.W.** **ICWA**

**Pars:**  
county/court failed to  
comply w/ ICWA notice,  
TPR error

**County:**  
various arguments challenging  
case law, harmless error

**In re A.W.** **ICWA**

**Juris, ripeness, standing**

Appeal improper remedy;  
ptn for invalidation is  
exclusive remedy

**NO**

Pars no standing; only  
available for pars of Indian  
children, not potential  
Indian children

**Timeliness / forfeiture**

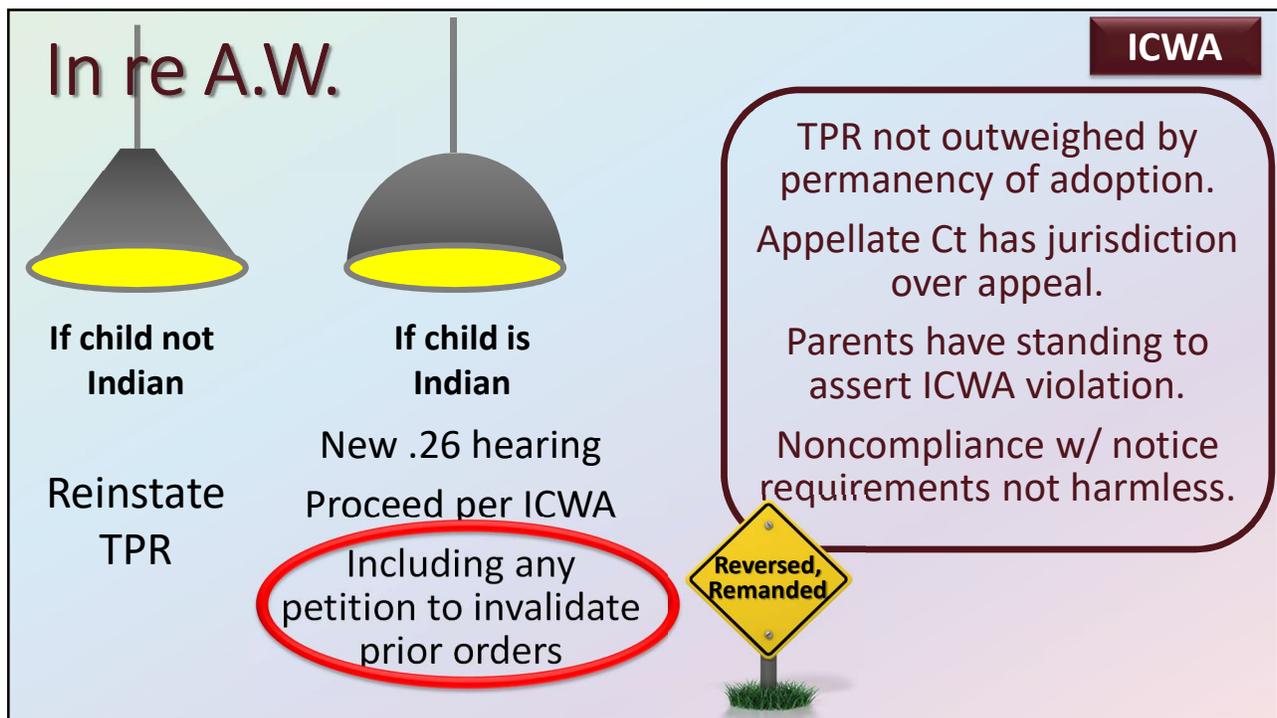
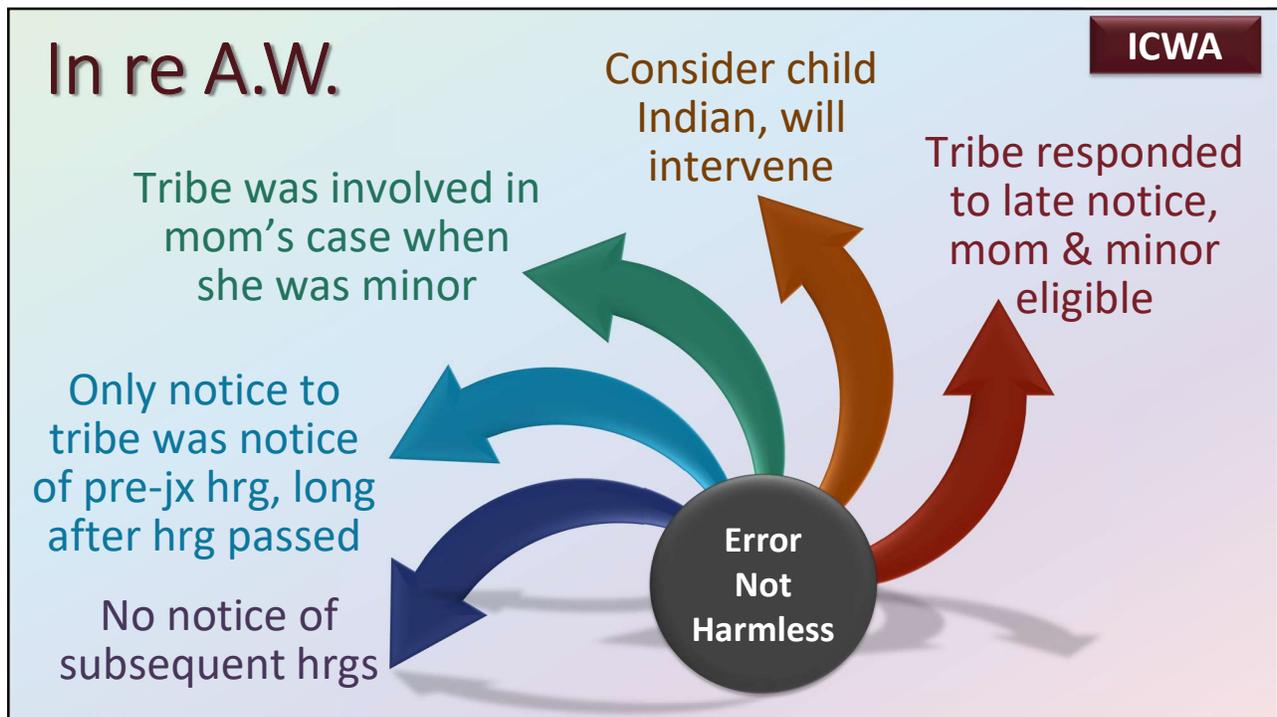
Re-examination forfeiture doctrine

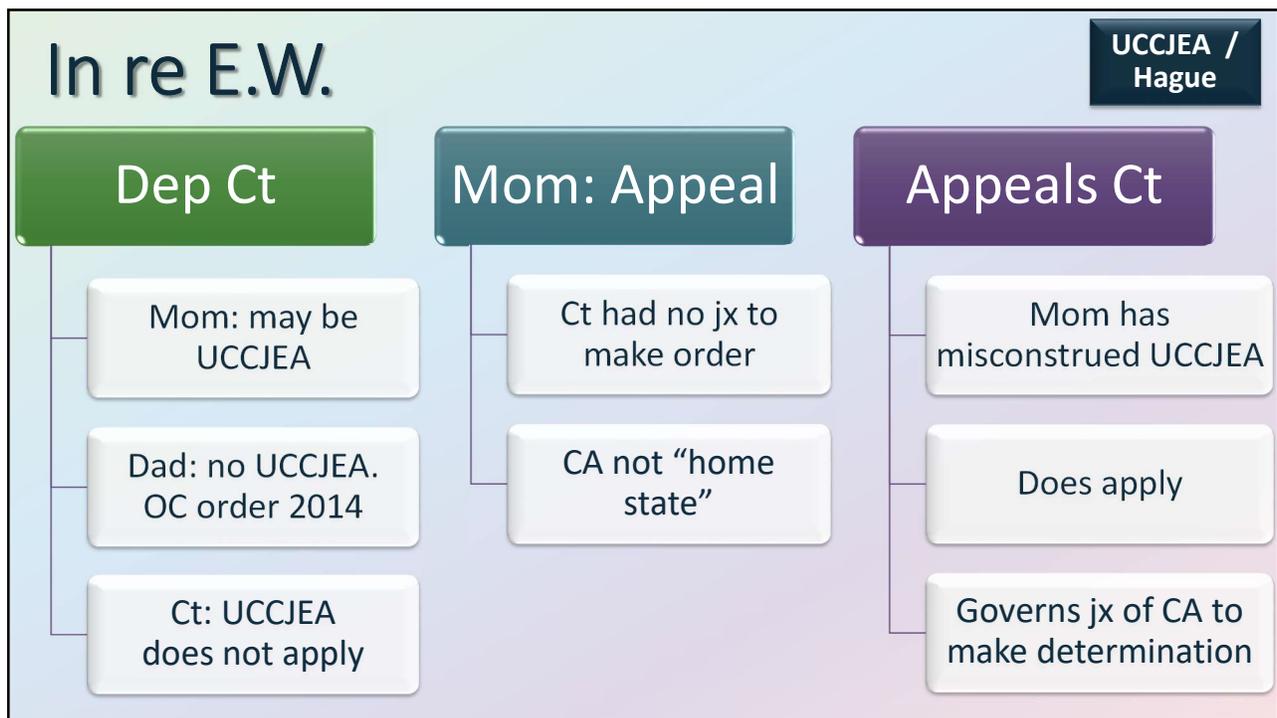
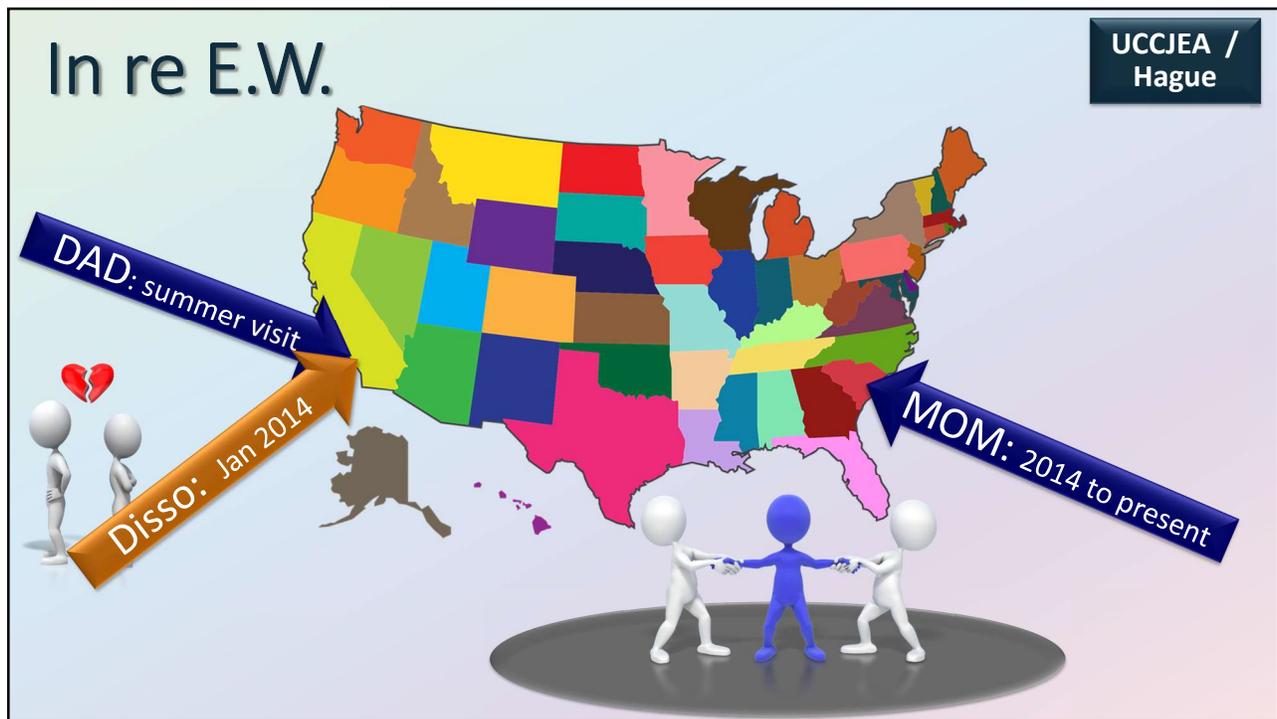
**NO**

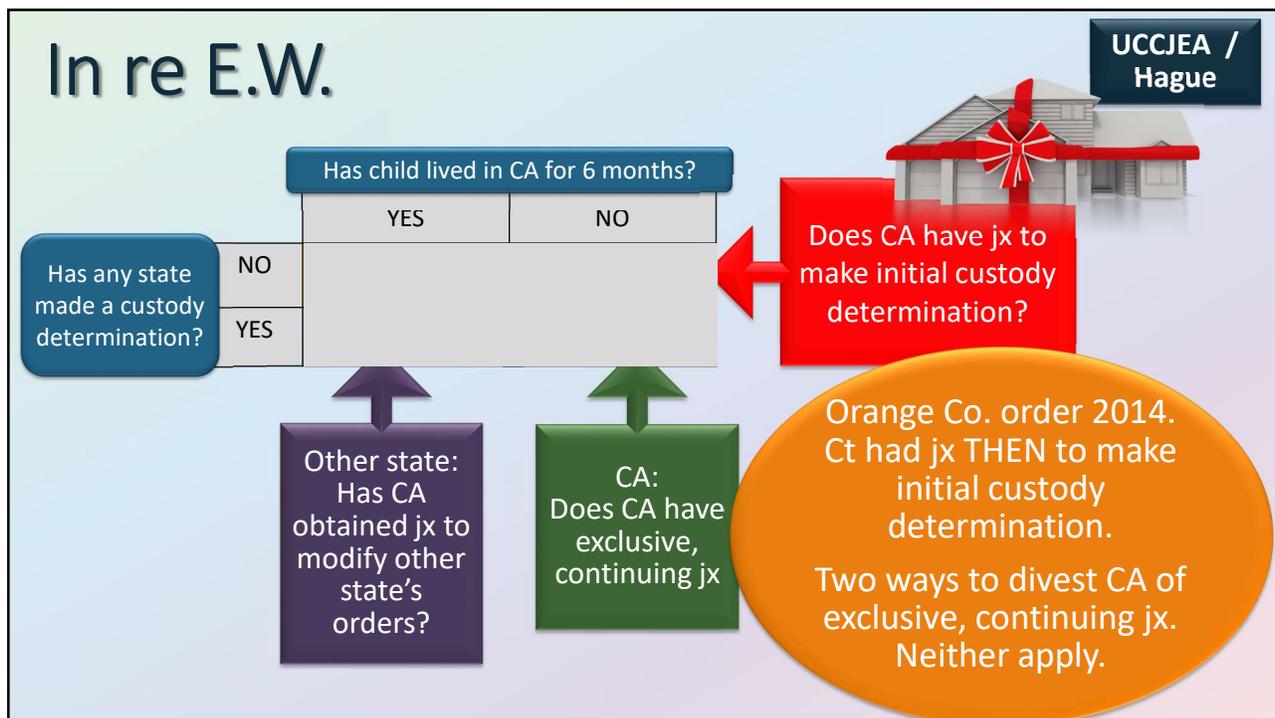
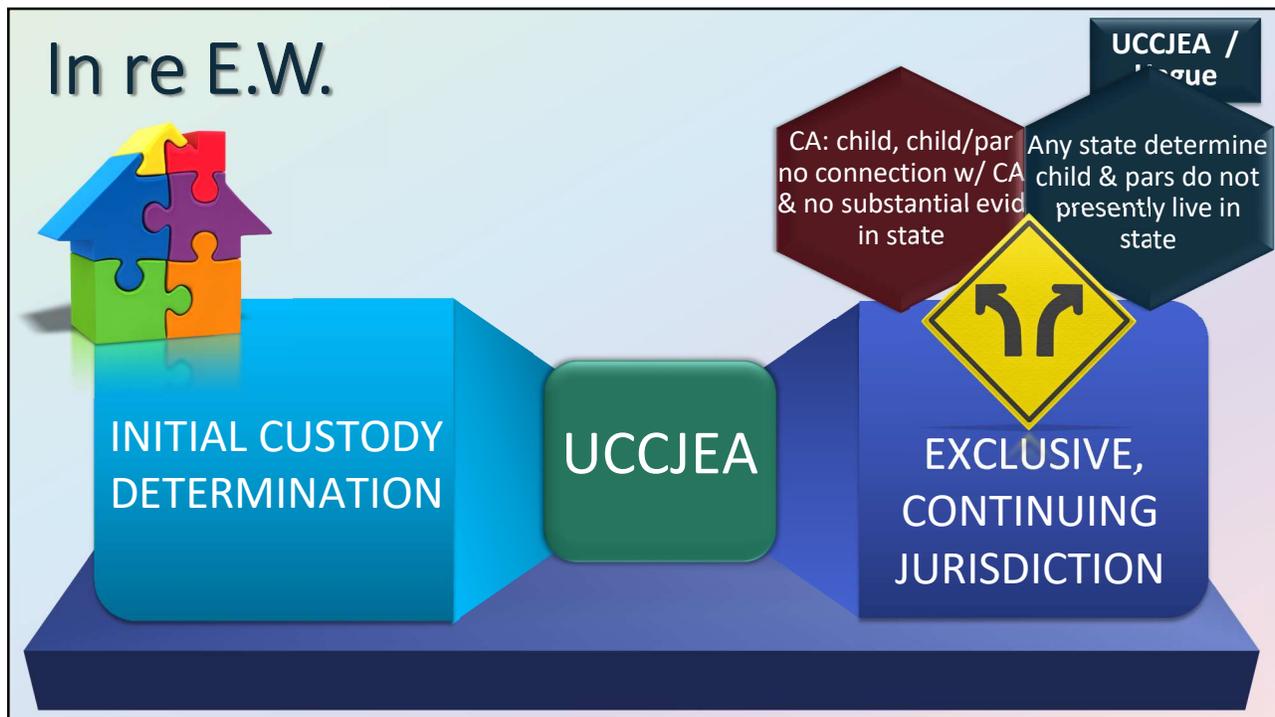
**Notice requirement**

Need notice only when ct knows  
or has reason to know child is  
definitively a member.

**NO**







# In re E.W.

UCCJEA / Hague



UCCJEA takes a first in time approach.



Home state at time *DEPENDENCY* began irrelevant because CA had **EXCLUSIVE, CONTINUING JURISDICTION.**



State that made initial custody determination has exclusive, continuing jurisdiction.

# In re D.R.

UCCJEA / Hague



Notice:



.26 Hrg



388 ptn: vacate jx/dispo for lack of notice.

Court denies. Dad appeals.

# In re D.R.

Agency didn't follow up w/ adult kids, most likely means to notify dad

Only when whereabouts unknown despite "reasonably diligent inquiry"

**Reversed, Remanded**

Findings re dad reversed. Commence de novo w/ adjudication after proper notice

Notice by publication invalid because no due diligence when Dept didn't try the method most likely to reach dad. Hague applies, no compliance, automatic reversal.

**APOSTILLE**  
(Convention de La Haye du 5 octobre 1961)

- Country: Norway
- This public document has been signed by Per Nordstrand
- acting in the capacity of notary public
- bears the seal/stamp of Notarius Publicus in Holstevoll

Certified

- at Bergen
- the 28.04.2004
- by the Governor of the County of Hordaland
- NO. 222/2004
- Seal/Stamp
- Signature: Jan Erik Øksnes

**UCCJEA / Hague**

Agency didn't comply w/ Hague Service Convention – required because dad resident of Mexico

# Riverside v. Estabrook

**Parentage**

**Atty Dec:**  
 H married to mom at time of conception & birth.  
 H present at birth.  
 H on birth certificate.  
 H signed birth certificate.  
 Mom and H cohabiting at time of conception.

**Non-paternity, please**

**\$7540**

- \$7540 presumption is automatic
- No genetic testing
- Judgment of nonpaternity

**APPEAL**

Genetic test per §7552  
 No judgment of non-paternity  
 No §7540 as shield

# Riverside v. Estabrook

Parentage

Dad's dec doesn't provide necessary facts.

Atty didn't say how he got knowledge of facts.

No authenticated birth certificate, marriage certificate, or VDOP



Moot

## No evidence of solid value



Error to not order genetic tests when Fam Code §7551 factors are met. No substantial evidence of marital presumption. Non-paternity judgment not supported by substantial evidence.

# County of L.A. v. Christopher W.

Parentage



**Chris**

3x





**Colin**

No overnights first two years.



Colin never represented himself as father, but 8 Facebook posts...



**Chris**

Mom, Colin & County disagreed.



**Colin is §7611(d) presumed; Facebook. Chris §7555 presumed, genetic testing. Chris' presumption easily overcome based on lack of relationship.**

Colin is dad. Chris is not. Mom appealed.

# County of L.A. v. Christopher W.

Parentage



Error to find Chris' presumption of bio paternity was overcome by lack of relationship.

Bio paternity rebutted any §7611(d) presumption.

Obligation of fatherhood should not be forced upon unwilling, unrelated candidate.

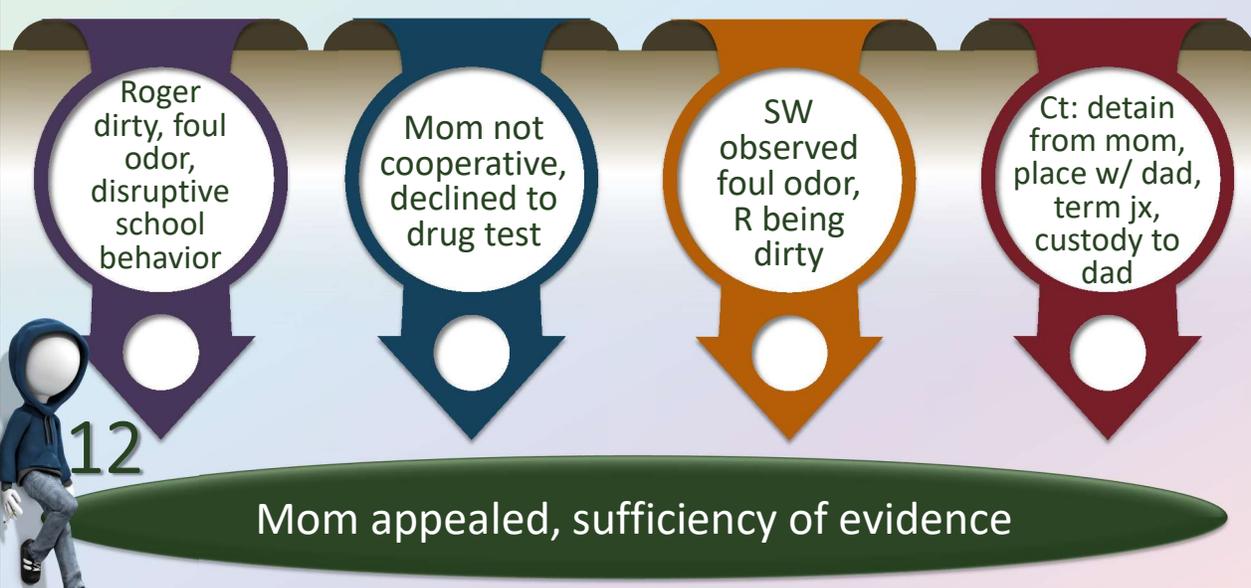
Error to relieve bio dad of responsibility by appointing unwilling presumed father.

Reversed

Bio father cannot assert §7611(d) presumption to have another man adjudged presumed father.

# In re Roger S.

Jurisdiction



Roger dirty, foul odor, disruptive school behavior

Mom not cooperative, declined to drug test

SW observed foul odor, R being dirty

Ct: detain from mom, place w/ dad, term jx, custody to dad

12

Mom appealed, sufficiency of evidence

## In re Roger S.

Jurisdiction



- §300(b)(1) requires child suffered, at risk to suffer, serious physical harm or illness
- Roger never suffered physical harm, illness due to mom's conduct
- No nexus between mom's conduct & risk of harm, so jx/dispo reversed
- Remanded to family court for hearing on custody and visitation.

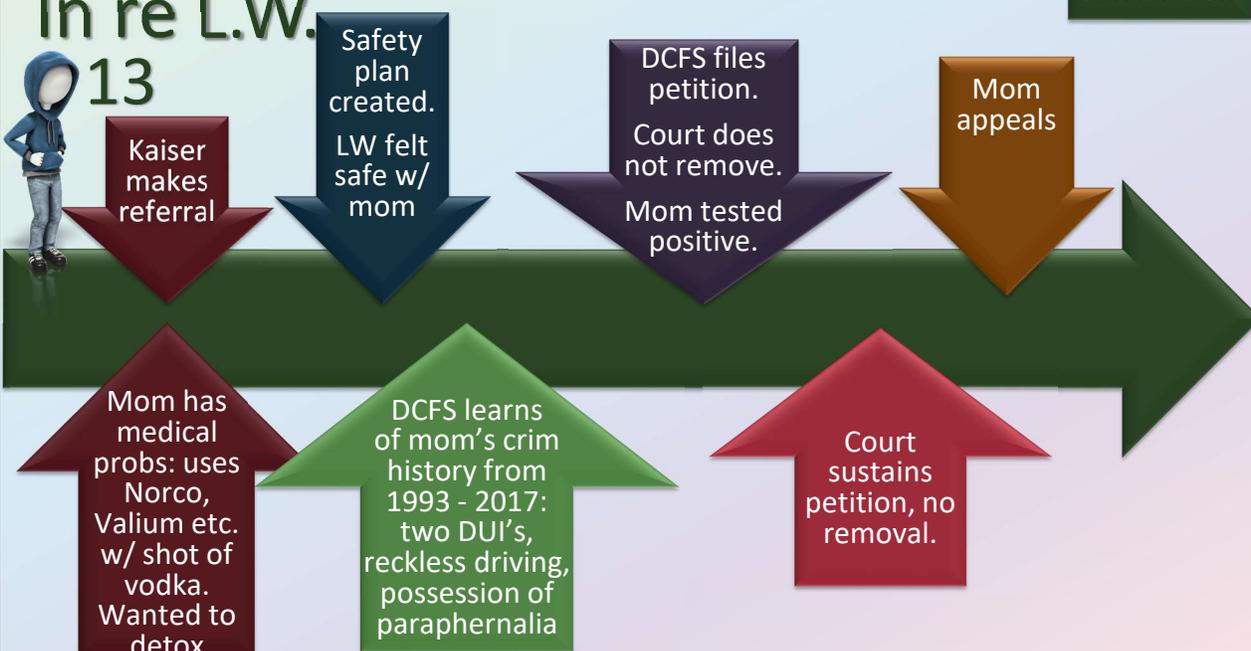
Pending Fam Ct hearing, current custody arrangement remains in place – to avoid undue confusion and disruption to Roger.



Foul odor and smelly, undersized clothing do no place child at substantial risk of suffering serious emotional harm or illness.

## In re L.W. 13

Jurisdiction



```

    graph TD
      A[Kaiser makes referral] --> B[Safety plan created. LW felt safe w/ mom]
      B --> C[DCFS files petition. Court does not remove. Mom tested positive.]
      C --> D[Mom appeals]
      D --> E[Large green arrow pointing right]
      F[Mom has medical probs: uses Norco, Valium etc. w/ shot of vodka. Wanted to detox] --> G[DCFS learns of mom's crim history from 1993 - 2017: two DUI's, reckless driving, possession of paraphernalia]
      G --> H[Court sustains petition, no removal.]
      H --> E
  
```

## In re L.W.

Jurisdiction

DCFS needs: 1) neglectful conduct; 2) causation; 3) serious harm or substantial risk of serious harm

Court doesn't accept that "risk to child of being cared for by under influence parent is not speculative." Where is causation?

Cannot presume physical harm from parent's substance abuse.

All agree no past harm based on mom's substance abuse.

But LW is at risk of harm. Recent DUI arrests and reckless driving provide nexus between risk of future harm and mom's SA.

This is not Drake M., "substance abuse w/o more"

Reasonable to infer that safety problems posed by mom's SA will continue to multiply until her SA is resolved.

**Affirmed** →

Jurisdiction is proper where mom admitted cocaine use and had reckless driving conviction and DUI arrests shortly before dependency petition.

## In re L.C.

Jurisdiction

Pedro, guardian

Lied to SW about use

Stayed in hotel

LC is 6

Tested for meth 2x

Used 6-7x in 9 mos

Arranged for care

Used profanity to SW.  
 Appeared to be under influence to SW.  
 Lied, told SW he never used.  
 Unavailable to L when he used.  
 Jx under §300(b)(1)



(b)(1)  
 ... at risk of serious physical harm ... due to ... substance abuse

In re L.C.  
**Pedro:**  
**No substantial evidence:**

**Jurisdiction**

Substance abuse

Relies on  
 Alexzander C. (2017)  
 Sub abuse shown by:  
 Dx from med profl  
 or  
 evid of criteria recognized  
 by med profession as  
 indicative of SA disorders

L at risk of serious phys harm bc of P's meth use

In re L.C.

**Jurisdiction**

Substance abuse

L at risk of serious phys harm bc of P's meth use

**Use ~~=~~ Abuse**

7x in 9 mos      No cravings

Didn't buy it

Did caretaking w/ no prob

Didn't give up socl, occpl, rec activities

FAT

Left L in care of good caretaker

Didn't ignore par responsibilities

Didn't keep meth in home

Phys harm not presumed from substance abuse

Homework issues don't rise to level of physical harm

## In re L.C.

Jurisdiction

1

Pedro's use of meth, w/o more, cannot support jx

3

Here, no evidence of SOMETHING MORE

What about §300.2?

"Provision of home free from negative effects of **substance abuse** is necessary condition for safety, protection, and physical and emotional well-being of child."

Because no evidence of substance **ABUSE**, inapplicable.

No Rocco M....

2

USE or ABUSE, w/o more, insufficient for jx

Occasional methamphetamine use outside the home, when child is safe in care of another, does not support jurisdiction.



## In re J.M.

Jurisdiction

Referral: pars physically fighting, selling drugs, yelling at 2 and 3 yr old kids. (fall 2017)

Petition filed, kids stay w/mom.  
Mom tested pos, detention order.  
Mom absconds w/kids.

Gone 9 mos.  
When back, pars uncooperative, uncommunicative, unavailable.  
Refuse to drug test.

Juris hrg yr later.  
Ct: evidence stale; need current risk.  
Dismissed petition.

DCFS requested stay.  
Filed writ of supersedeas.

# In re J.M.

Jurisdiction

-  Gen rule: for (b)(1) risk of harm, need curr risk at time of hearing
-  Cannot use “at time of hearing” rule as sword, rather than shield
-  “At time of hearing” rule: wrongful conduct cannot cause delay
-  Encourage pars to defy court orders, prevent efforts to monitor kids
-  Evidence of current risk anyway; kids still tender age.

It is error to dismiss petition based on lack of current evidence of harm when that lack is due to parent absconding w/ children and preventing SW from monitoring children’s welfare.



# In re I.I.\*

Jurisdiction

**Does §300(f) require current risk?**

**Dad appealed.**



2011, one twin died.  
§300(f) sustained

Pars failed FR; surviving twin adopted

Minors I.I. & M.I. born 2016 & 2017

2 yr old I.I. to hospital, possible sexual abuse

§300(b,f,j) petitions filed.  
Kids released to pars at detention

Jx/Dispo: Ct said no current risk, sustained ptn, FM to pars

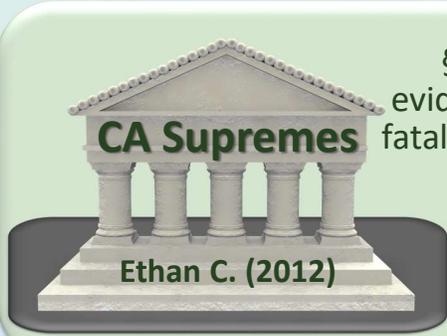
Nov. 2010: 4 mo old twins to hospital, shaken

## In re I.I.\*

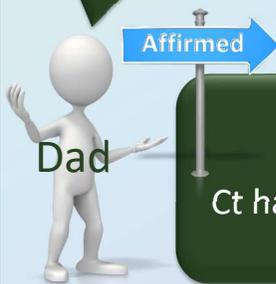
**Jurisdiction**

§300(f) does not require evidence that circumstances of fatality demonstrate current risk to surviving children.

If §300(f) facts exist, that risk is enough to warrant jurisdiction.



Discretion to dismiss.  
No evidence kids at risk of harm due to prior case of twins.



**Appellate Ct:**  
Jx and Dispo are separate.  
Ct has no discretion re jurisdiction where uncontroverted evidence.  
Ct has discretion re disposition order.

Where §300(f) facts are true, court is required to assert jurisdiction.

## In re Harley C.

**Disposition**





- Social worker
- Mom
- Dad
- Therapist
- Kid

## In re Harley C.

Disposition

Cts have inherent & statutory and rule-making authority to exercise reasonable control over proceedings.

Not boundless authority.  
No rules inconsistent with law, Rules of Court.  
Weigh impact on constitutional rights.



Procedures to adopt local rules.  
No indication court followed procedures.  
Rule invalid.

Excluding all of mom's evidence because she didn't follow local rule regarding filing of witness list was disproportionate sanction.

## In re A.E.

Disposition

6 kids, ages 3-10

Contested Dispo:  
(b)(5) bypass for AE,  
(b)(6) bypass for other kids.

Serious physical injury to AE  
by adoptive parents.

Ct: FR in kids' BI

Kids have special needs.  
Multiple placements bef adoption.

Kids appeal.

## Disposition

# In re A.E.

- Discretion re FR in child's BI, but abuse of discretion if no subst evid
- Pars' denial shows unlikely future progress in treatment
- Ct rejects argument that denial rooted in 5<sup>th</sup> Amendment
- Kids closely attached to pars not subst evid services will prevent re-abuse
- 1<sup>st</sup> impression: "competent testimony" refers to in-court, oral testimony

"Testimony" in §361.5(c)(3) refers to in-court, live testimony. Parents' complete denial of abuse may be evidence that services are unlikely to prevent re-abuse.



## Disposition

# In re I.A.



Somebody please appeal! There is a split in authority.

2015 IA, Isa removed (mom)

2017 IA, Isa removed (dad)

2018 IA, IsA, AA removed (mom)

Rec = (b)(10) bypass

Ct: FR not in kids' BI

Bypass for AA, sibs had TFR

FR for IA, IsA, begrudgingly

IA, IsA no sibs w/ TFR

## Disposition

# In re I.A.

Appellate Ct: §361.5(b)(10) – ambiguous on face.

Are IA & IsA sibs of each other?  
If so, no (b)(10) for only-children

Legislative intent favors bypass all 3:  
“reasonable, commonsense interpretation consistent w/ legislative intent ... practical rather than technical manner, **choosing wise policy over absurd result.**”

### Split in authority:

<ul style="list-style-type: none"> <li>• 1st Dist. <i>Gabriel K.</i> (2012)</li> <li>• 4th Dist., Div. 2 <i>In re I.A.</i> (2019)</li> </ul>	<ul style="list-style-type: none"> <li>• 4<sup>th</sup> Dist, Div. 1 <i>In re B.L.</i> (2012)</li> <li>• 3<sup>rd</sup> Dist. <i>In re J.A.</i> (2013)</li> </ul> <p>But no sibs ...</p>
<p>Applies to “same child”</p>	<p>May NOT apply to same child</p>

Bypass per §361.5(b)(10) may apply to the “same child.”  
But beware split in authority....

## Disposition

# In re M.S.

Baby born pos tox.  
Investigation: mom gives Mexicali address, phone number.

Dept: tries DIF, consulate, no follow-up.

Mom appears detention.

Jx/Dispo cont'd for UCCJEA.

At Jx/Dispo, mom appears, verifies Mexicali address.

Jx/Dispo 11 mos later.

Rec = (b)(1) bypass.

Tried calling mom few times, checked jails, hospitals.

Juv Ct: found due diligence, ordered (b)(1) bypass, set .26. At .26 hearing, TPR.

## In re M.S.

Disposition

**Appellate Court reversed ALL decisions.**

Mom's whereabouts were NOT unknown

Mom appeared in court, visits. Dept. failed to work w/ DIF & consulate.

Ct should not have set .26. For (b)(1) bypass, set 6 month review.

Harmless error inapplicable; mom deprived of fundamental right. And not harmless.

(b)(1) bypass not supported when Dept. had mom's address and valid phone number, mom came to some hearings and visits, and Dept. never asked DIF to help contact mom.

## In re Adam H. \* 14

Disposition

**§361(c) – remove from both.  
Dad is noncustodial.**

**"Premature to "return" Adam to dad given no history of relationship.**

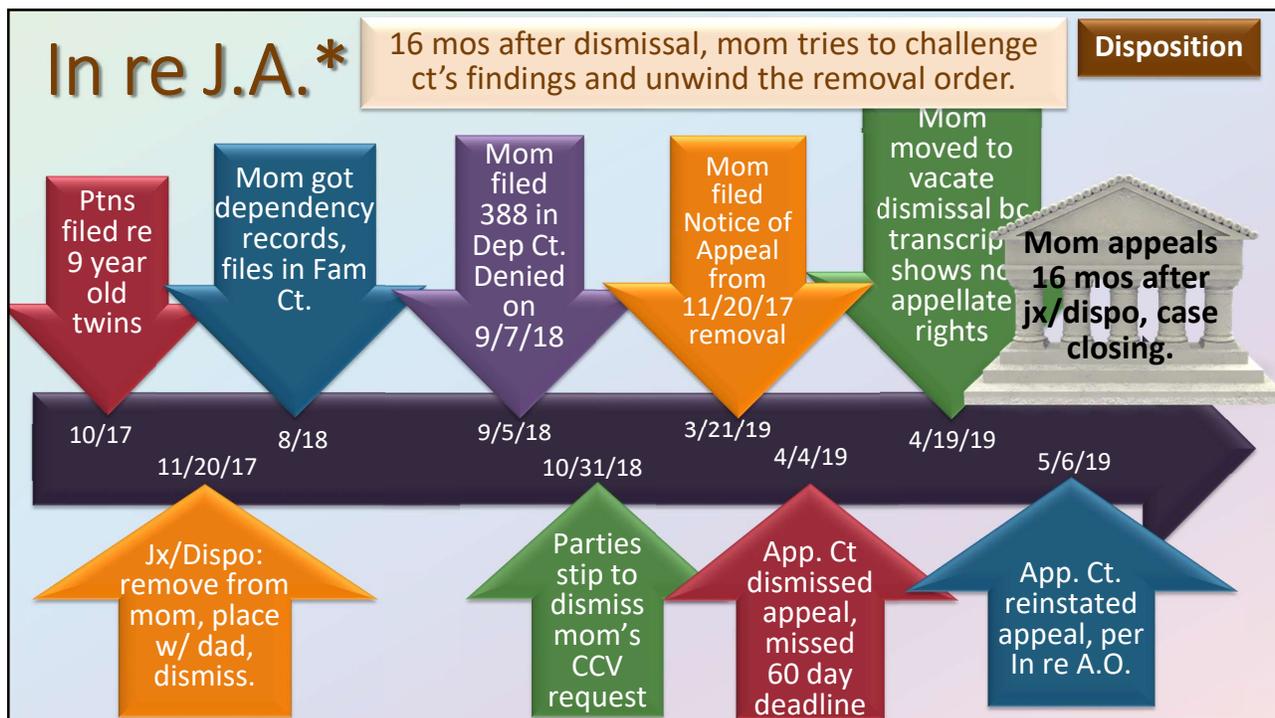
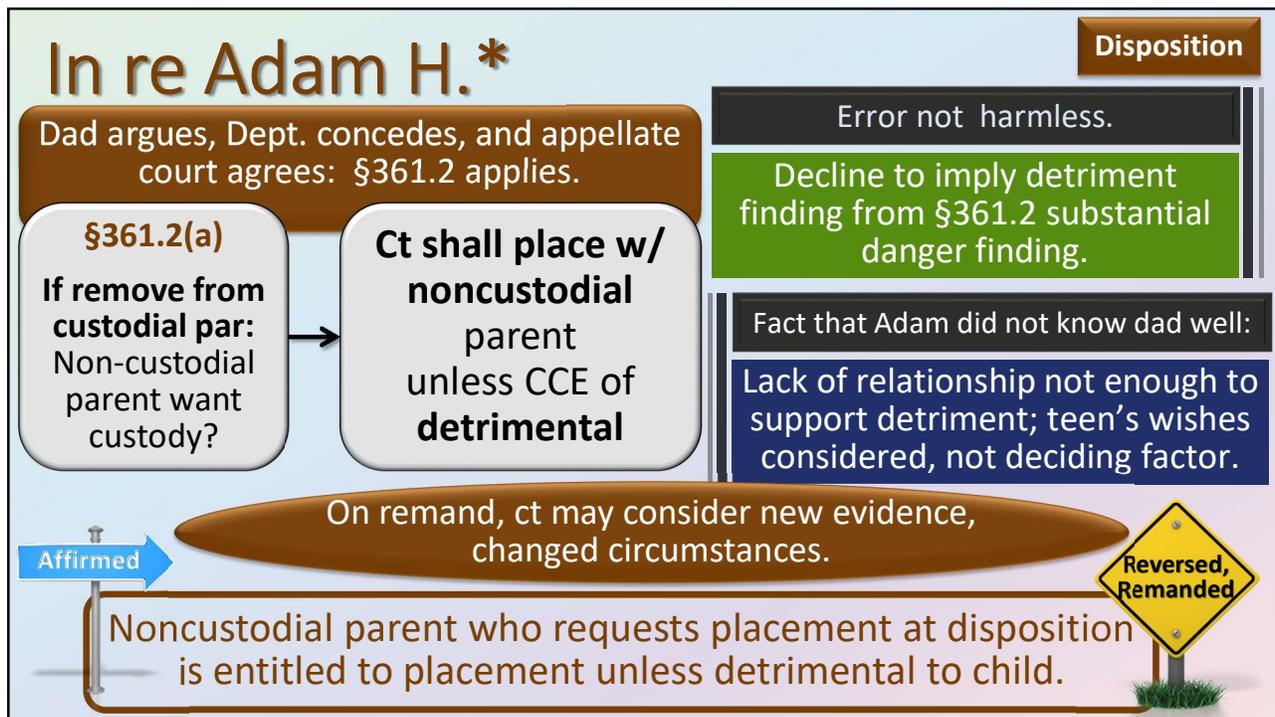
Detain from mom; abuse, drugs. Dad WU at detention.

Dad found; Adam says he doesn't know him. Last saw dad 8 yrs ago.

Dad started visits, went well; Adam enjoyed but said don't know dad.

J/D Hrg, Ct dismissed allegation re dad, who asked for custody, no detriment.

SW & Adam said premature to place w/ dad.



## In re J.A.\*

Disposition

No jurisdiction to consider late appeal

Consequences not remediable

Attorney's inexperience no excuse

Purpose is finality, security

A.O. distinguishable




Failure to advise parent of appellate rights does not excuse 16 month delay in appealing dismissal of dependency case.

## N.T. v. H.T.

Restraining Orders

W got TRO vs. H, wanted DVRO.

H refused to give W child unless W interacted w/ H.

H requested physical contact w/ W.

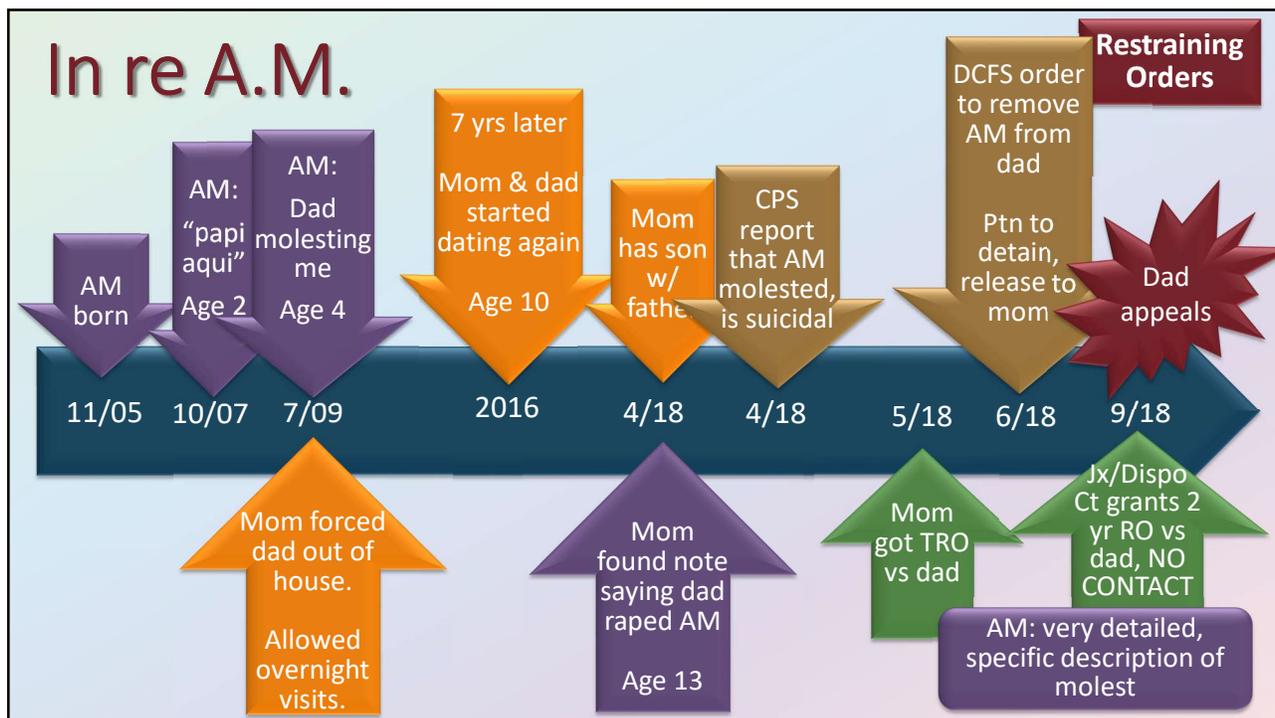
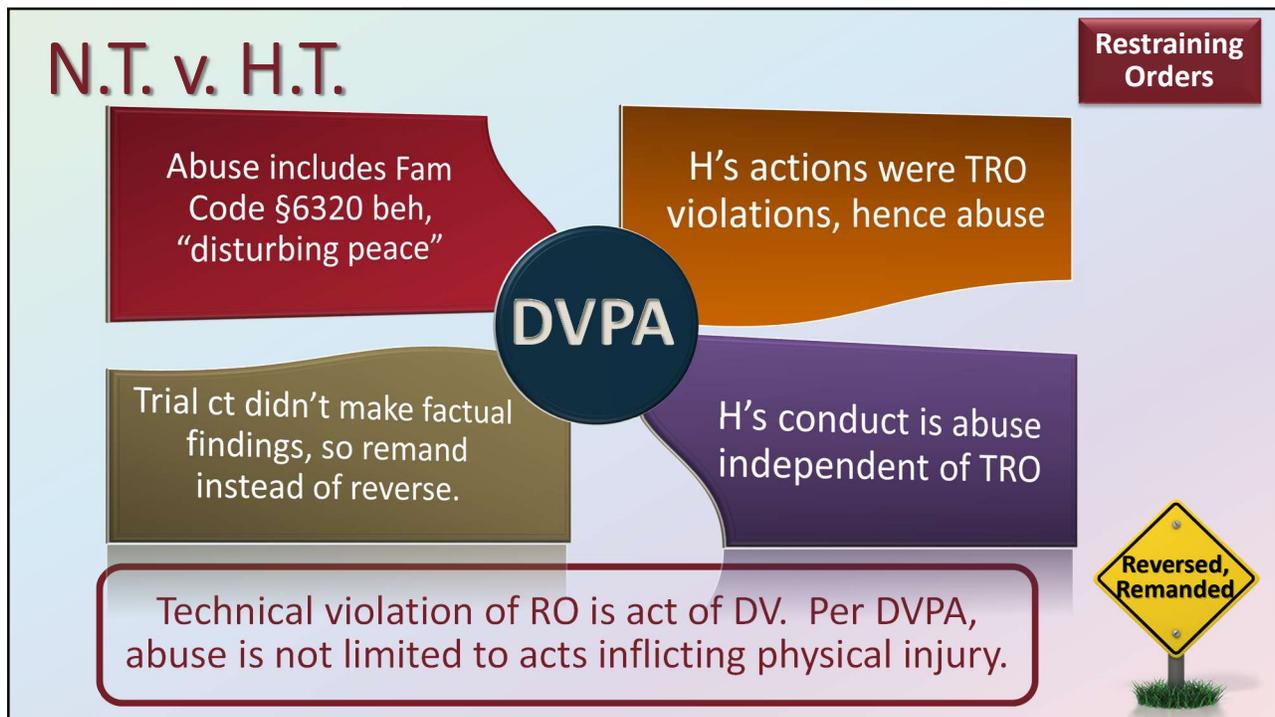
H wrote letter to W, put it in diaper bag.

H drove to W's apt.

Ct denied DVRO:

Technical violation of RO not act of DV.

No DV unless violation of TRO constitutes DV.



## In re A.M.

Restraining  
Orders

### Dad's arguments:



No evid that restricting all communication necessary



AM: mental resiliency despite sexual abuse



Dependency presumes if "non-severe" abuse, can protect w/o no contact

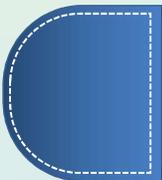


If FR, visits. Not enough for bypass bc not severe sex abuse.

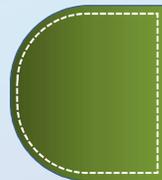
## Juv RO reviewed for abuse of discretion

## In re A.M.

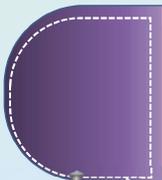
Restraining  
Orders



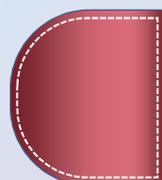
OK to proscribe ALL contact: dad groomed, abused over many years, denied. Risk it would continue if any access.



Bypass argument fails: mom getting FM, so no FR for dad anyway.



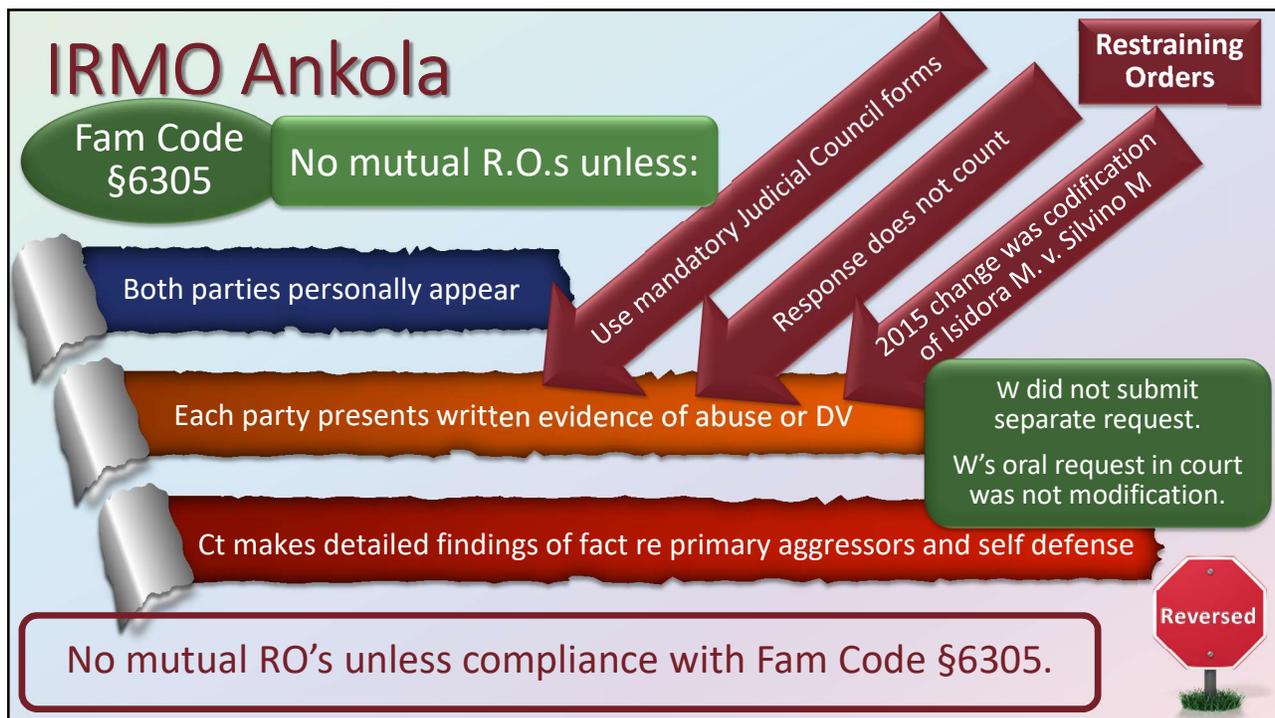
Argument that abuse not "severe" because over clothing waived, not raised below.

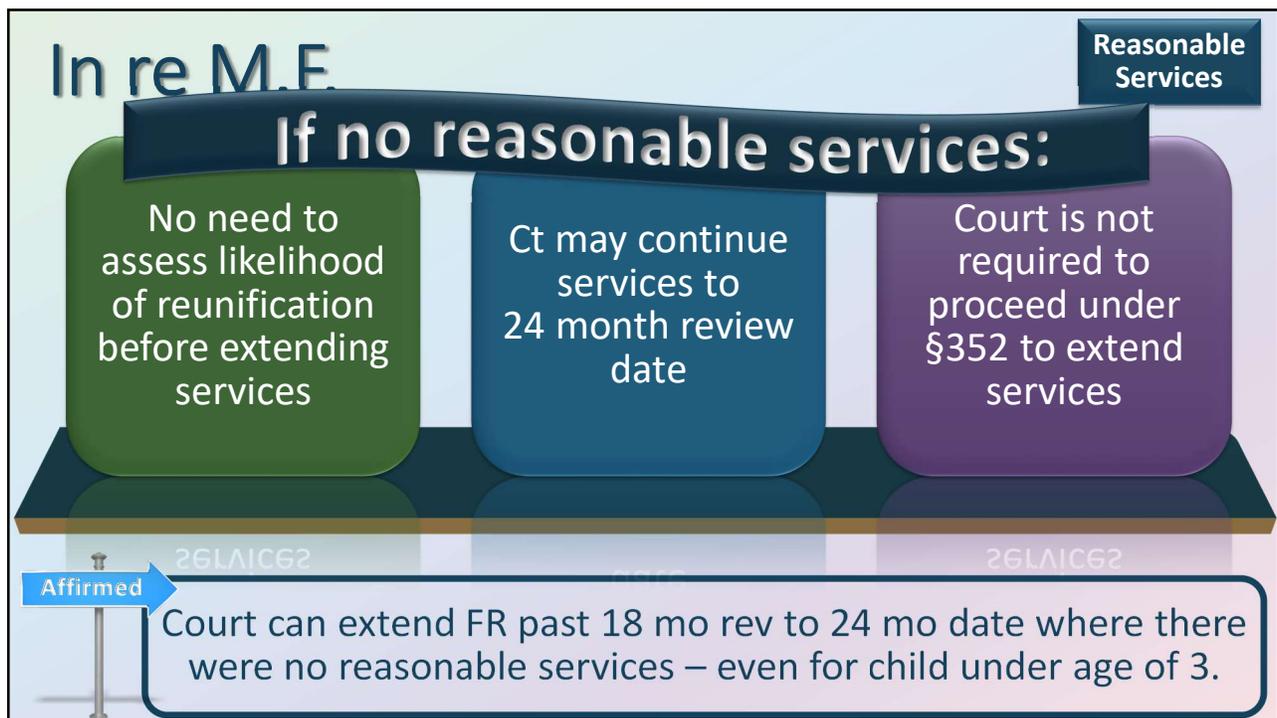
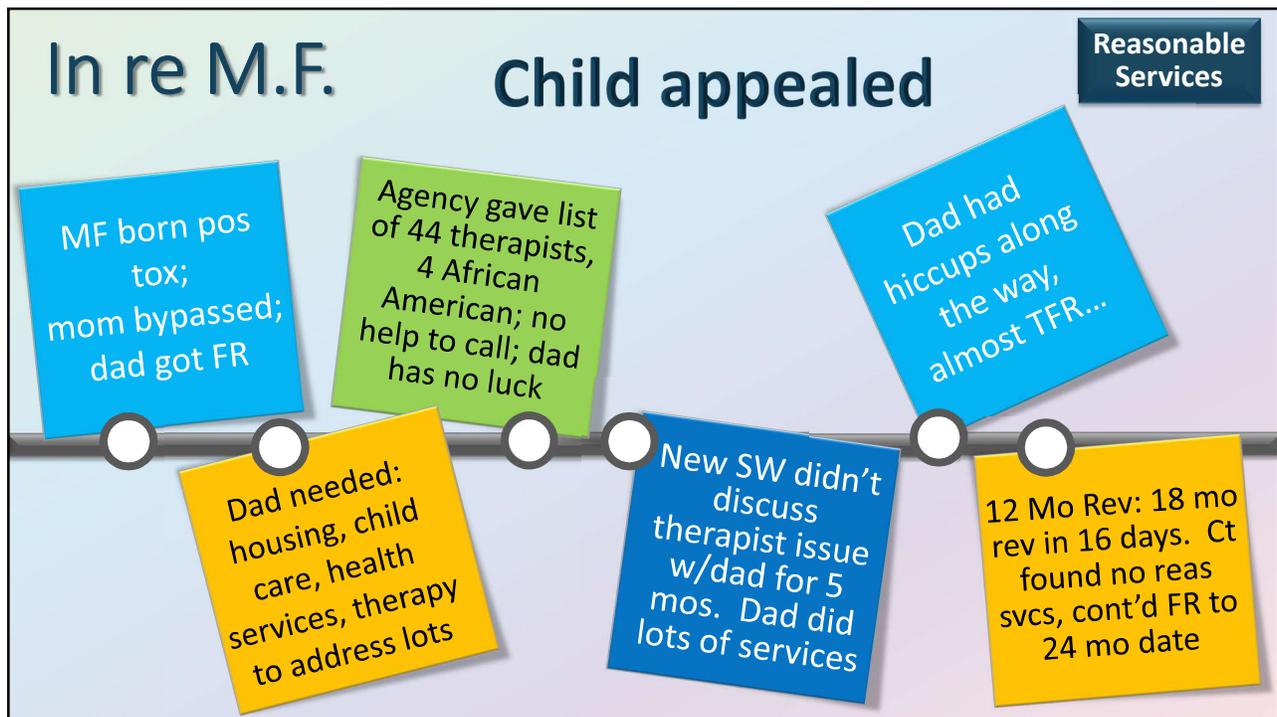


Even if not waived, dad's actions meet def of severe sexual abuse.

Affirmed

Dad's long history of grooming minor justifies RO enjoining all contact; dad cannot cite child's resiliency as reason she is not at risk.





# In re J.P.

Visitation

## Mom's FM Rev

- Albert wanted presumed of JP; trial, ct said no
- Albert asked for visits with JP, ct said yes

No authority to order visits bc Albert not presumed, de facto, or NREFM

Even if authorized, inappropriate and abuse of discretion

## Mom's args

# In re J.P.

Visitation

Ct lacked authority? No merit...

2 statutes re visits

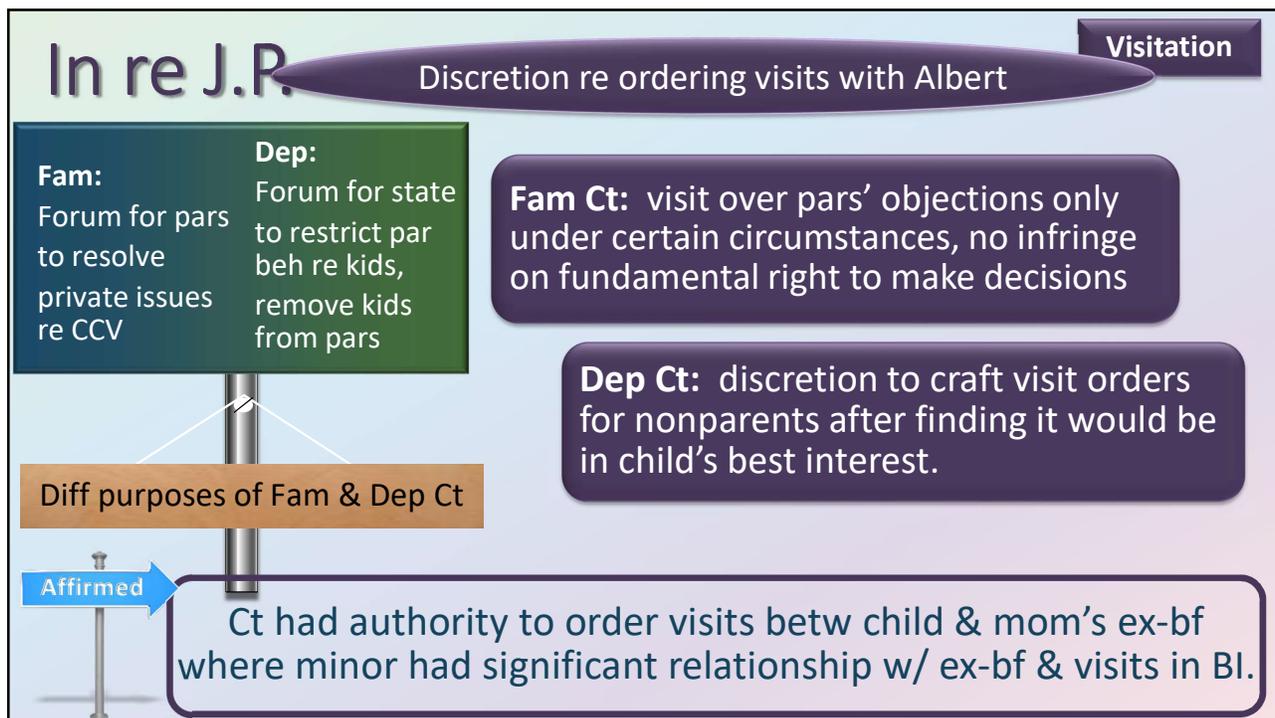
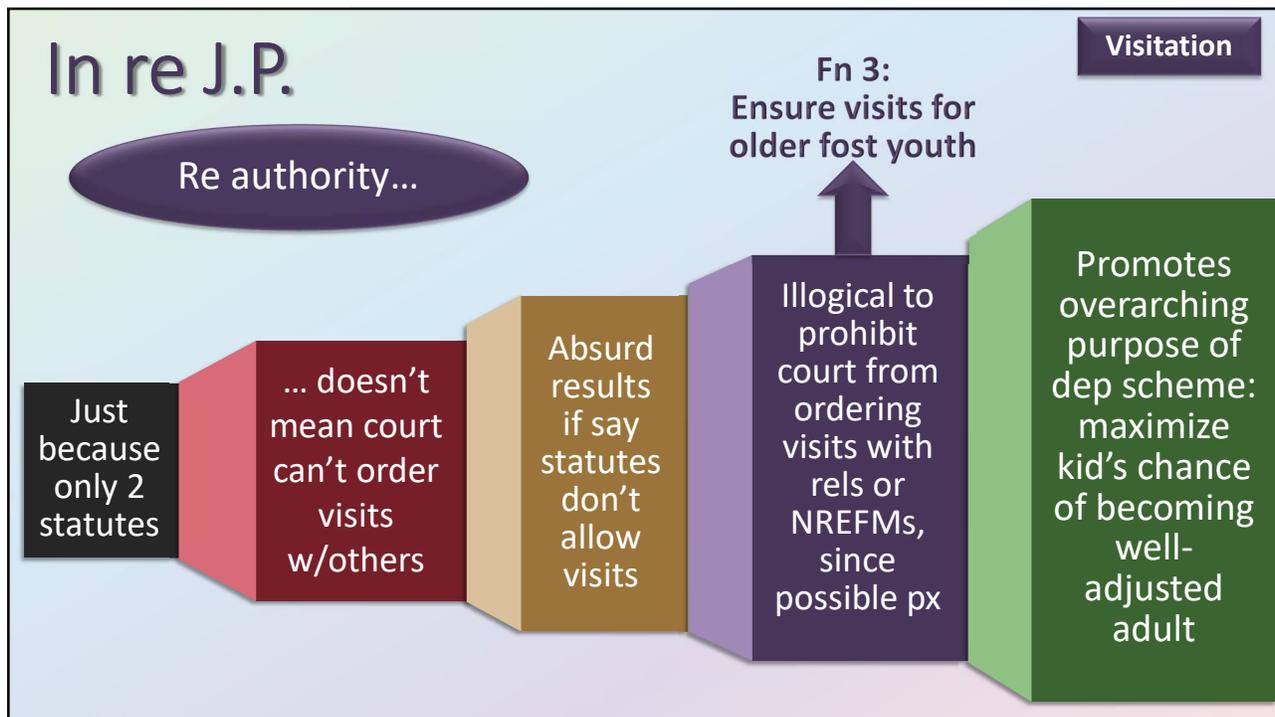
§362.1: pars & sibs

§362.1(i): consider for gps if BI

**Juv Ct broad authority**

**§362(a):** make any and all reasonable orders for care, supervision, custody, conduct, maintenance and support of child...

**§362(d):** may direct any and all reasonable orders to pars ... as court deems necessary and proper...



## In re Nicole S.

NMD



*Prior case:*

NMD, asserted Category 5.  
Dispute re patient-litigation exception to therapist-patient privilege.  
Nicole retained BALA for writ of mandate.  
Prevailed.

*Current case:*

Motion for \$90k in atty's fees in closed NMD case per CCP §1021.5: codifies private attorney general doctrine exception to the rule that parties in civil litigation must pay their own attorney's fees.

## In re Nicole S.

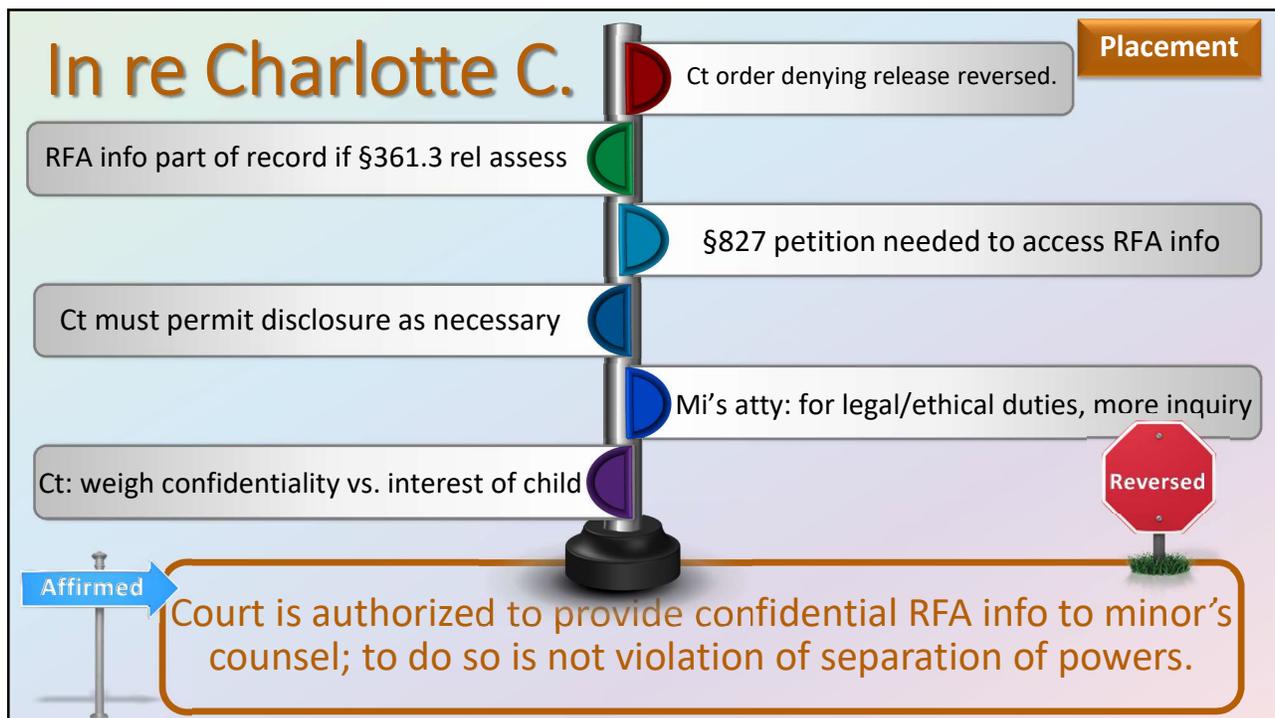
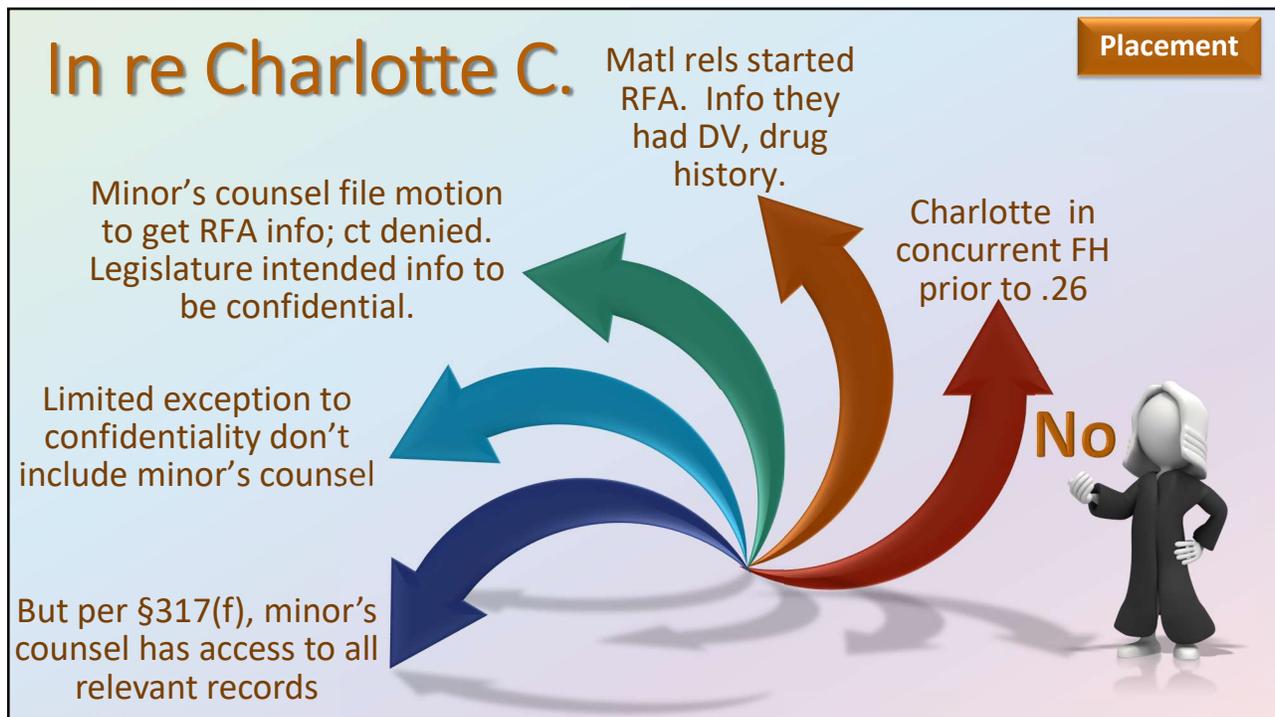
NMD

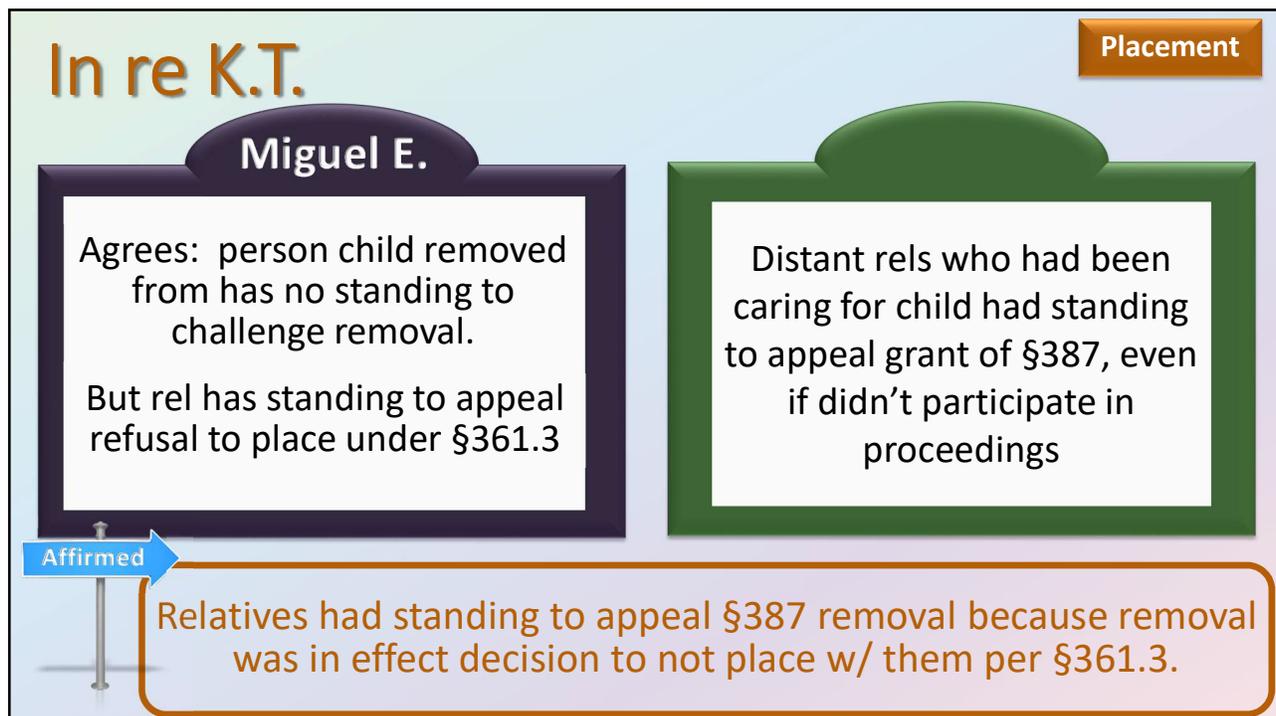
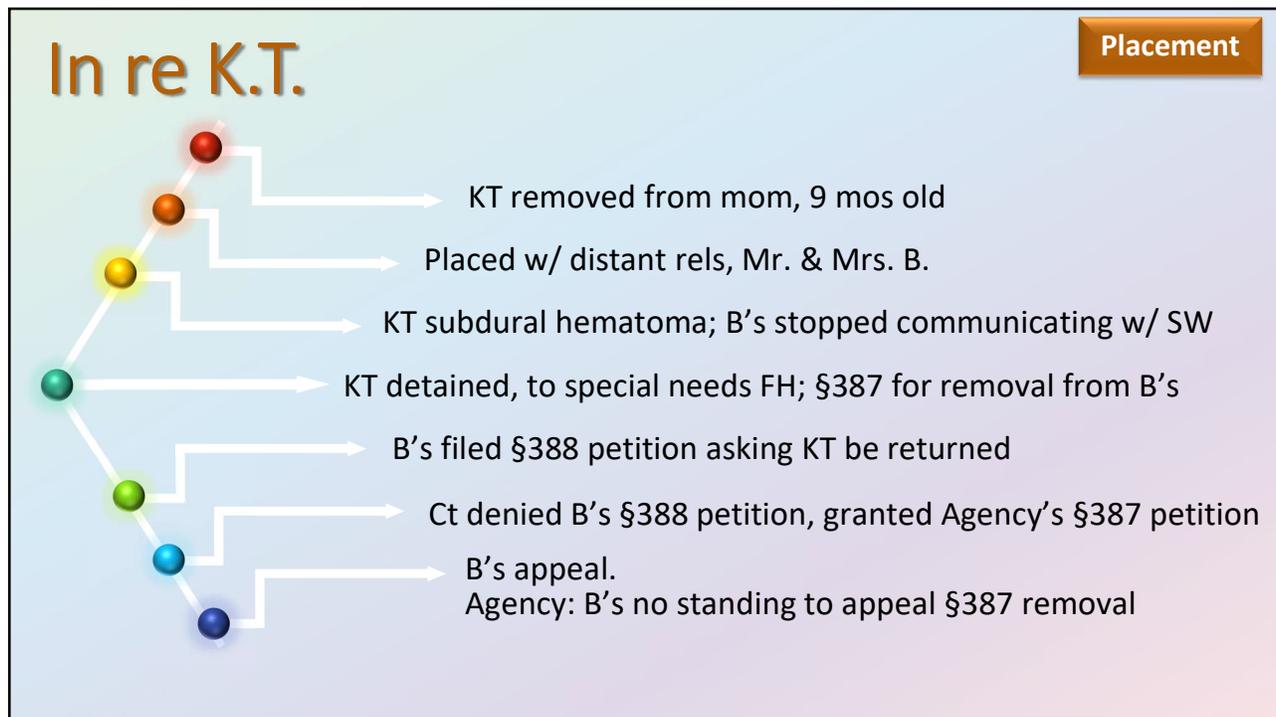
Ct lacked jx to reopen dependency after NMD turned 21, but ancillary jx to hear motion re atty fees.

Authorizing private parties to pursue CCP §1021.5 fees subverts legislative plan for provision/compensation of competent counsel in dependency.

Role played by social services is not analogous to that of opposing party in public interest litigation.

**Affirmed** → CCP statute authorizing attorneys fees to prevailing party in action resulting in enforcement of important public right affecting public interest does not apply to dependency.

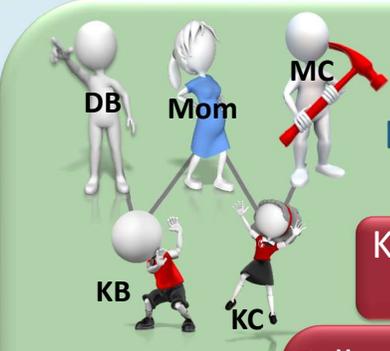




# M.L. v. Superior Court

388 Petition





**Over 4.5 yrs of services**  
**Lots of instability**  
**MC targets KB**

KB's atty files 388:  
"detain kids"

Follow-up hrg:
 

- Term FM, set .26.
- 55 mos of svcs
- More than reas svcs
- Pars no progress

Mom, MC MC  
writs

Hrg re 388 & FM:
 

- Detain KB, KC.
- "Volatile & dire"

# M.L. v. Superior Court

388 Petition



1) "Removal" order beyond scope of 388, which asked to "detain"  
 2) KB atty no standing to request detention of other kid, KC

§387 not only way to remove. §388 liberal use

"Detain v. remove." Juv Ct concluded §388 was for both

**Writ** Standing: KC's atty agreed. In §388 and at hearing

Even if removal exceeded scope: court inherent & statutory authority

Due process: §385, followed §387 procedure; pars had opportunity to challenge

Summary: Ct well w/in inherent & statutory authority to remove via §388

# M.L. v. Superior Court

388 Petition

WIC §385

Ct authority to change, mod, set aside, if procedural req'mts

Nickolas F.

Inherent constitutional authority to carry out duties

Broad statutory authority  
Due process WIC §386

Writ denied

A §388 petition is appropriate tool for party other than SW to seek removal. Court was entitled to concluded request to "detain" encompassed detention and removal. Parents got due process.

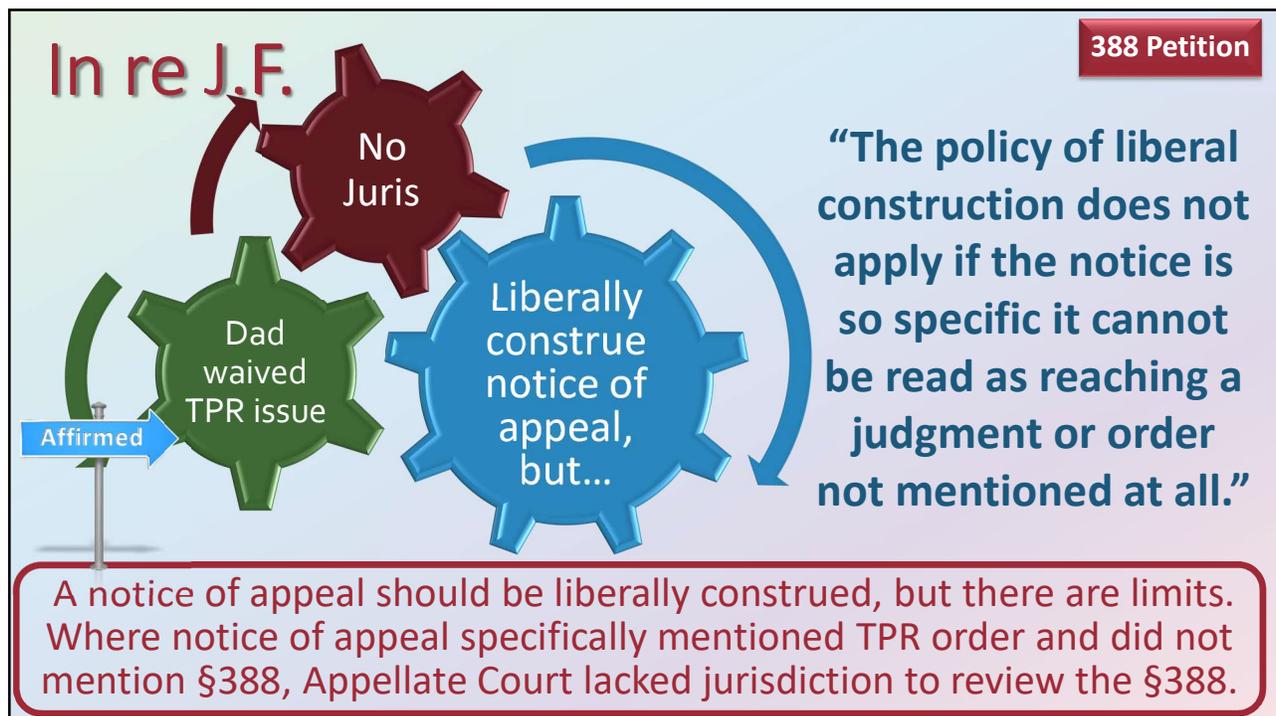
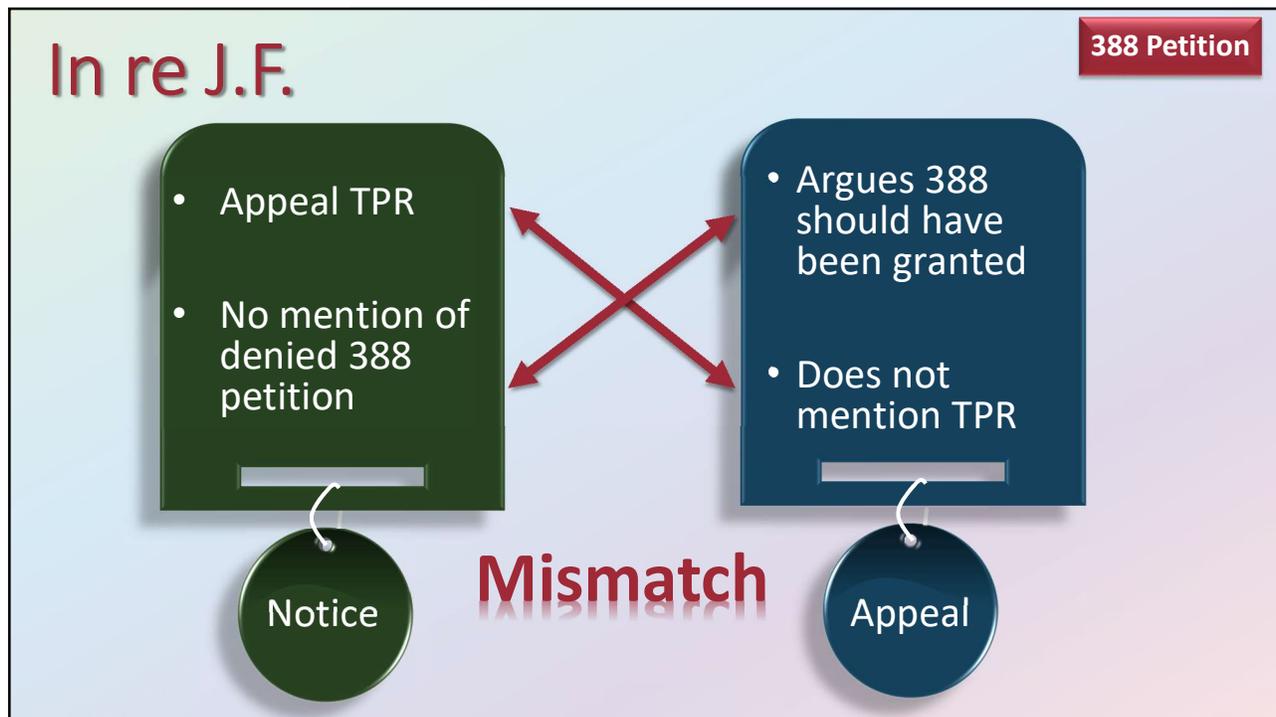
# In re J.F.

388 Petition

Dispo:  
both pars  
bypassed

Pend .26,  
dad filed 388,  
wants more  
visits & FR

Ct denied  
388, ordered  
TPR



# In re Caden C.

366.26 /  
TPR



**Caden**  
VFM – age 3  
Removed – age 4  
Returned, removed again – age 7.



**Mom**  
30 yr CW, SA history  
Sporadic treatment  
Visited  
**Disrupted placements**

Caden adoptable  
No TPR  
Beneficial relationship



.26 trial  
Experts re bond



Agency & Caden  
appeal

# In re Caden C. Hybrid...

366.26 /  
TPR

1) Beneficial relationship: mom visited, strong bond

Factual issue

Substantial evidence

Beneficial relationship exception

Here, mom's relationship not compelling reason for no TPR



2) Relationship is compelling reason to deny TPR

Discretionary

Abuse of discretion

Consistent visitation & beneficial relationship are not enough; court must find that relationship constitutes compelling reason to forgo TPR.

## In re B.D.

**366.26 /  
TPR**

“But that was only a hint of things to come...”

BD, 8  
Fost pars, JM, CP  
CPS consistently reported happy, thriving  
.26, TPR  
Removed from FH  
“barely mo aft .26”

Physical abuse in fost home  
Investigator saw bruised lip  
Fost dad JM threw eraser, drew blood  
Kept BD home from school



Postjudgment evidence

Due process

Stipulated reversals

Adoptability:  
general vs. specific

## In re B.D.

Series of hrqs re removal from fost pars

**366.26 /  
TPR**

2017 investigation re allegations of sex abuse

7 yrs prison, home invasion

JM had TPR over all 3 sons

JM’s adult nephew, molested as child, sharing room w/ BD

3 adult sons: all sex abuse victims; each perpetrated vs. others.

3 sons declared wards

One of sons living in home while BD there

SW aware

SW no copy of 2017 investigation

Allegations old news

Safety plan

Licensed RFA

2017 investigation info not in .26 report, but case notes for discovery

# In re B.D.

366.26 / TPR

Mom, dad: appeal  
no beneficial relation

CCP 909 motion:  
und on appeal

Bureau moves to strike  
mom's CCP 909 motion

Parties stipulate to reversal

# In re B.D.

366.26 / TPR

<b>Mom's 909 granted</b>	Withheld info undermines legal underpinnings of .26 judgment
<b>No stipulated reversal</b>	Due to risk that public trust in judiciary will be eroded
<b>Failure to include info was due process violation</b>	Deprived minor of fully informed counsel. Const'l error not harmless.
<b>Zeth S. exception</b>	In rare and compelling case, ct may consider postjudgment evidence

## In re B.D.

**366.26 /  
TPR**

.26 findings, orders reversed

Remanded for new §366.2(c)(1) report assessing adoptability within reas amount of time

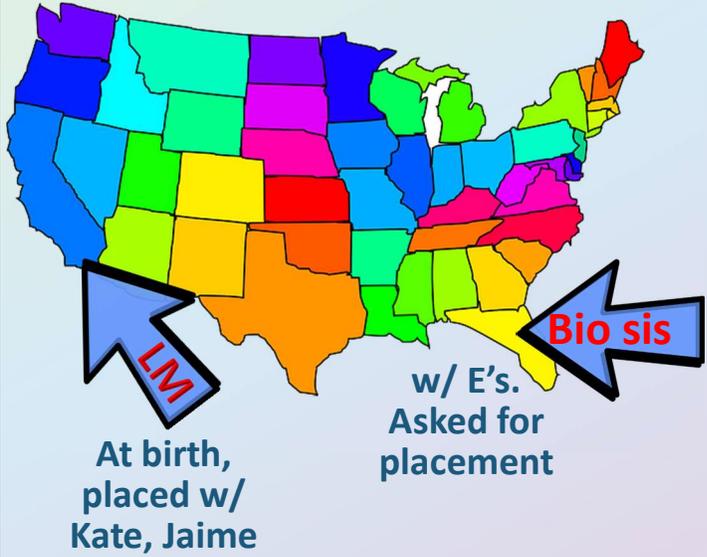
Juv Ct shall conduct new .26 hrg

Agency's failure to disclose report detailing foster parent's criminal history violated minor's due process rights and undermined legal underpinnings of TPR order.  
No stipulated reversal due to risk to public trust in judiciary.

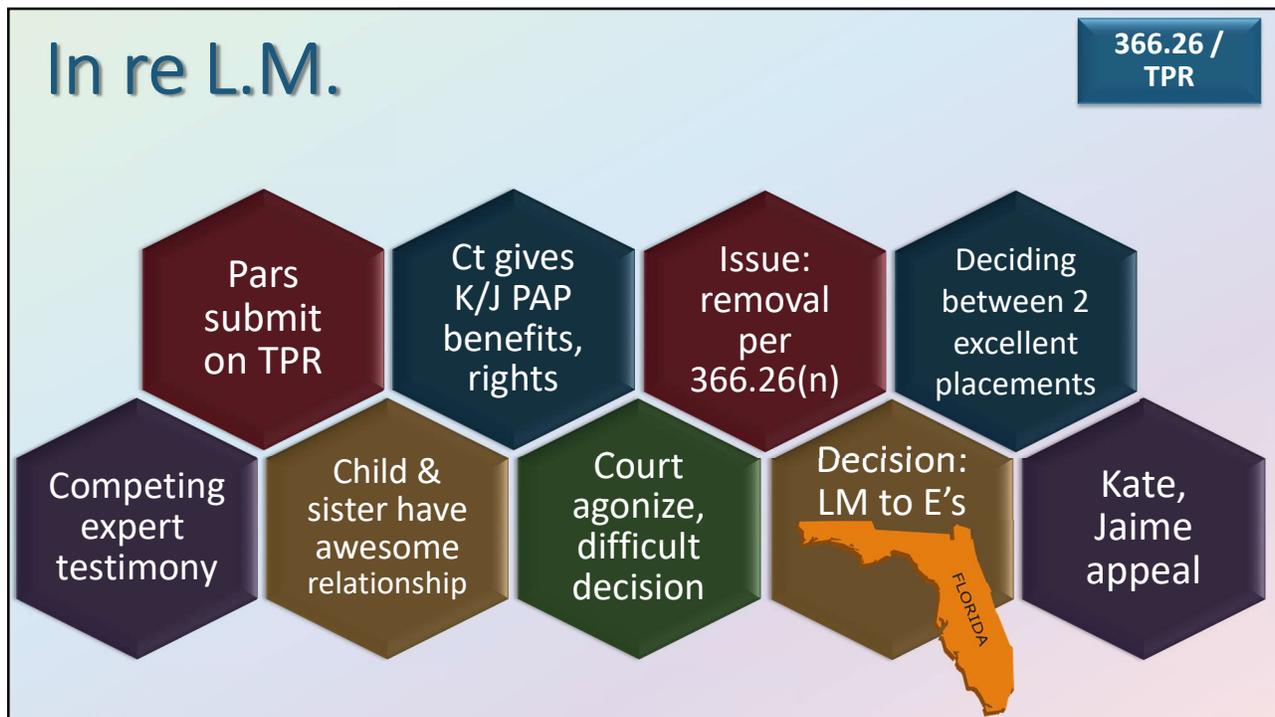


## In re L.M.

**366.26 /  
TPR**



-  Pars denied services. .26 hearing set
-  E's 388 for px of LM  
Agency: LM to E's
-  Bio sister (VE) & E's visit LM monthly
-  K / J ask for PAP status per 366.26 (n)



## In re L.M.

366.26 / TPR

Does court have to find there is something wrong w/ PAP placement before it can remove from them? NO

§366.26(n) removal not decided in vacuum.  
Best interest standard drives §366.26(n),  
which is forward looking.

Failure to designate foster pars as PAPs was harmless, where they were given same rights as PAPs.  
Using best interest standard at §366.26(n) hearing not improper.

Not designating K/J PAPs harmless. Got all PAP rights.

Affirmed

**In re H.D.**

366.26 / TPR

14 mos later

Mom filed to modify CC/V

11 days later...

Stepmom filed to free girls from mom's custody

*Rec =*  
*Deny stepmom petition*

**In re H.D.**

366.26 / TPR

Fam Code §7822(a)(3)

**Abandonment:**

- Leaves child for year
- No communication or \$\$ support
- With intent to abandon

Grant stepmom petition.  
TPR mom.  
Free children.

Mom abandoned:  
failed to communicate or support for year

Mother's attempts to contact daughters, diligence in treating her addictions, her attempts to regain custody in family court, and her payment of support when she was able preclude finding of abandonment.

Reversed

**In re N.O.** Term of Jx, Custody



**Possible problems:**



Several  
continuances

Agency rec:  
Dismissal

Ct terminated  
jurisdiction,  
over objection  
of NO counsel

Minor  
appeals

**In re N.O.** Term of Jx, Custody

Thriving. Bonded.  
Happy.

Mom complied w/  
case plan.

DV rel?

Reversal not required  
as matter of law.

NO's atty was strong  
advocate.

**DISSENT:**

Abuse of discretion.  
Continuance.  
Reasonable steps to  
locate.

Court did not inappropriately terminate jurisdiction where agency and minor's attorney had lost contact with minor, given that minor had been thriving in mom's care, mom and child had health relationship, and mom had complied with case plan. Any denial of minor's right to counsel is harmless.



# In re C.W.

**Term of Jx, Custody**

10 year old CW

At risk w/ dad

Permanency

CW to dad on trial home visit

Disaster.

Case dismissed.

Mom appeals.

Louisiana CPS removed from dad, placed w/ mom, dismissed

# In re C.W.

**Term of Jx, Custody**

Appeal not entirely moot

Reverse custody order

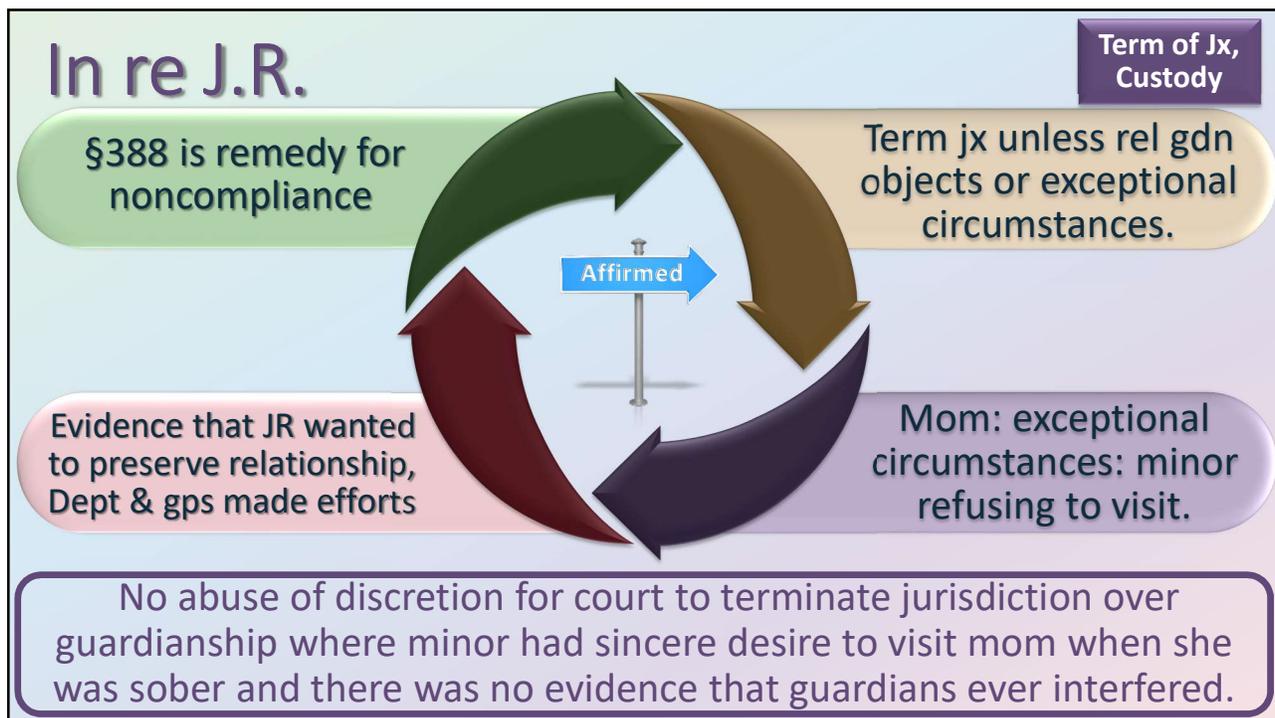
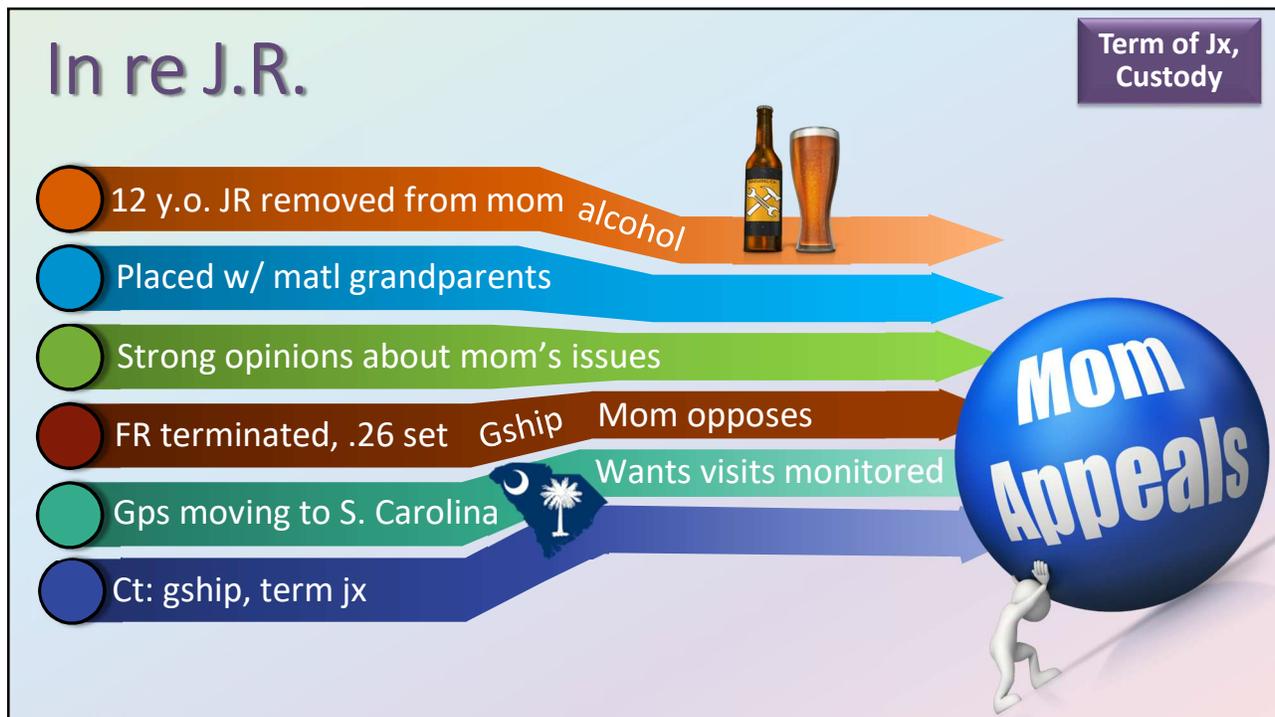
UCCJEA

Abuse of discretion

Reversed, Remanded

Juv Ct "strayed significantly from statutory framework of §366.3."

Abuse of discretion for court, in post permanency, to award sole custody to dad and dismiss, where there was no evidence dad had ameliorated safety issues.



## In re C.M.

Term of Jx, Custody

No



Removal from mom due to DV w/ father of other child

CM placed w/ dad

At dismissal, rec was joint legal custody

Dad opposed joint legal, cited §3044

Ct hesitant to exclude mom, ordered joint legal

## Dad appealed.

Does Fam Code §3044, presumption against joint custody upon finding of DV – apply to dependency?

## In re C.M.

Term of Jx, Custody

<ul style="list-style-type: none"> <li>• Fam &amp; Dep both do CCV</li> <li>• Separate statutory schemes, distinct purposes</li> <li>• Fam Code sections don't apply</li> <li>• Long line of cases say Civil, Fam Codes not applicable unless expressly stated</li> <li>• Dad argues plain language creates rebuttable presumption</li> </ul> <div style="background-color: white; color: black; padding: 5px; transform: rotate(-15deg); display: inline-block;"> <b>FC 3044 inapplicable to Dependency cases</b> </div>	<h3 style="text-align: center; margin: 0;">Dep</h3> <ul style="list-style-type: none"> <li>• CCV per WIC authority</li> <li>• Totality of circumstances</li> <li>• Orders in child's BI</li> <li>• Parens patrie, special responsibility</li> </ul>	<h3 style="text-align: center; margin: 0;">Fam</h3> <ul style="list-style-type: none"> <li>• 3044 part of overall scheme from FC to govern considerations that impact custody under BI standard</li> <li>• Including if finding of DV</li> <li>• Part 2 of Code                             <ul style="list-style-type: none"> <li>• Disso, nullity of marriage</li> <li>• Legal separation</li> <li>• 3120 custody request</li> <li>• UPA proceedings</li> <li>• Enforcement of support</li> <li>• DVPA proceedings</li> </ul> </li> </ul>
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# In re C.M.

Term of Jx, Custody

- WIC §213.5 (Juv RO) says when making custody orders:
- Follow Fam Code §6323
- Doesn't say to follow any other Fam Code section

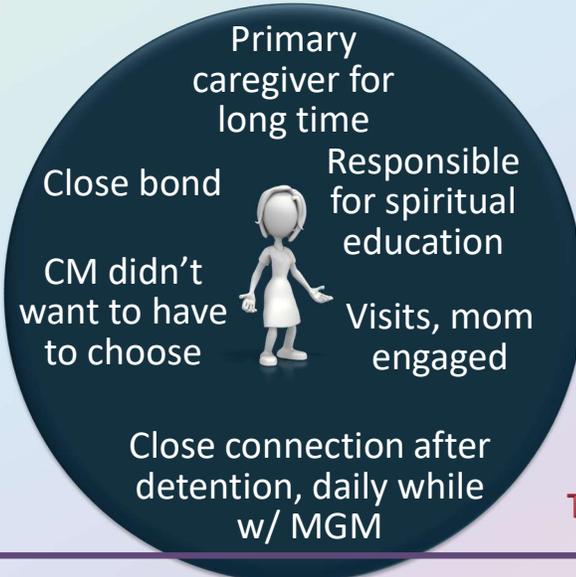
Jennifer R. reasoning



# In re C.M.

Term of Jx, Custody

Dad makes valid arguments for sole legal, but joint legal is not abuse of discretion



Will be hard to change order in future....



That's not the test....



Fam Code §3044 (presumption against awarding sole or joint custody to perpetrator of DV) does not apply to dependency.

**In re D.D.** **Evidence**

**While in FM...**



**387 petition filed  
Kids removed**



**Sustain allegations.  
Remove from mom.**



**In re D.D.** **Evidence**

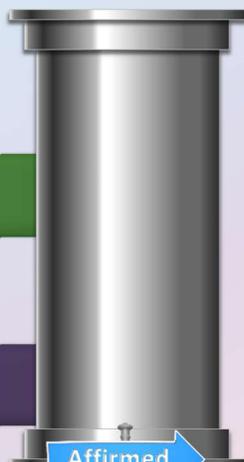


387 bifurcated: adjudicatory re allegations & previous dispo AND disposition re removal

Reasonable to infer mom intended to cruelly inflict pain – chili peppers on young child

Look at totality of circumstances, not each incident in isolation

Don't need danger or harm before removal, focus is on averting harm.



Text message to SW admissible under rule that social study, with hearsay evidence contained in it, is admissible.

Affirmed →

# People v. Keo

Yep, I did it.

Evidence

2nd degree murder

Appeal: 5th } Miranda?  
6th } Attorney?

WIC §355.1(f)  
Due process

# People v. Keo

Evidence

- SW not required to Mirandize before interview
- SW not law enforcement or agent thereof
- No violation of right to counsel
- §355.1(f), due process don't bar statements

Affirmed →

A statement to SW conducting dependency investigation does not require a Miranda warning, and due process does not provide immunity to such statements.

# In re A.C.



AC,  
home probation



Ana,  
child & family counselor  
"Family Preservation"



Evidence

Ana discloses

Juv Ct:

- Ana is not therapist, so stmts are admissible
- Stmt was violation of probation.

# In re A.C.



Evidence

1 Admissibility of  
stmts made to Ana

Yes,  
admissible

2 Sufficiency of  
evidence

Insufficient evidence of  
probation violation

... but if danger,  
can divulge.

# In re A.C.

Evidence

“One may, in private, curse one’s enemies, pummel pillows, and shout revenge for real or imagined wrongs.”

People v. Felix

“[M]ere angry utterances or ranting soliloquies, however violent,” do not, by themselves, constitute criminal threats.”

People v. Felix

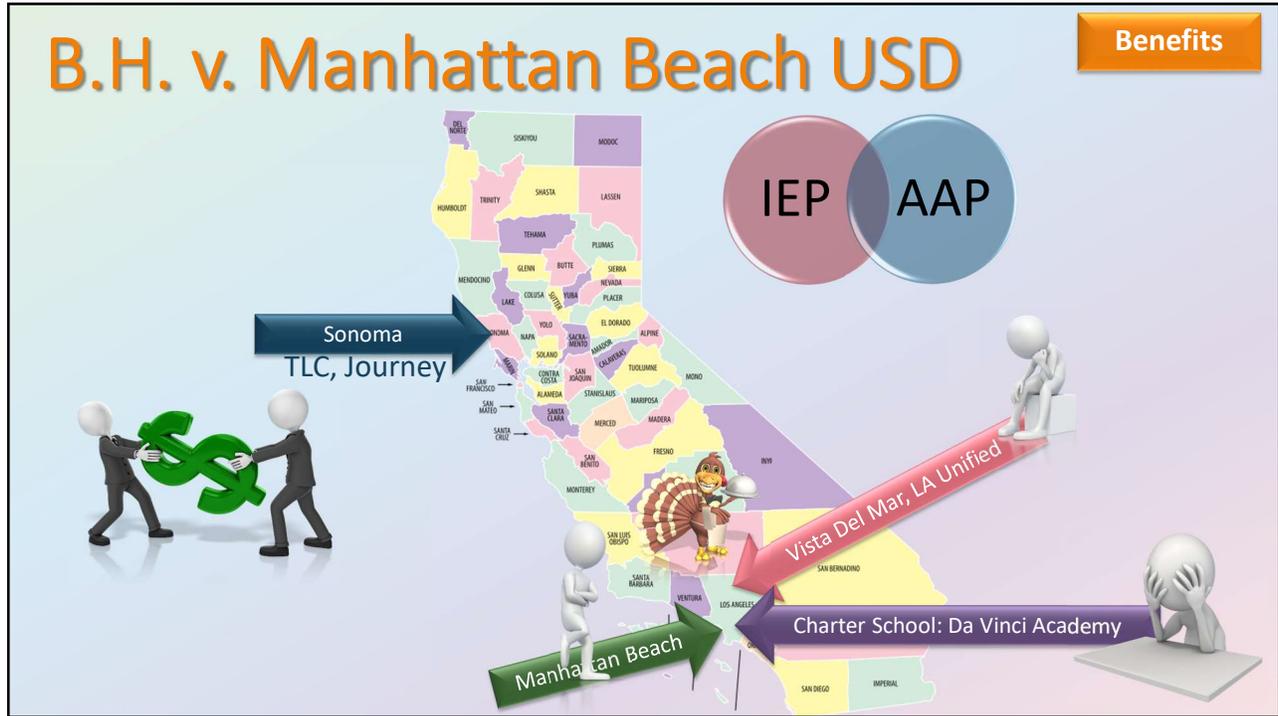


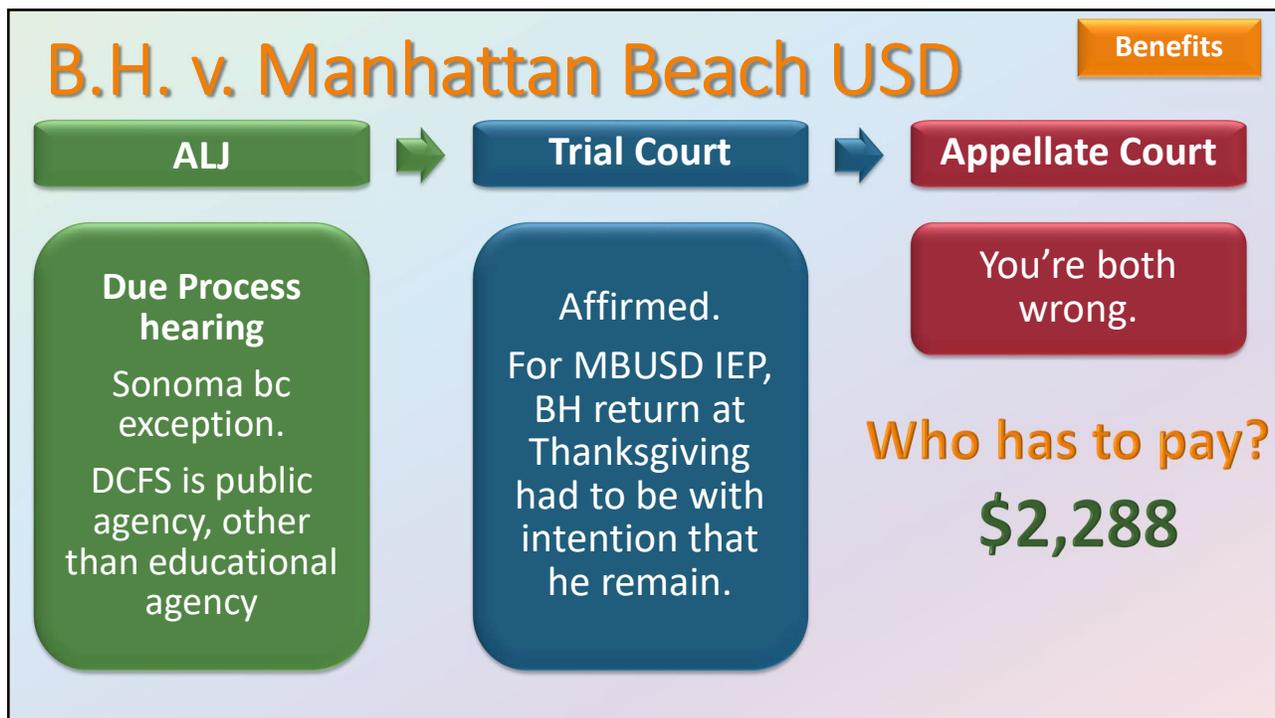
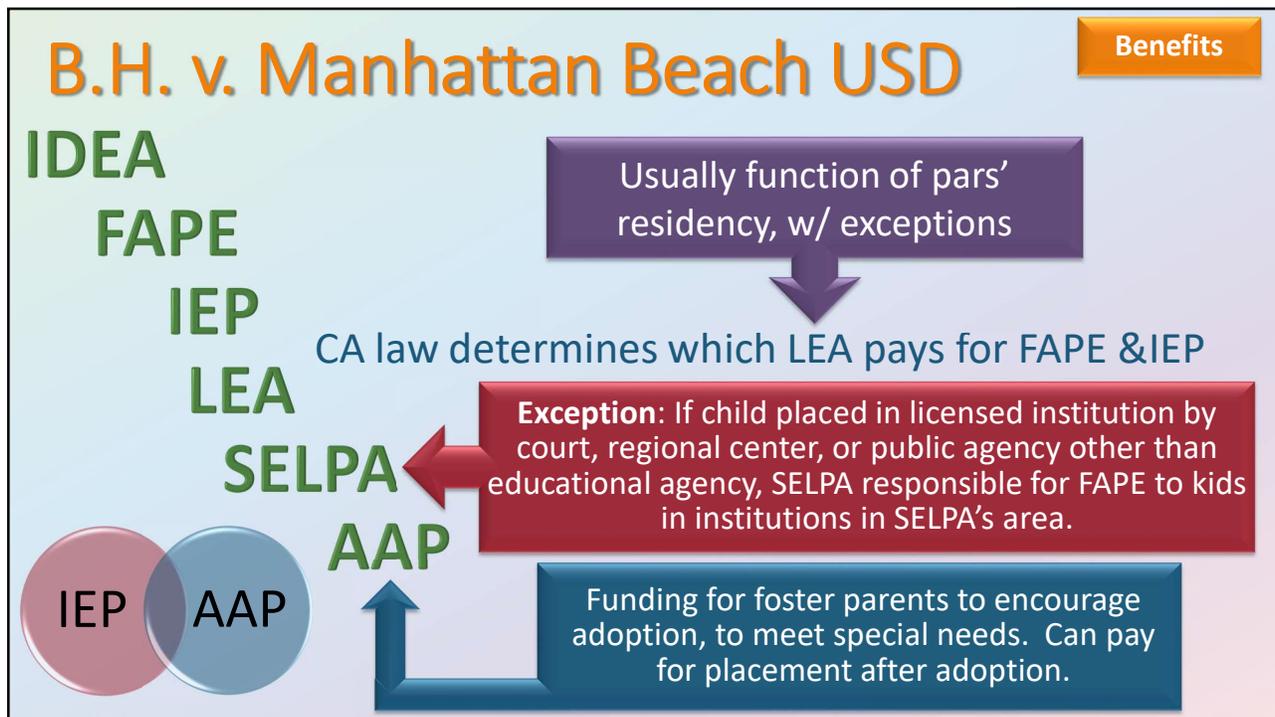
Insufficient evidence re VOP

Statements to in-home counselor are not protected by psychotherapist-patient privilege.  
Therapist testimony admissible due to therapist duty to warn.

# B.H. v. Manhattan Beach USD

Benefits





# B.H. v. Manhattan Beach USD

Benefits

**MBUSD is responsible**



Px through AAP does not relieve MBUSD of independent duty to implement IEP, incl residential px

AAP stipend is not placement by noneducational public agency that triggers exception

Even if ambiguity, look to purpose of legislation: to benefit students, not school district

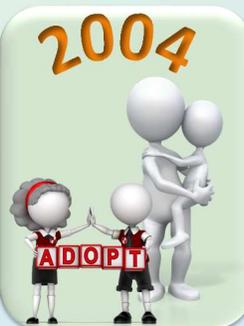
DCFS has no ongoing monitoring

AAP stipend for student's placement at residential treatment center is not "placement" that relieves school district of obligation to comply with IDEA.

# CA DSS v. Marin

Benefits

2004



2014



**NO MONEY!**

County: **NO**

ALJ: **NO**

Court granted writ of mandate

CDSS **appealed**

Legislature was clear, no retroactivity.

AAP stipend increases are not retroactive.



