



# Children's Law Center of California

## ***“DEPENDENCY LEGAL NEWS”***

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Written by: Daniel Szrom (DS), Maggie Lee (ML), Kristin Hallak (KH), Michael Ono (MO), Ann-Marissa Cook (AMC), Stanley Wu (SW), Sarah Liebowitz (SL), Taylor Lindsley (TL), Liz Lopez (LL), Kaveh Landsverk (KL).

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### **NEW DEPENDENCY CASE LAW**

#### **Jurisdiction—WIC 300(d)**

*In re E.G.*—published 7/1/25; Second Dist., Div. Eight

Docket No. B338002; 112 Cal.App.5th 707

Link to case: <https://www4.courts.ca.gov/opinions/documents/B338002.PDF>

**SUBSTANTIAL EVIDENCE OF SEXUAL ABUSE MAY REST ON THE MINOR'S CONSISTENT AND DETAILED DISCLOSURES, EVEN WHERE THE MINOR LATER RECANTS.**

The agency filed a petition over 11-year-old E.G. after she reported sexual abuse by her stepfather, the father of her two younger half-siblings, that began when she was six years old. E.G. and her half-siblings were removed from stepfather and remained with mother. E.G. gave largely consistent, detailed reports of stepfather's sexual abuse involving multiple instances of rape and molestation to at least six people over several months. Nonetheless, mother and maternal relatives reported they did not believe stepfather had abused E.G. and questioned E.G. as to whether she was telling the truth. The agency reported that mother repeatedly expressed financial reliance on stepfather and wondered when he could return home. After maternal aunt asked E.G. whether the allegations were true, threatened that the agency

could take her away for lying, and suggested she may have dreamt the abuse, E.G. recanted. E.G. also denied any abuse with her therapist, but their sessions were virtual and mother was always present in the background. At the adjudication, E.G. testified that stepfather had not sexually abused her, that she lied due to being upset with him, and denied being pressured to recant. The court sustained the sexual abuse allegations under subdivisions (b), (d), and (j), explaining at length that recantation was not uncommon, that E.G. had for the most part given consistent and detailed descriptions of the abuse, and that her recantation appeared to be the result of seeing her family split up and mother in a difficult situation. Stepfather appealed.

Affirmed. On appeal, stepfather relied on various inconsistencies in E.G.'s statements and other evidence to challenge jurisdiction under section 300, subdivision (d). Nonetheless, the juvenile court reasonably found it was E.G.'s recantation, rather than her detailed reports of sexual abuse, that lacked credibility. The court's credibility determination was substantially supported given E.G.'s family's disbelief, their pressure on E.G. to recant, threats of foster care, and suggestions that the abuse was a dream. E.G.'s explanations as to why she lied were also at odds with each other, which further undermined her recantation. While the evidentiary and credibility conflicts could have been resolved differently, they did not negate the existence of substantial evidence to support jurisdiction. The court was entitled to credit E.G.'s repeated and detailed descriptions of abuse rather than the recantations made after family pressure. Substantial evidence also supported jurisdiction under section 300, subdivision (j) as the severity of the sexual abuse placed the siblings at substantial risk of harm. As in *In re I.J.*, where rape was deemed "aberrant in the extreme," the egregious nature of the sexual abuse of E.G. justified finding the siblings were likewise endangered. (ML)

## **ICWA—WIC 224.2**

*In re C.R.*—published 7/3/25; Second Dist., Div. Three

Docket Nos. B341338, B341335; 112 Cal.App.5th 793

Link to case: <https://www4.courts.ca.gov/opinions/documents/B341335.PDF>

**WHEN A PARENT IS A DEPENDENT, THE COURT NEED NOT REPEAT RECENT ICWA INQUIRIES IF THE RESULTS ARE SUFFICIENTLY REPORTED AND INCORPORATED INTO THE CHILD'S CASE.**

In January 2020, the agency filed a petition over a fifteen-year-old. At the initial hearing, the teen's mother filed a Parental Notification of Indian Status (ICWA-020) form denying Native American ancestry and confirmed in

court there was none on the deceased father's side. The court found "no reason to know" the minor was an Indian Child under ICWA. In the jurisdictional report, the teen's mother again denied ancestry and reported no contact information for the father's family. In July 2020, the minor, now pregnant, was declared a dependent. She gave birth to C.R. in December 2020. In January 2021, the agency filed a petition over C.R. due to domestic violence and father's drug abuse. C.R.'s case was assigned to the same courtroom handling her mother's dependency matter. One month before filing, C.R.'s mother denied Native American ancestry to the social worker. At the detention hearing, the court admitted into evidence three reports from mother's dependency case - one of which indicated the prior finding that ICWA did not apply - and mother's ICWA-020 form which again denied ancestry. C.R.'s father also denied ancestry. The court found no reason to know ICWA applied as to mother. At subsequent hearings, the court admitted reports from the mother's dependency case that reflected the earlier ICWA findings. At the section 366.26 hearing, the court, noting mother's dependency history, again found there was "no reason to know or believe" that ICWA applied and terminated parental rights. On appeal, mother argued the agency failed to conduct an adequate initial inquiry under ICWA by not interviewing maternal grandmother, aunt, and cousin.

Affirmed. The court may find that ICWA does not apply if the agency's inquiry and due diligence were proper and adequate and the record provides no reason to know the child is an Indian child as defined by ICWA. Here, although the agency had failed to ask maternal grandmother (MGM) about the family's Native American ancestry in C.R.'s case, the agency and the court did question her in mother's dependency case, which had only begun a year earlier, about her and deceased maternal grandfather's ancestry. The mother's dependency case was ongoing, both cases were in the same court department, the same attorney represented the mother in both matters, and records from mother's dependency case were repeatedly admitted into C.R.'s case. In short, everyone knew MGM had denied ancestry throughout mother's dependency case and that the court had found no reason to know that mother was an Indian child. Although the agency had contacted maternal aunt and cousin without asking about ancestry, the court could reasonably conclude aunt would not have more information than mother, who was her sister. Moreover, given MGM's denials and lack of further information from mother, the court could reasonably find it unnecessary to question a cousin about C.R.'s ancestry. (ML)

## **Incarcerated Parents—Penal Code 2625, subd. (d)**

*In re Hunter V.*—published 7/3/2025; Second Dist., Div. Seven

Docket: B339028

Link to Case: <https://www4.courts.ca.gov/opinions/documents/B339028.PDF>

[1] AMENDMENTS TO A PETITION CANNOT MATERIALLY ALTER THE ALLEGATIONS WITHOUT PROPER NOTICE. [2] DUE PROCESS REQUIRES AN INCARCERATED PARENT TO BE TRANSPORTED TO COURT FOR THE ADJUDICATION AND DISPOSITION HEARING UNLESS A WRITTEN WAIVER IS PROVIDED.

A section 300 petition was filed alleging the children were at risk due to mother’s substance abuse and father’s extensive criminal history. During the course of the dependency proceedings, father was incarcerated. At the initial hearing, father was not transported to court. The children were detained and monitored visits were ordered for both parents. Counsel was directed to reach out to father. While in custody, the agency was able to contact and speak to father. At the jurisdiction hearing, father was not transported to court and remained incarcerated. Father remained without counsel. Counsel for the agency requested a continuance because there was no documentation indicating father waived his right to be present. The juvenile court directed the bailiff to contact father’s facility to inquire why father was not transported—the bailiff reported father refused to be transported. The agency’s continuation request was denied. The juvenile court found the agency did not meet its burden to show father’s criminal history posed a risk to the children. However, the juvenile court created its own allegation and found father was unable to parent his children due to his incarceration and he failed to make an appropriate plan. At the dispositional hearing, father was represented by counsel. Father’s counsel requested a continuance due to father’s desire to be present. The juvenile court declined to continue the case. The children were removed and the parents were provided reunification services. Father timely appealed.

Reversed. The juvenile court made two errors. First, the juvenile court violated father’s due process right to notice of the amended allegation against him. A juvenile court may amend a dependency petition to conform to the evidence received at the jurisdiction hearing to remedy immaterial variances between the petition and proof. However, material amendments that mislead a party to his or her prejudice are not allowed. The juvenile court’s amendments to the petition were material. The original petition alleged father’s criminal history placed the child at risk. The amended petition did not allege father posed a risk to the children. Instead, the amended petition alleged father was unable to care for the children and failed to make an appropriate plan. Second, the juvenile court violated father’s statutory right

to be present at the jurisdiction and disposition hearing. Pursuant to California Penal Code section 2625, subdivision (d), a parent has the right to be present at an adjudication hearing unless the parent waives his or her appearance. Subdivision (d) requires a waiver to be signed by the prisoner or signed by the warden, superintendent, or other person in charge of the institution stating the parent has, by express statement or action, indicated an intent not to appear. No such waiver was provided to the juvenile court. (MO)

### **Sibling Visitation—Forfeiture—WIC 388; 16002**

*In re L.M.*—published 7/31/25; First Dist., Div. Three  
Docket No. A171105

Link to case: <https://www4.courts.ca.gov/opinions/documents/A171105.PDF>

ALTHOUGH COURTS MUST GIVE SPECIAL WEIGHT TO PARENTAL DECISION-MAKING WHEN CONSIDERING NON-DEPENDENT SIBLING VISITATION, THE ISSUE IS FORFEITED HERE WHERE THE CONSTITUTIONAL ARGUMENT WAS NOT MADE IN THE TRIAL COURT.

The juvenile court sustained a petition that mother was unwilling or unable to care for 15-year-old L.M. and removed him from her custody. The agency did not file a petition as to L.M.'s sister, who remained in mother's care. The agency requested an order for visits between sister and L.M. Mother objected to in-person visitation due to L.M.'s "unregulated" behaviors such as smoking marijuana and threatening self-harm. The juvenile court initially ruled that it did not have jurisdiction over the sister and could not order visitation. The agency and minor's counsel moved for reconsideration on the basis that recent changes to sections 388 and 16002 gave the court authority to order non-dependent sibling visitation. Mother again objected on the grounds that the standards for reconsideration were not met; mother did not object on constitutional grounds. The juvenile court reversed its prior decision and ordered weekly in-person visitation between L.M. and his sister. Mother appealed.

Affirmed. Legislative amendments to sections 388 and 16002 allow dependent minors to petition the court for visitation with non-dependent siblings in parental custody. Mother challenges the constitutionality of those amendments on appeal. The United States Supreme Court declared that fit parents have a fundamental liberty interest in the upbringing and control of their children. Considering visitation with a grandparent, the Supreme Court

held that courts must accord special weight to a fit parent's determination. In the present case, the statutory amendments do not make a provision for giving weight to the visitation decision of the parent. The Constitution requires that the juvenile court give special consideration to parental decisions when deciding on non-dependent sibling visitation. However, because mother failed to make this constitutional argument in the trial court, we deem it forfeited. Although there is discretion to consider the argument, we do not exercise it here. The statute is not facially unconstitutional because it authorizes but does not require sibling visitation. The statute may well be unconstitutional "as applied" but we leave that for another day. Nor do we find that the visitation order was otherwise an abuse of discretion based on the evidence before the court. (DS)