

# Foster Care and Parental Rights

## I. Introduction

Children are taken from their birth parents or family guardians on a daily basis. "Nationwide, more than 400,540 children live in foster care. In California, which has the largest foster care population than any other state, the number of foster youth has tripled in the last 20 years." <sup>(1)</sup> In many cases these children are neglected or abused or living under conditions that are unsuitable for health, safety and learning. In some cases the child's conditions do not improve upon being placed into a foster home. Some of these cases are unnecessary and some parents find themselves trapped by a system that forgot its standards of keeping families together. In the cases where parents who are addicted to drugs or have other mental issues or incarceration issues that are present; efforts could be made to again facilitate the training of other blood relatives which would be better for the child's mental and physical well being. So the right to know one's parental rights is vital.

Once the children are in a foster care home, the monitoring of that home is not well established or completed. The emphasis on court proceeding and of the local social workers is to make a plan for reunification with the children and their birth parent(s) and to monitor the progress of the birth parents as to that plan. <sup>(2)(3)</sup> There is very little emphasis on the foster parents care for the foster child during this time. One can assume that the hope originally was that those who become foster parents were good people, wanting to care "It is crucial that the State upgrade the status of foster parents . . . (to) ensure their parenting skills by requiring adequate training and a psychological evaluation." <sup>(4)</sup> CASA, which is the newest emerging advocate, for a child in foster care, is this writer's observance of success due to the time and effort spent by their volunteers

## II. Scope of This Paper

This research paper will first discuss what foster care is and then announce the statistics for foster care from the fiscal year 2011. Next it will discuss the parental rights of parents before and after the child or children have been taken from the parent or parents. It will discuss the cases where the courts have decided what is reasonable in determining the separation and reunification of the child or children from his/her parent. Lastly it will discuss the role of the foster parent, training for that parent and law reviews and research opinions on the problems involved and the role of the new program called CASA.

### **III. Definitions and Statistics**

#### **A. What is Foster Care?**

“When the government believes that a child or children are being abused or neglected and cannot safely live with their families, it asks a Family Court judge to place the children in foster care.” <sup>(5)</sup> “Foster care” is residential care which includes the approved home of a relative, a non relative’s licensed home, the approved home of a non relative extended family member, a licensed group home, a non related legal guardians home, an exclusive use home, a setting certified by a licensed transitional housing placement provider or an approved supervised independent living setting for non minor dependents. (Ibid)

#### **C. Governmental Department Names**

Many names are used to refer to governmental departments that work with neglected and abused children. Some examples are: CPS – Child Protective Services, Health and Human Services, Department of Social Services, Child Welfare Department, DHS, Department of Human Services. This paper will refer to “department” when speaking of the governmental governing body over each citing unless otherwise stated. All of the agencies or departments are held to the standards written in the health and institution codes dealing with foster children and the state child welfare codes that may slightly differ from state to state as well as each states rules of court.

#### **B. Nation Wide Statistics**

- I. 400,540 children were in foster homes in 2011.
- II. 252,320 entered the system in 2011 and 245,260 exited the system.
- III. 31,101 of those children will be in the foster care system for 17 years.
- IV. 199,123 were reunified with parents in 2011. <sup>(6)</sup>

### **IV. Initial encounters with County or State officials.**

As mentioned above it is the government that is led to the knowledge that a child is experiencing abuse or neglect in their current home, usually by the birth parents. This information can come to the department’s attention by: a neighbors call, a person mandated by law to report suspected cases of child abuse or neglect, a law enforcement agency might make a report or refer a child to the department, a person might call the department to request that a social worker investigate a particular child’s circumstances and file a petition to make a child a dependent of the juvenile court. <sup>(7) (8) (9) (10)</sup>

## **A. Grounds for Removal**

A child may become a dependent of the juvenile court if the following descriptions happen; from the California Welfare and Institutions Code Section 300. (a); The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted non accidentally upon the child by the child's parent or guardian . . . a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. 300.

(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child, or the willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left, or by the willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.

The governmental department then has the responsibility to provide welfare services. "Only a social worker may file a petition asking the court to declare a child a dependent child of the court." <sup>(11)</sup> Once the social worker decides to file a petition asking the court to declare the child a dependent, the social worker files the petition with the juvenile court clerk, who set the matter for hearing. <sup>(12)</sup> <sup>(13)</sup>

## **V. Parental Rights**

This section will cover, first, the rights of parents who are present; meaning that their whereabouts are known. The last case is that of a parent whose whereabouts were temporarily unknown, but where the grandmother was able to be located and the case addresses notice to parents and/or relatives when parent rights are at stake.

### **A. Initial hearings**

Parents are informed of a hearing for the petition to have the child become a dependent of the court (Dispositional Hearing). Unless the parent has already lost parental rights, the law dictates that they must be informed of the hearing. If the parent has an attorney, the attorney must be notified. These services can be written or oral. <sup>(14)</sup> <sup>(15)</sup>

If the child is removed from the physical custody of a parent or guardian on the ground that the child may come within the jurisdiction of the juvenile court

pursuant to Section 300 of the Welfare and Institutions Code (described above), the child shall be returned to the physical custody of that parent or guardian immediately after a finding by the juvenile court that the child is not a person described in 300. <sup>(16)</sup>

## **B. Case Law and The Juvenile Dependency System**

The seriousness of having a child taken from a parent or parents is quite a serious event, especially for the child. The weight that a social worker has when assessing whether the child should be taken from a parent is then very heavy. This type of event should be taken as seriously and seen as objectively as is humanly possible. At times the social worker or the Court may forget their objectivity, and infringe upon the rights of the parents.

### **1. The Social Worker**

"Because we so abhor the involuntary separation of parent and child, the state may disturb an existing parent-child relationship only for *strong reasons and subject to careful procedures.*" <sup>(17)</sup> The court in this quoted case was asked to review whether the parents of Jasmine were to be kept from her parents because a social worker opined that the teenagers parents lacked a "full understanding"<sup>(18)</sup> of their . . . daughter's adolescent "issues."<sup>(19)</sup>

The court in this case held that; "a social worker's opinion that parents have not sufficiently internalized proper parenting skills is not substantial evidence to justify even a detriment finding, much less removal under section 361 of the Welf & I C. Because the trial court had no substantial evidence on which to predicate a finding of substantial danger to the daughter, we reverse the dispositional order." <sup>(20)</sup> In this case the parental right to have this review hearing <sup>(21)</sup> through the court and laws written in the Welfare and Institutions and Codes and have a judge determine the facts and the objectivity or in this case, a subjective report from the social worker, was paramount in having their teenager returned to them. It should be noted that the teenager did want to return to her parents home.

### **2. The Juvenile Court**

If a child is determined to be a dependent of the court at the initial dispositional hearing then within 6 months, there must be what is called a "status review hearing." At this point if the parent and child should already have received reunification services offered by the governmental department and ordered by the court. The reunification services consist of :

1. Individual, group, and family counseling;
2. Inpatient, residential, or outpatient substance abuse treatment services;
3. Mental health services;

4. Assistance to address domestic violence;
5. Services to provide temporary childcare and therapeutic services for families, including crisis nurseries;
6. Transportation to or from any of the services and activities listed above.

The next services are not required but may be offered if available:

- Assisting visitation
- Education, i.e. Parenting Skills
- Child Development
- Budgeting
- Housing
- Child Care
- Employment Readiness <sup>(22)</sup>

These services are required by law and are intended to reunite the child with one or both parents. <sup>(23)</sup> It is in the best interests of the parent or parents who have had their child or children taken, to comply with the court orders of reunification services.

**In Sara M. v. Superior Court (Tuolumne Co. Dept. of Social Services) (2005) 36 Cal.4th 998 [32 Cal.Rptr.3d 89; 116 P.3d 550]**, the mother, Sara M. petitioned the court to have her reunification services reinstated after they had been terminated. They were terminated because she did not visit her children in the initial 6 months after removal of them from her custody. Sara M. “contends that section 366.21, subdivision (e) of the W & I C, does not permit a court to terminate reunification services after only six months due to a parent's failure to contact or visit a child, unless the child had originally been removed from the parent's custody because of abandonment. Because she did not originally abandon the children, she argues, she is entitled to a full year of reunification services before the court may begin to consider a permanent plan.” (Ibid) Sara M. knew her rights and used them in court to try to get herself back on a plan (she had mild substance abuse issues.) But the evidence showed that Sara M. efforts were not genuine in nature and the court ruled that, “In this case, mother made no apparent effort after January 7 to visit her children under the reunification plan when she was free of drugs and alcohol. At the June 22 hearing, the court gave her another chance, and she still failed to visit the children. Under the circumstances, we find no error in the court's ultimate order of July 15 terminating reunification services and setting a hearing to establish a permanent plan. **[36 Cal.4th 1019]**”

This case shows both the need to know your rights and also the courts abilities to keep children if the court orders are not followed.

### **3. Drugs and Parental Rights Loss**

In extreme cases where a parent is neglecting their child to a point where the child is malnourished, is in harms way often or is not attending school, any normal human would see how a child would become a dependent of the court. But when a

social worker determines that an otherwise good mother who is drinking alcohol in moderation and smoking marijuana determines the children should be permanently taken away <sup>(24)</sup>, is when the system fails. The permanent removal of children from their parents is called Termination Parental Rights. <sup>(25)</sup>

In this case the mother Jennifer A., got onto the radar of child protective services because she had left her children ages, 7 and 3 alone in a motel room. She had a good job and as the court stated; "Mother's social worker and therapist recognized Mother was 'far removed' from leaving the children at home alone again, had learned proper parenting skills, and had accepted responsibility for the circumstances that brought the children into the juvenile court's custody."<sup>(26)</sup>

She was later found by the social workers to be missing drug tests, but only minimally and she admitted to have some alcohol and smoking marijuana. The court furthered had to say about Jennifer A.; "Mother not only has been employed in a responsible position since before these proceedings began, but since then, she has received a promotion. There is no evidence either Mother or Father ever physically or emotionally abused the children, other than the July 2002 incident leading to their detention. There is no evidence Mother cannot provide adequate living conditions. There is no evidence she has a mental illness or physical impairment affecting her parenting skills. Mother has never been incarcerated. She substantially complied with her reunification plan, has completed parenting courses and counseling, has completed drug treatment, and knows proper parenting behavior. Mother always acted appropriately with the children during visits. The relationship between Mother and the children has always been close, loving, and that of parent and children. <sup>(27)</sup>

The Social Worker continued to "pursue termination of parental rights on the theory Mother's positive marijuana test is one of a series of events, starting with the incident leading to the children's detention, that are indicative of poor judgment." This is a travesty to children who want to be with their parents. Thanks goodness the judge ruled: "The question we face is not whether Mother has an unblemished drug testing record or whether Mother is a perfect parent. Rather, the question is whether substantial evidence supports the juvenile court's finding that returning the children to Mother's custody would create a substantial risk of physical or emotional detriment to the children. Substantial evidence *does not support* such a finding. <sup>(28)</sup>

Imagine that these children may have been permanently taken from their mother because of a social worker who felt that the mother's record was not perfect. Yet the standard that the social worker would have for the foster parent would be sub standard, but that is for another topic and another research paper finding.

#### **4. The Doctor Said**

We have all heard the rumor stories and seen the TV drama shows where the Dr. sees physical abuse on a child but for some reason the Dr. feels to protect the parent instead of the child. This next case involves a Dr. who was too cautionary.

Every child falls and hits his or her head at least once in childhood. Because toddler falls are so prevalent, there are plenty of baby and toddler sites on how to prevent accidents such as the bump on the head. <sup>(29)</sup> “Ten month old Nataleigh fell and hit her head on a coffee table. One week later Jennifer noticed a bump on Nataleigh’s head, which was painful to the touch and appeared to have fluid in it. Jennifer called the family pediatrician and made an appointment. The doctor conducted an examination and concluded that there had been an un-witnessed fall in addition to the earlier fall on September 17. The doctor referred Nataleigh to the hospital for further tests, and informed Jennifer that she had called DCFS (department of Child and Family Services) to report possible child abuse.”<sup>(30)</sup>

This is a parent’s worst nightmare, when the child takes a normal fall and then the police and DCS become involved in an investigation. In this case the child was removed from the home and the parents used their rights to sue under the 4<sup>th</sup> amendment right “to be free from unreasonable searches by entering plaintiffs’ home without a warrant or consent, and in the absence of exigent circumstances.” We recall from the Section 300 of the Welfare Code that a child may be removed from the parent if there is a substantial risk that the child will suffer, serious physical harm inflicted non-accidentally upon the child by the child's parent or guardian, etc. But the facts showed in this case and the court of appeals found that; “Nataleigh was physically removed from her home at defendants’ (DCFS) direction and separated from her parents. This was done without court order, based solely on the one report by the pediatrician over a week before the removal. The complaint further alleges that, defendants had been informed by the hospital professionals, *that they did not believe any abuse had occurred.* Having already allowed Nataleigh to remain with her parents for over a week, the lone pediatrician report of possible abuse cannot support a finding of probable cause or exigent circumstances. Accordingly . . .defendants should have known that removing Nataleigh without a court order was unlawful.” <sup>(ibid)</sup>

The parents were able to successfully win this case on the fourth and fourteenth amendment violations. The social workers filed motions to dismiss on several counts, one of them being “immunity” as social workers, but the court found that “Qualified immunity is not just a defense from liability.” <sup>(ibid)</sup> What the court means is that even a social worker must remember at all times that there are rules and liabilities that are intertwined with their work. They get so angry with some parents that they cannot see when good parents are caught in the system by accident and they act in a manner that violates rights.

## **5. Failure to notify**

“We cannot and will not endorse (The Departments) failure to notify mother of the proceedings and its subsequent cynical effort to justify its conduct as ultimately serving the best interests of the minors.” <sup>(31)</sup> As stated earlier, parents

must be notified of initial hearings. Once the children are dependents of the juvenile court, there is then a 6-month review hearing per the California Rules of Court 5.695(i). Parents that are not the best of parents because they have trouble keeping jobs due to lack of a education are many times moving their residence quite often. Many times they are loving parents that just have financial challenges. At times they are parents who do lack a instinctive desire to care for their children with full regard for the health and safety of the children, but don't the less they do not harm their children for the most part by at times being without permanent residence. Children almost always want to be with their parent, even if their parent is less than ideal. To take away parental rights without notifying the parent or parents or even the next living relative, is, as the court stated, something that cannot be endorsed.

The case of DeJohn B and his Brother Edward B.,<sup>(32)</sup> a hearing to remove parental rights of their mother proceeded without notification to her. The social workers had not done the due process of finding relatives soon enough. Upon making a better effort to find relatives, the mother was found, then petitioned the court to have her parental right re-instated. The court reversed the order to terminate parent rights and remanded the case for "proceedings comporting with due process."<sup>(33)</sup> The sound of reasoning from the court is so comforting to those who advocate for children to be with their parents, even when the parents are less than perfect. The court furthered commented in this case; "We publish our decision because the failure to give notice carries such grave consequences in the dependency court, where parent-child ties may be severed forever. Social services agencies, *invested with a public trust and acting as temporary custodians of dependent minors, are bound by law to make every reasonable effort in attempting to inform parents of all hearings.* They must leave no stone unturned."<sup>(IBID)</sup>

## **VI. Conclusion**

Today we are more occupied with things of the world than we are with time with our children. Times spent teaching, loving, working to make a safe loving home and setting a good example by our own actions would help to alleviate the foster care problem. The right to freely propagate is just as stated; "free" yet, it comes with a responsibility that is not taken seriously. Yes, it is time consuming and requires must thankless sacrifice to care for children. Or is it thankless?

When these responsibilities are not taken seriously OR when they are taken seriously but a parent is caught in an unfortunate situation, the children of the nation become the responsibility of the county, which they reside. The system is imperfect and so it is important to know ones parental rights. The social worker on a daily basis sees parents that abuse or neglect their children. Horrible as each case may be, the process of correctly following procedure without prejudice is vital. The reason being that sometimes the child is placed in foster care in a worse home than they started, being neglected by people that are unknown them.<sup>(34)</sup>

Children innately want to be with their blood relatives. And in most cases should be. Help, funds and training for parents is the better way than Foster care to



keep families together Ashley Rhodes Carter put it this way in her memoir, *Three little Words*, “My mother’s parental rights were gone . . . I believed she yearned for me as much as I yearned for her. There were times when this longing dissolved all my defenses until all that was left were tears that couldn’t be contained” (Rhodes-courter, 2008, p. 163-164)

**Footnotes:**

1. <http://www.childrenunitingnations.org/who-we-are/foster-care-statistics/>
2. Welfare and Institutions Codes §366(a)(1)
3. California Rules of Court 5.798 (d)(3)
4. <http://www.lhc.ca.gov/studies/115/report115.pdf>
5. <http://www.childrenslawcenter.org/issues/foster-care>
6. Adoption and Foster Care Analysis and Reporting System (AFCARS) FY 2011 data
7. California Penal Code §11166(g)
8. California Penal Code §11165.7 and .9
9. Welfare and I C §329
10. *In re H.E.* (2008) 169 CA4th 710, 712, 86 CR3d 820
11. Welfare & I C §328
12. Welfare & I C §311(a)
13. Cal Rules of Ct 5.670
14. Welfare & I C §§290.1 (a)–(b)-(c)290.2 (a)-(b)
15. Cal Rules of Ct. 5.524(e)
16. Welfare & I C §361 (361.2)
17. *In re Jasmine G.*, 82 CA4th, quoting *In re Kieshia E.* (1993) [6 Cal. 4th 68](#), 76
18. *In re Jasmine G.*, 82 CA4th
19. *Ibid*
20. ***Blanca P. v. Superior Court* (1996) 45 Cal. App. 4th 1738, 1751 [53 Cal.Rptr.2d 687]**
21. Welfare and I C §366.21(e)-(f), Call Rules of Ct 5.79(d)
22. <http://info.dhhs.state.nc.us/olm/manuals/dss/csm-92/man/FR-01.htm>
23. Welfare & I C §16507
24. ***Jennifer A. v. Superior Court (Orange County Social Services Agency)* (2004) 117 Cal.App.4th 1322**
25. Welfare & I C §366.26(i)1; Cal Rules of Ct 5.725(e)2
26. ***Jennifer A. v. Superior Court (Orange County Social Services Agency)* (2004) 117 Cal.App.4th 1322**
27. [117 Cal.App.4th 1327]
28. [117 Cal.App.4th 1328]
29. <http://www.babycenter.com/toddler-safety-childproofing>

30. **Evans et al v. Richardson et al - Document 72 - No. 08 C 5593**

<http://docs.justia.com/cases/federal/district-courts/illinois/ilndce/1:2008cv05593/224320/72/0.pdf?1269888318>

31. **In re DeJohn B. (2000) 84 Cal. App. 4th 100 [100 Cal. Rptr. 2d 649]**

32. Ibid

33. Ibid

34. <http://poundpuplegacy.org/node/46451>