

**RESOLUTION 05-05-2017**

**DIGEST**

Children: Extended Reunification Period in Child’s Best Interest

Amends Welfare and Institutions Code section 366.21 to allow the court to extend reunification services from the 18-month review to a 24-month review if the parent is likely to qualify within that extended period of time.

**RESOLUTIONS COMMITTEE RECOMMENDATION**

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Welfare and Institutions Code section 366.21 to allow the court to extend reunification services from the 18-month review to a 24-month review if the parent is likely to qualify within that extended period of time. This resolution should be approved in principle because it would allow a parent the opportunity to regain custody of his or her child in those cases where reunification appears probable given a broader time horizon, but due to the present circumstance unlikely in 18 months since the child was made a ward of the court.

For example, consider a parent whose incarceration at the 12-month review is expected to continue until just after the 18-month review. Under current law, reunification services must be terminated because the parent will not be able to establish that reunification will happen before the 18-month hearing – solely because the parent will be incarcerated at the 18-month hearing. Services would then be terminated at 18 months no matter how much progress the parent had made. This resolution would further the goal of allowing children to remain with their parents by permitting the court to give the parent a chance to show at the 18-month hearing that reunification will occur in the next six months, at the 24-month mark.

**TEXT OF RESOLUTION**

**RESOLVED** that the Conference of California Bar Associations recommends that legislation be sponsored to amend Welfare and Institutions Code section 366.21 to read as follows:

1 § 366.21

2 (a) Every hearing conducted by the juvenile court reviewing the status of a dependent  
3 child shall be placed on the appearance calendar. The court shall advise all persons present at the  
4 hearing of the date of the future hearing and of their right to be present and represented by  
5 counsel.

6 [Subdivisions (b) through (f) remain unchanged.] [Omission of sections permitted by  
7 Chair.]

8 (g) If the time period in which the court-ordered services were provided has met or  
9 exceeded the time period set forth in subparagraph (A), (B), or (C) of paragraph (1) of  
10 subdivision (a) of Section 361.5, as appropriate, and a child is not returned to the custody of a

11 parent or legal guardian at the permanency hearing held pursuant to subdivision (f), the court  
12 shall do one of the following:

13 (1) Continue the case for up to six months for a permanency review hearing, provided  
14 that the hearing shall occur within 18 months of the date the child was originally taken from the  
15 physical custody of his or her parent or legal guardian. The court shall continue the case only if it  
16 finds that there is a substantial probability that the child will be returned to the physical custody  
17 of his or her parent or legal guardian and safely maintained in the home within the extended  
18 period of time or that reasonable services have not been provided to the parent or legal guardian.  
19 For the purposes of this section, in order to find a substantial probability that the child will be  
20 returned to the physical custody of his or her parent or legal guardian and safely maintained in  
21 the home within the extended period of time, the court shall be required to find all of the  
22 following:

23 (A) That the parent or legal guardian has consistently and regularly contacted and visited  
24 with the child.

25 (B) That the parent or legal guardian has made significant progress in resolving problems  
26 that led to the child's removal from the home.

27 (C) The parent or legal guardian has demonstrated the capacity and ability both to  
28 complete the objectives of his or her treatment plan and to provide for the child's safety,  
29 protection, physical and emotional well-being, and special needs.

30 (i) For purposes of this subdivision, the court's decision to continue the case based on a  
31 finding or substantial probability that the child will be returned to the physical custody of his or  
32 her parent or legal guardian is a compelling reason for determining that a hearing held pursuant  
33 to Section 366.26 is not in the best interests of the child.

34 (ii) The court shall inform the parent or legal guardian that if the child cannot be returned  
35 home by the next permanency review hearing, a proceeding pursuant to Section 366.26 may be  
36 instituted. The court shall not order that a hearing pursuant to Section 366.26 be held unless there  
37 is clear and convincing evidence that reasonable services have been provided or offered to the  
38 parent or legal guardian.

39 (2) Continue the case for up to six months for a permanency review hearing, provided  
40 that the hearing shall occur within 18 months of the date the child was originally taken from the  
41 physical custody of his or her parent or legal guardian, if the parent has been arrested and issued  
42 an immigration hold, detained by the United States Department of Homeland Security, or  
43 deported to his or her country of origin, and the court determines either that there is a substantial  
44 probability that the child will be returned to the physical custody of his or her parent or legal  
45 guardian and safely maintained in the home within the extended period of time or that reasonable  
46 services have not been provided to the parent or legal guardian.

47 (3) For purposes of paragraph (2), in order to find a substantial probability that the child  
48 will be returned to the physical custody of his or her parent or legal guardian and safely  
49 maintained in the home within the extended period of time, the court shall find all of the  
50 following:

51 (A) The parent or legal guardian has consistently and regularly contacted and visited with  
52 the child, taking into account any particular barriers to a parent's ability to maintain contact with  
53 his or her child due to the parent's arrest and receipt of an immigration hold, detention by the  
54 United States Department of Homeland Security, or deportation.

55 (B) The parent or legal guardian has made significant progress in resolving the problems  
56 that led to the child's removal from the home.

57 (C) The parent or legal guardian has demonstrated the capacity or ability both to  
58 complete the objectives of his or her treatment plan and to provide for the child's safety,  
59 protection, physical and emotional well-being, and special needs.

60 (4) Continue the case for up to six months for a permanency review hearing, provided  
61 that the hearing shall occur within 18 months of the date the child was originally taken from the  
62 physical custody of his or her parent or legal guardian, if the court determines by clear and  
63 convincing evidence that the parent may reunify with the child by the 24 month hearing and the  
64 best interests of the child would be met by the provision of additional reunification services to a  
65 parent or legal guardian who is making significant and consistent progress in a court-ordered  
66 residential substance abuse treatment program, a parent who was either a minor parent or a  
67 nonminor dependent parent at the time of the initial hearing making significant and consistent  
68 progress in establishing a safe home for the child's return, or a parent recently discharged from  
69 incarceration, institutionalization, or the custody of the United States Department of Homeland  
70 Security and there is a substantial probability the parent will be able to make significant and  
71 consistent progress in establishing a safe home for the child's return. The court shall continue the  
72 case only if it finds that there is a substantial probability that the child will be returned to the  
73 physical custody of his or her parent or legal guardian and safely maintained in the home within  
74 24 months of the date the child was originally taken from the physical custody of his or her  
75 parent or legal guardian or that reasonable services have not been provided to the parent or legal  
76 guardian. For the purposes of this section, in order to find a substantial probability that the child  
77 will be returned to the physical custody of his or her parent or legal guardian and safely  
78 maintained in the home within the extended period of time, the court shall be required to find all  
79 of the following:

80 (A) That the parent or legal guardian has consistently and regularly contacted and visited  
81 with the child, taking into account any particular barriers to a parent's ability to maintain contact  
82 with his or her child due to the parent's arrest and receipt of an immigration hold, detention by  
83 the United States Department of Homeland Security, or deportation.

84 (B) That the parent or legal guardian has made significant and consistent progress in the  
85 prior 12 months in resolving problems that led to the child's removal from the home or the  
86 parent or legal guardian was recently discharged from incarceration, institutionalization, or the  
87 custody of the United States Department of Homeland Security and there is a substantial  
88 probability the parent will be able to make significant and consistent progress in resolving  
89 problems that led to the child's removal from the home.

90 (C) The parent or legal guardian has demonstrated the capacity and ability both to  
91 complete the objectives of his or her substance abuse treatment plan as evidenced by reports  
92 from a substance abuse provider as applicable, or complete a treatment plan postdischarge from  
93 incarceration, institutionalization, or detention, or following deportation to his or her country of  
94 origin and his or her return to the United States, and to provide for the child's safety, protection,  
95 physical and emotional well-being, and special needs.

96 (4) (5) Order that a hearing be held within 120 days, pursuant to Section 366.26, but only  
97 if the court does not continue the case to the permanency planning review hearing and there is  
98 clear and convincing evidence that reasonable services have been provided or offered to the  
99 parents or legal guardians. On and after January 1, 2012, a hearing pursuant to Section 366.26  
100 shall not be ordered if the child is a nonminor dependent, unless the nonminor dependent is an  
101 Indian child and tribal customary adoption is recommended as the permanent plan.

102           ~~(5)~~ (6) Order that the child remain in foster care, but only if the court finds by clear and  
103 convincing evidence, based upon the evidence already presented to it, including a  
104 recommendation by the State Department of Social Services when it is acting as an adoption  
105 agency or by a county adoption agency, that there is a compelling reason for determining that a  
106 hearing held pursuant to Section 366.26 is not in the best interests of the child because the child  
107 is not a proper subject for adoption and has no one willing to accept legal guardianship as of the  
108 hearing date. For purposes of this section, a recommendation by the State Department of Social  
109 Services when it is acting as an adoption agency or by a county adoption agency that adoption is  
110 not in the best interests of the child shall constitute a compelling reason for the court's  
111 determination. That recommendation shall be based on the present circumstances of the child and  
112 shall not preclude a different recommendation at a later date if the child's circumstances change.  
113 On and after January 1, 2012, the nonminor dependent's legal status as an adult is in and of itself  
114 a compelling reason not to hold a hearing pursuant to Section 366.26. The court may order that a  
115 nonminor dependent who otherwise is eligible pursuant to Section 11403 remain in a planned,  
116 permanent living arrangement.

117           (A) The court shall make factual findings identifying any barriers to achieving the  
118 permanent plan as of the hearing date. When the child is under 16 years of age, the court shall  
119 order a permanent plan of return home, adoption, tribal customary adoption in the case of an  
120 Indian child, legal guardianship, or placement with a fit and willing relative, as appropriate.  
121 When the child is 16 years of age or older, or is a nonminor dependent, and no other permanent  
122 plan is appropriate at the time of the hearing, the court may order another planned permanent  
123 living arrangement, as described in paragraph (2) of subdivision (i) of Section 16501.

124           (B) If the court orders that a child who is 10 years of age or older remain in foster care,  
125 the court shall determine whether the agency has made reasonable efforts to maintain the child's  
126 relationships with individuals other than the child's siblings who are important to the child,  
127 consistent with the child's best interests, and may make any appropriate order to ensure that  
128 those relationships are maintained.

129           (C) If the child is not returned to his or her parent or legal guardian, the court shall  
130 consider, and state for the record, in-state and out-of-state options for permanent placement. If  
131 the child is placed out of the state, the court shall make a determination whether the out-of-state  
132 placement continues to be appropriate and in the best interests of the child.

133           [Subdivisions (h) through (k) remain unchanged.] [Omission of sections permitted by  
134 Chair.]

(Proposed new language underlined; language to be deleted stricken)

**PROPOSER:** San Diego County Bar Association

## **STATEMENT OF REASONS**

The Problem: Under certain circumstances at the 18-month review hearing, parents who were in a long-term drug treatment program, incarcerated, or minors when the child was removed can receive 24 months of reunification services if it is in the child's best interest. But, at the 12-month review, a parent must prove there is a substantial probability the child will be returned by the 18-month review. Therefore, the court must terminate services at the 12-month review for parents who would qualify for 24 months of services at the 18 month, because they can't show

there is a substantial probability of return by the 18-month review.

The Solution: This amendment allows the court to extend services at the 12-month review to the 18-month review for parents who qualify for 24-months of services.

**IMPACT STATEMENT**

The resolution does not affect any other law, statute or rule other than those expressly identified.

**CURRENT OR PRIOR RELATED LEGISLATION**

None known.

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