



# Children's Law Center of Los Angeles

## ***“DEPENDENCY LEGAL NEWS”***

Vol. 4, No. 4 February 26, 2008

Issued by the Children's Law Center of Los Angeles the second and fourth Tuesday of each month

Written by: Martha Matthews (MM), Jenny Cheung (JC), Sophia Ali (SA), and Patricia Bell (PB)

© 2008 by Children's Law Center of Los Angeles (“CLC”). All rights reserved. No part of this newsletter, except those which constitute public records, may be reproduced in any form or by any electronic or mechanical means, including information storage and retrieval systems, without permission in writing from CLC. Cases reported may not be final. Case history should be checked before relying on a case. Cases and other material reported are intended for educational purposes only and should not be considered legal advice.

For more information on Children's Law Center, please visit our website at [www.clcla.org](http://www.clcla.org).

### **NEW DEPENDENCY CASE LAW**

*ADOPTABILITY; WIC 366.26(c)(3); SIBLING BOND*

***In re B.D.*** – filed January 17, 2008, Fourth Dist., Div. 1

Docket No. D050179

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/D050179.DOC>

After the juvenile court terminated mother's services, she filed a WIC 388 petition for return of her five children, which was heard at the WIC 366.26 hearing. A psychological evaluation on two of the children indicated they had developmental and behavioral problems and two others had been in multiple placements. The social worker testified mother was still unstable, was more like an older sibling than parent, felt the children had a strong sibling relationship, and also testified that she identified a home for the children. The eldest child B.D requested a continuance under WIC 366.26(c)(3). The juvenile court denied mother's petition and terminated parental rights. Mother and minor B.D. appealed.

Affirmed. Juvenile court did not abuse its discretion by denying mother's WIC 388 petition and substantial evidence supports its finding that WIC 366.26(c)(1)(B)(i) [formerly WIC 366.26(c)(1)(A)] did not apply. However, the juvenile court should have continued the hearing under WIC 366.26(c)(3) for the agency to identify one approved home willing to adopt the sibling group. Under WIC 366.26(c)(3), if a child is difficult to place for adoption because the child is part of a sibling group, has a diagnosed, medical, physical, or mental handicap, or is seven or older, the court may identify adoption as the permanency plan goal and give the agency additional time to find an appropriate adoptive home. Here, the worker acknowledged it would be difficult to find one home for all and considered separating them, several of the children had mental handicaps, two were about to be seven or older, 10-year old

B.D. was opposed to adoption and could end up a legal orphan, and another child would only consider adoption if B.D. was able to stay with the siblings. Also, the family identified did not have a foster license or approved home study, only knew about the children's problems hypothetically, they had never met the children, and the children's transition into their home would require a long therapeutic process. As for the sibling relationship, where, as here, there are tentative different plans for adoptive placement and certain plans could substantially interfere with the sibling relationship, it is better to continue the hearing until the uncertainty is resolved. But because the augmented record on appeal shows that all the children were placed in an approved adoptive home within 180 days of the WIC 366.26 hearing, the issues of adoptability and interference with the sibling relationship are rendered moot and any procedural error is harmless. (SA)

**APPEALABILITY; WIC 366.26(c)(3)**

***In re S.B.*** – filed Feb. 15, 2008, Third Dist.

Docket No. C055838

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/C055838.DOC>

Two children were removed due to mother's failure to protect them from sexual abuse. At the time of the WIC 366.26 hearing, they were 13 and 12 years old, had been in 11 different placements, and were developmentally delayed. The juvenile court identified adoption as the permanent plan and continued the WIC 366.26 hearing for 180 days to give the county agency time to look for an adoptive home. Mother appealed. Appeal dismissed as premature. The WIC 366.26 hearing has not been concluded, so the court has not made a finding that the children were adoptable. Mother's challenge to the sufficiency of the evidence on adoptability must wait until the juvenile court makes a final determination on that issue. [Court noted split in authority on whether a WIC 366.26(c)(3) order is appealable.] (MM).

### **NON-DEPENDENCY CASES OF INTEREST**

***DELIQUENCY: DEFERRED ENTRY OF JUDGMENT UNDER WIC §§ 790-791***

***In re Usef S.*** – filed February 20, 2008, First District, Div. 3

Docket No. A117896

Link to case: <http://www.courtinfo.ca.gov/opinions/documents/A117896.DOC>

A juvenile wardship petition was filed under WIC § 602(a) alleging that Usef S. had committed felony vehicle theft under Veh. Code § 10851, among other offenses. The prosecutor filed a notice that Usef was eligible for the deferred entry of judgment (DEJ) program under WIC §§ 790-791. A hearing on Usef's suitability for the program was scheduled for December 20, 2007 and then continued due to lack of notice. At the next hearing and at all subsequent hearings, there was no mention of the deferred entry of judgment program. At the conclusion of a contested jurisdictional hearing, the juvenile court found true the allegation that Usef had committed vehicle theft. Usef appealed on the ground that the trial court erred: 1) by failing to determine whether he was a suitable candidate for

the DEJ program; and 2) by failing to make an express finding on the record whether the section 10851 violation was a felony or misdemeanor.

Affirmed in part and reversed in part. Once the juvenile court is notified that a juvenile is eligible for the DEJ program, the court is thereafter required to make a finding that he or she is suitable for the program before it can grant DEJ. However, there is no requirement that a juvenile court determine suitability of a juvenile who expresses no interest in that option. By contesting the jurisdictional allegations against him, Usef was evidencing a lack of interest in taking advantage of the DEJ option. The trial court did err in failing to expressly designate the violation of section 10851, a “wobbler” offense, as either a felony or a misdemeanor, as required under section 702. Case remanded to juvenile court with directions to make such a designation. (PB)

### **OTHER LEGAL DEVELOPMENTS**

#### **New or Revised Los Angeles County Department of Children and Family Services Policies of Significance –**

##### **For Your Information (FYIs):**

08-07            Correctly Documenting Amended/Sustained Petition Language In  
                         Court Reports

Link to FYI:

<http://dcfs.co.la.ca.us/Policy/FYI/2008/FYI0809AmendedPetitionsinCRTRpts.doc>

This FYI reminds staff that once a petition has been sustained, only the sustained counts can appear in subsequent court reports. When the petition is sustained with amended language, the reports must contain the amended language exactly as the court sustained it. (SA)

##### **Procedural Guides:**

0100-510.40    (REV) Teen Parents In Foster Care

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0500/050050710v0208.doc>

This procedural guide has been updated with a reference to and instructions regarding Whole Family Foster Homes and Shared Responsibility Plans. (SA)

0100-535.40 (REV) Continuation Of AFDC-FC Payments For Non-Court Dependent Youth Age 18 Or Over Residing In An Unrelated Home Or In The Home Of A Kin-Gap Guardian

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0100/010053540v0208.doc>

This procedural guide has been updated with information that Kin-Gap benefits may also be extended until age 19 if the conditions set forth by WIC 11403 are met. (SA)

0070-501.15 When Clients Provide Their Own Interpreters

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/00705015v0208.doc>

This procedural guide advises CSWs of the steps they are supposed to take and document when non-English speaking clients provide their own interpreters. (SA)

0070-501.10 (REV) Identifying A Client's Communication Needs

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007050110v0208.doc>

This procedural guide was updated to advise CSWs that when providing bilingual or interpreter services to clients, they shall document the method used pursuant to California Civil Rights Regulations Division 21-116.22. (SA)

050-503.20 (REV) Child Protection Hotline (CPH): Classification Of Allegations

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0050/005050320v0208.doc>

This procedural guide was revised to reflect changes in the way "Substantial Risk" as an allegation is now used pursuant to AB 673 and ACL 07-52. (SA)

0500-501.15 Releasing Case Record Information To Child Welfare Agencies Outside California

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0500/050050115v0208.doc>

This procedural guide informs staff that Penal Code 11167.5 now allows the release of case record information to another state's child welfare agency responsible for approving prospective foster or adoptive parents or relative caregivers for placement of a child. This procedural guide outlines the procedures that must be taken if staff receive notification of a request for information from the Department of Justice. (SA)

0500-302.10 (REV) Suspected Child Abuse Report: Release Of Information  
Pursuant To Penal Code Section 1167(d) And 1167.5

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0500/050030210v0208.doc>

This procedural guide has been revised to include instructions on how to release information related to reports of suspected child abuse or neglect to out-of-state agencies responsible for approving prospective foster or adoptive parents or relative caregivers for placement of a child. (SA)

0070-548.17 Completion And Submission Of The SS 8583, Child Abuse  
Investigation Report To The Department Of Justice

Link to Procedure:

<http://dcfs.co.la.ca.us/Policy/Hndbook%20CWS/0070/007054817v0208.doc>

This procedural guide informs CSWs of the procedure for completing the SS 8583 form, “Child Abuse Investigation Report,” to submit to the Department of Justice. The SS 8583 is required when a child abuse/neglect investigation concludes with either a substantiated or inconclusive finding in the categories of sexual abuse, physical abuse, severe neglect, emotional, mental abuse or exploitation. (SA)