

REUNIFICATION SERVICES

Reasonable Services
Not Qualified Statutorily for Services
Bypass

REASONABLE SERVICES:

CPS is required to develop a case plan if the minor is removed, unless the court authorizes bypass. (*In re Kristin W.* (1990) 222 Cal.App.3d 234, 254.)

“It is difficult, if not impossible, to exaggerate the importance of reunification services in the dependency system.” (*In re Luke L.* (1996) 44 Cal.App.4th 670, 678.)

No grounds for drug testing when only evidence of parent’s drug use is the unsworn allegations of the other parent. (*In re Sergio C.* (1999) 70 Cal.App.4th 957, 960-961 [the parent “has flatly denied all involvement with drugs and has otherwise cooperated fully with all of the court’s orders, there must be *some* investigation by DCFS to warrant the kind of invasive order that was made here. For this reason, we will reverse the order and remand to the dependency court with directions to order a further investigation before deciding whether, in fact, drug testing is necessary in this case.”].) Cannot order drug testing for either parents based on social worker’s observation that mother “behaved somewhat out of the usual and was obsessed with discussing a fortune-making invention” (*In re Basilio T.* (1992) 4 Cal.App.4th 155, 172.)

Can order non-offending parent to go to parenting class. (*In re Jasmin C.* (2003) 106 Cal.App.4th 177, 180-181 [mother acted appropriately to the father’s single incident of physical abuse]; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1008 [the father’s repeated convictions for driving under the influence and positive test for methamphetamine]; *In re Edward C.* (1981) 126 Cal.App.3d 193, 205-206 [mother supported father’s excessive disciplining].)

Case plan can be based on findings made during investigation that were not the basis of jurisdiction. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.)

Reunification services must be specifically tailored to the needs of the parents. (*In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438; *In re Kristin W.* (1990) 222 Cal.App.3d 234, 254-255; *In re John B.* (1984) 159 Cal.App.3d 268, 275; *In re Jamie M.* (1982) 134 Cal.App.3d 530, 545; *In re Bernadette C.* (1982) 127 Cal.App.3d 618, 626; *In re Riva M.* (1991) 235 Cal.App.3d 403, 414; but see *Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598-599 [services reasonable though did not fully address the parent’s

mental health problems].)

Reasonableness of services judged on content and implementation. (*In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1362.)

CPS must make a good faith effort to implement the case plan. (*In re John B.* (1984) 159 Cal.App.3d 268, 275.)

Services were reasonable though CPS was slow to implement it. (*Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1159.)

“Family preservation, with the attendant reunification plan and reunification services, is the first priority when child dependency proceedings are commenced.” (*In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1787.)

Reunification services need not be perfect. (*Katie V. v. Superior Court* (2005) 130 Cal.App.4th 586, 598.)

Services were reasonable when the minor was placed in Georgia and CPS would not pay for plane fare for visitation. (*LA Co. DCFSS v. Superior Court* (1988) 60 Cal.App.4th 1088, 1093.)

Services were unreasonable when reunification was dependent upon the father finding his own home, but CPS never did anything about it. (*David B. v. Superior Court* (2004) 123 Cal.App.4th 768, 793-797.)

Services were unreasonable when a 60 day trial visit with the parent was indefinitely delayed. (*Rita L. v. \sc* (2005) 128 Cal.App.4th 495, 508-509.)

A court need not make a finding of reasonable services if it does not order a permanent plan of adoption. (*Danny H. v. Superior Court* (2005) 131 Cal.App.4th 1501, 1511-1512; see *Mark N. v. Superior Court* (1998) 80 Cal.App.4th 996, 1015-1016.)

Appealability: Failure to appeal the case plan waives the issue of reasonable services on appeal. (*In re Julie M.* (1999) 69 Cal.App.4th 41, 47; see *Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018; *In re Precious J.* (1996) 42 Cal.App.4th 1463, 1476; *Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 810, 811; *In re Cicely L.* (1994) 28 Cal.App.4th 1697, 1705 [cannot attack reasonable services on appeal from termination of parental rights].)

Appealability: One cannot appeal the finding of reasonable services when the

court offers more services because appellant is not an aggrieved party. (*Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1158 [but can file a petition for writ of mandate].)

Waiver: Failure to object to evidence supporting denial of services waives the issue. (*In re Jennilee T.* (1992) 3 Cal.App.4th 212, 222 [parent did not waive insufficient evidence for denial of services when court received only one expert report when two were required]; but see *In re Catherine S.* (1991) 230 Cal.App.3d 1253, 1258 [insufficient evidence of expert's qualifications]; *In re Rebecca H.* (1991) 227 Cal.App.3d 825 [same].)

Waiver: Failure to appeal the case plan waives the claim of unreasonable services as designed (*Steve J. v. Superior Court* (1995) 35 Cal.App.4th 798, 810, 811 [TRS]; *In re Julie M.* (1999) 69 Cal.App.4th 41, 47 [6DR]; *In re Kevin S.* (1996) 41 Cal.App.4th 882, 885-886 [failure to object to unreasonable services at DR]; *In re Terry H.* (1994) 27 Cal.App.4th 1847, 1853 [never requested services].)

Waiver: Because CPS has a statutory duty to provide reasonable services, a parent is not required to object to lack of reasonable services in the juvenile court in order to raise the issue on appeal. (*Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1014.)

Standing: Parent cannot object to inadequate services provided for other parent. (*In re Sarah M.* (1991) 233 Cal.App.3d 1486, 1503.)

Mootness: Challenge of an entry in the case plan moot on appeal because father complied with the order by the time the appeal was decided. Should be raised by writ petition. (*In re Andres G.* (1998) 64 Cal.App.4th 476, 483-484.)

Standard of review: Whether a case plan provision should be ordered is reviewed for abuse of discretion. (*In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006.)

Standard of review: Whether services ordered would be reasonable reviewed for substantial evidence. (*Sara M. v. Superior Court* (2005) 36 Cal.4th 998, 1018; *Melinda K. v. Superior Court* (2004) 116 Cal.App.4th 1147, 1158 [6DR]; *In re Alvin R.* (2003) 108 Cal.App.4th 962, 971; *In re Precious J.* (1996) 42 Cal.App.4th 1463, 1472 [6DR]; *In re Monica C.* (1995) 31 Cal.App.4th 296, 306 [18DR]; *In re Misako R.* (1991) 2 Cal.App.4th 538, 545 [12DR]; *In re Ronell A.* (1996) 44 Cal.App.4th 1352, 1361-1362; *In re Joanna Y.* (1992) 8 Cal.App.4th 433, 438; but see *In re James B.* (1991) 227 Cal.App.3d 524, 530 [abuse of discretion]; *In re David D.* (1994) 28 Cal.App.4th 941, 954.) Can presume CPS properly implemented the case plan. (*David B. v. Superior*

Court (2004) 123 Cal.App.4th 768, 794.)

Remedy: Failure to provide reasonable services requires six more months of services. (*In re Monica C.* (1995) 31 Cal.App.4th 296, 310.) The court may also postpone the permanent plan hearing. (*In re Danel G.* (1994) 25 Cal.App.4th 1205, 1214; but see *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1017, fn. 10.)

Remedy: Even without a finding in the trial court of unreasonable services, the court has discretion to provide more than 18 months of services if services were defective or inadequate for at least part of the time. (*In re Alvin R.* (2003) 108 Cal.App.4th 962, 973-974 [six more months of services because there was no visitation]; *Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1465-1466 [can provide more than 18 months of services when essentially nothing happened the first six months]; *Mark N. v. Superior Court* (1998) 60 Cal.App.4th 996, 1016-1017 [No services or visitation were provided to an incarcerated parent. “Courts of Appeal have held the Legislature never intended a strict enforcement of the 18-month limit to override all other concerns including preservation of the family when appropriate.”]; *In re Elizabeth R.* (1995) 35 Cal.App.4th 1774, 1778-1796 [mother hospitalized]; *In re David D.* (1994) 28 Cal.App.4th 941, 955-956 [inadequate services]; *In re Daniel G.* (1994) 25 Cal.App.4th 1205, 1214 [services provided to mentally ill parent were “a disgrace”]; see *In re Brittany S.* (1993) 17 Cal.App.4th 1399, 1406-147 [no services or visitation to incarcerated parent]; *In re Dino E.* (1992) 6 Cal.App.4th 1768, 1778; but see *In re N.M.* (2003) 108 Cal.App.4th 845, 856-857 [court abused discretion ordering more than 18 months of services when mother relapsed just before the dependency was to be dismissed]; *In re Jayson T.* (2002) 97 Cal.App.4th 75, 81 [no automatic right to more services when mother in hospital during some of the reunification period], disapproved on other grounds in *In re Zeth S.* (2003) 31 Cal.4th 396, 413-414; *Andrea L. v. Superior Court* (1998) 64 Cal.App.4th 1377, 1388-1389 [mother failed to drug test and then tested positive, despite claim she was provided inadequate services]; *Los Angeles County Dept. of Children and Family Services v. Superior Court* (1998) 60 Cal.App.4th 1088 [no extension in cases not involving special circumstances; father late to start case plan]; *In re Brequia Y.* (1997) 57 Cal.App.4th 1060, 1068 [alcoholic mother in and out of treatment].)

NOT QUALIFIED STATUTORILY FOR SERVICES:

A parent is statutorily entitled to reunification services when there is a new dependency, though she received 18 months of services before previous dependency was dismissed. (*Rosa S. v. Superior Court* (2002) 100 Cal.App.4th 1181,1188.)

A noncustodial parent who did not receive placement of the child is not entitled to

reunification services unless the parent requests them. (*Robert L. v. Superior Court* (1996) 45 Cal.App.4th 619, 626-629; *In re Terry H.* (1994) 27 Cal.App.4th 1847, 1855.)

A parent who did not appear in court for a year not entitled to services. (*In re William G.* (2001) 89 Cal.App.4th 423, 428 [CPS knew where parent was, but parent refused to attend court because of an outstanding warrant].)

When the court places the child with the noncustodial parent, the court has discretion whether to order reunification services. (*In re Patricia T.* (2001) 91 Cal.App.4th 400, 407; *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1179; *In re Erika W.* (1994) 28 Cal.App.4th 470, 475.)

Alleged father is not entitled to services, though services can be offered if it is in the best interests of the child. (*In re Zacharia D.* (1993) 6 Cal.4th 435, 451; *In re Elijah V.* (2005) 127 Cal.App.4th 576, 585-587 [denial of services does not violate equal protection]; *Glen C. v. Superior Court* (2000) 78 Cal.App.4th 570, 584; *In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75; *In re Christopher H.* (1996) 50 Cal.App.4th 1001, 1006; *In re Sarah C.* (1992) 8 Cal.App.4th 964, 975-977.)

Step-parent is not entitled to reunification services. (*In re Jodi B.* (1991) 227 Cal.App.3d 1322, 1325; but see *In re Venus B.* (1990) 222 Cal.App.3d 931, 935 [can order services for step-parent if in best interests of the child]; cf. *In re Jody R.* (1990) 218 Cal.App.3d 1615, 1626-1629 [the court has no authority to order reunification services for step-parent].)

De facto parent is not entitled to reunifications services. (*In re Jamie G.* (1987) 196 Cal.App.3d 675, 684.)

Grandparent is not entitled to reunification services. (*In re Albert B.* (1989) 215 Cal.App.3d 361, 381.)

Dependency legal guardian is not entitled to reunification services. (*Barbara A. v. Superior Court* (2005) 129 Cal.App.4th 1408, 1420-1421 [an could not complain about reasonable services if did receive it]; *In re Alcia O.* (1995) 33 Cal.App.4th 176, 182.)

If remove the child after offering 18 months of out-of services, need not re-offer reunification services, even if the child was placed for a while in the parent's home for a trial placement. (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 165; *In re Steven A.* (1993) 15 Cal.App.4th 754, 765; *In re Michael S.* (1987) 188 Cal.App.3d 1448, 1459.)

Court can order services, then grant a 388 petition denying services. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872.)

Standard of review: Uphold the decision of the juvenile court if there was substantial evidence for by-pass. (*Edgar O. v. Superior Court* (2000) 84 Cal.App.4th 13, 18-19; *Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470, 474; *In re Jasmine C.* (1999) 70 Cal.App.4th 71, 75; *In re Catherine S.* (1991) 230 Cal.App.3d 1253, 1258; but see *In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 474 [juvenile court has broad discretion in determining whether offering services would be in the minor's best interests]; *In re Nada R.* (2001) 89 Cal.App.4th 1166, 1179 [the standard is abuse of discretion when deny services because placed minor with other parent].)

Waiver: Attorney conceding services would be futile waives argument the court erred in denying services. (*In re Rebekah R.* (1994) 27 Cal.App.4th 1638, 1649.)

Waiver: Parent who did not clearly state that he or she wanted services could waive the issue of denying services. (See *In re Terry H.* (1994) 27 Cal.App.4th 1847, 1853.)

Waiver: Denial of services without cause not waived. (*In re Nada R.* (2001) 89 Cal.App.4th 1166, 1178.)

Mootness: Subsequent order offering services make appeal from denial of services moot. (*In re Dani R.* (2001) 89 Cal.App.4th 402, 406.)

BYPASS:

Can rescind services based on new information. (*Sheila S. v. Superior Court* (2000) 84 Cal.App.4th 872, 877-879 [§ 388 petition to rescind reunification services after six months]; see *Nickolas F. v. Superior Court* (2006) 144 Cal.App.4th 92, 119 [court rescinded services after six months under § 387 because the parent severely injured a sibling].)

Section 361.5(b) authorizes denial of reunification services to parents in situations in which efforts would be "fruitless." (*Deborah S. v. Superior Court* (1996) 43 Cal.App.4th 741, 750.) "It should (and cannot) go without saying that 'fruitless' is a pretty high standard. If the evidence suggests that despite a parent's substantial history of misconduct with prior children, there is a reasonable basis to conclude that the relationship with the current children could be saved, the courts should always attempt to do so." (*Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464.) Twelve months, "[w]hile this may not seem a long period of time to an adult, it can be a lifetime to a

young child.” (*In re Marilyn H.* (1993) 5 Cal.4th 295, 310.)

In assessing whether bypass is in the minor’s best interests, the juvenile court should consider the gravity of the problem, the strength of the minor’s bond with the parent and the caretaker, and the minor’s need for permanence and stability. Ameliorating the cause of the dependency is not enough. (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 66-67, citing *In re Kimberly F.* (1997) 56 Cal.App.4th 519.)

§ 361.5(b)(1) Abandonment. The court can deny reunification services to the noncustodial father. (*Robert L. v. Superior Court* (1996) 45 Cal.App.4th 619, 626-629; *In re Terry H.* (1994) 27 Cal.App.4th 1847, 1855; *In re Sarah C.* (1992) 8 Cal.App.4th 964, 975-977.)

§ 361.5(b)(2):Mental illness. Statute is constitutional (*In re Jennilee T.* (1992) 3 Cal.App.4th 212, 218-221; *In re Christina A.* (1989) 213 Cal.App.3d 1073, 1080.)

Statute requires two psychiatric evaluations. (*Linda B. v. Superior Court* (2001) 92 Cal.App.4th 150, 152-153; *In re Catherine S.* (1991) 230 Cal.App.3d 1253, 1258; *In re Rebecca H.* (1991) 227 Cal.App.3d 825, 841-845, disapproved on other grounds in *In re Candace P.* (1994) 24 Cal.App.4th 1128, 1130 fn. 3; cf. *Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470, 474.)

Although must have two psychiatric evaluations, there is no requirement the psychologist be licensed in determining whether the parent, already properly diagnosed, would benefit from services. (*In re Catherine S.* (1991) 230 Cal.App.3d 1253, 1258.)

Can bypass if the parent refuses to undergo psychological examination. (*In re C.C.* (2003) 111 Cal.App.4th 76, 84-91.)

Waiver: Failure to object to psychiatrist’s qualifications waive issue. (*In re Joy W.* (2002) 99 Cal.App.4th 11, 19; *In re Jennilee T.* (1992) 3 Cal.App.4th 212, 222-223; but see *In re Catherine S.* (1991) 230 Cal.App.3d 1253, 1257-1258 [clearly unqualified].)

Standard of review: Uphold the decision of the juvenile court if there was substantial evidence for by-pass. (*Curtis F. v. Superior Court* (2000) 80 Cal.App.4th 470, 474; *In re Catherine S.* (1991) 230 Cal.App.3d 1253, 1258.)

§ 361.5(b)(3) Minor removed because of abused, returned, and removed because of abuse.

§ 361.5(b)(4) Killed a child. The court can terminate services once parent is convicted of a crime which resulted in the death of a child. (*In re Alexis M.* (1997) 54 Cal.App.4th 848, 851; *In re Jessica F.* (1991) 229 Cal.App.3d 769.)

Can by-pass because parent’s boyfriend killed a child. (*Patricia O. v. Superior Court* (1999) 69 Cal.App.4th 933, 942-944; *In re Ethan N.* (2004) 122 Cal.App.4th 55,

68-69 [there can be virtually no ground why it would be in the minor's best interest to try to reunify with a parent who negligently caused the death of a sibling].)

Can by-pass even though there was no criminal conviction for killing a child. (See *In re Sylvia* (1997) 55 Cal.App.4th 559, 562-563.)

§ 361.5(b)(5) Severe physical abuse. The court must make a(n implied) finding under subdivision (c) to by-pass. (*In re Rebekah R.* (1994) 27 Cal.App.4th 1638, 1652-1656.) The subdivision applies to the non-perpetrating parent as well. (*Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 849; *In re Kenneth M.* (2005) 123 Cal.App.4th 16, 21; *In re E.H.* (2003) 108 Cal.App.4th 659, 667, 670.)

The statute creates presumption of by-pass unless parent can show fitness. (*Raymond C. v. Superior Court* (1997) 55 Cal.App.4th 159, 164.)

§ 361.5, subd. (c), third paragraph, applies to § 361.5, subd (b)(5), but not to subd. (b)(6). (*Pablo S. v. Superior Court* (2002) 98 Cal.App.4th 292, 303.)

§ 361.5(b)(6) Abused child. The court can deny services because a sibling qualified under this subdivision. (*Deborah S. v. Superior Court* (1996) 43 Cal.App.4th 741, 749-751 [see § 361.5, subd. (b)(7)]; see generally *Anthony J. v. Superior Court* (2005) 132 Cal.App.4th 419, 425-427 [can bypass father when he abused a step-child who was the half-sibling of the father's child]; *Pablo S. v. Superior Court* (2002) 98 Cal.App.4th 292, 301 [can bypass because waited several months before took minor to the hospital with painfully broken leg]; *Raymond C. v. Superior Court* (1997) 55 Cal.App.4th 159; *In re Rebekah R.* (1994) 27 Cal.App.4th 1638, 1651-1652 [the subdivision applies only to the perpetrator]; see *Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 849-851 [the subdivision does not apply to a negligent parent who was unaware of abuse by the other parent]; but see *Amber K. v. Superior Court* (2006) 146 Cal.App.4th 553, 561-563 [can bypass parent who permitted another to abuse the child]; *In re Tanyann W.* (2002) 97 Cal.App.4th 675, 679 [does not include foster sibling].) The court need not make an expressed factual finding. (*In re S.G.* (2003) 112 Cal.App.4th 1254, 1259-1261.) This subdivision applies only to the perpetrator of the physical abuse and require special findings under section 361.5, subdivision (i). (*In re Kenneth M.* (2005) 123 Cal.App.4th 16, 21.)

§ 361.5, subd. (c), third paragraph, applies to § 361.5, subd (b)(5), but not to subd. (b)(6). (*Pablo S. v. Superior Court* (2002) 98 Cal.App.4th 292, 303.)

§ 361.5(b)(7) Bypassed another child. This exception applies if a sibling was bypassed under subdivision (b)(5). (*In re Kenneth M.* (2005) 123 Cal.App.4th 16, 22.)

§ 361.5(b)(8) Rapist or molester.

§ 361.5(b)(9) Abandonment.

§ 361.5(b)(10): Prior termination of services. The Department must show (1) the parent previously failed services, and (2) the parent failed to make a reasonable effort to resolve that problem. (*Cheryl P. Superior Court* (2006) 139 Cal.App.4th 87, 96; see *In re Albert T.* (2006) 144 Cal.App.4th 207, 220 [that something was a “concern” in the previous dependency did not make it a “cause” of the dependency].) Termination of services for other sibling may be after the filing of the new child’s petition but must be during or before the dispositional hearing. (*Cheryl P. Superior Court* (2006) 139 Cal.App.4th 87, 97-99 [failing previous services alone is not enough, so when attempt to bypass the same day as terminate services for a (half) sibling, the issue is whether the parent attempted to address the problems]; see also *Marlene M. v. Superior Court* (2000) 80 Cal.App.4th 1139, 1148-1149 [can continue dispositional hearing in order for the court to order termination of services for sibling before dispositional hearing in the new case]; *Riverside Co. DPSS v. Superior Court* (1999) 71 Cal.App.4th 483, 488; but see *In re Harmon B.* (2005) 125 Cal.App.4th 831, 842-843 [can terminate services for the sibling and bypass on the minor the same day simply on the ground that the parent failed to reunify with the sibling].)

Can deny services for father when terminated services for the minor’s half-sibling where the father was only the alleged father in that case. (*Francisco G. v. Superior Court* (2001) 91 Cal.App.4th 586, 598.)

The Americans with Disabilities Act does not provide relief for parent. (*In re Diamond H.* (2000) 82 Cal.App.4th 1127, 1139.)

“Reasonable effort to treat” the cause of prior problems under subdivisions (b)(10) and (b)(11) does not require the parent to cure the problem. (*Renee J. v. Superior Court* (2002) 96 Cal.App.4th 1450, 1464; see *In re Albert T.* (2006) 144 Cal.App.4th 207, 220-221 [doing programs was a reasonable effort]; but see *In re Harmon B.* (2005) 125 Cal.App.4th 831, 842-843 [this provision does not apply if the court bypasses the same day it terminated services for the sibling].)

§ 361.5(b)(11): Prior termination of parental rights. CPS need not show parent had not subsequently made reasonable efforts under subdivision (A). (*Marshall M. v. Superior Court* (1999) 75 Cal.App.4th 48, 58-60; overruling *Shawn S. v. Superior Court* (1998) 67 Cal.App.4th 1424, 1440, but overruled by subsequent legislation.)

Statute is constitutional. (*In re Baby Boy H.* (1998) 63 Cal.App.4th 470, 478; *In re Joshua M.* (1998) 66 Cal.App.4th 458, 468-469 [despite concerns of retroactivity].)

By-pass justified even though parent successfully reunified with another child. (*Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 71-72.)

This statute provides independent grounds for by-pass even when the parent is in custody and subdivision (e) would also apply. (*In re Jasmine C.* (1999) 70 Cal.App.4th

71, 77.)

This statute applies even if prior termination of parental rights was from relinquishment or private adoption. (*In re Angelique C.* (2003) 113 Cal.App.4th 509, 517-519.)

§ 361.5(b)(12) Parent committed violent felony

For a parent convicted of voluntary manslaughter against his spouse, services would be detrimental to the child. (See *In re Geoffrey S.* (1979) 98 Cal.App.3d 412, 422-423.)

A violent felony conviction and currently in prison is sufficient. (*In re James C.* (2002) 104 Cal.App.4th 470, 485.)

§ 361.5(b)(13) Continuing drug abuser (former subdivision (b)(12)). This subdivision provides for two distinct grounds for by-pass: history of drug use and either resistance to treatment in the previous three years or failure in two drug programs. (*In re Brian M.* (2000) 82 Cal.App.4th 1398, 1402, fn. 5; *Laura B. v. Superior Court* (1998) 68 Cal.App.4th 776, 779-780.)

By-pass when parent successfully completed drug program but relapse, showing it was chronic and resistant to treatment. (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 383 [though minor lived with parent 3 of 6 years]; *Karen S. v. Superior Court* (1999) 69 Cal.App.4th 1006, 1010-1011; *Randi R. v. Superior Court* (1998) 64 Cal.App.4th 67, 72-73; *Karen H. v. Superior Court* (2001) 91 Cal.App.4th 501, 504-505 [though testing clean after program, mom had long history of drug abuse or in drug program but still using].)

By-pass when parent had history of drug abuse and never entered program, though the parent is no longer using. (*In re Levi U.* (2000) 78 Cal.App.4th 191, 199-201; but see *In re Brian M.* (2000) 82 Cal.App.4th 1398, 1402.)

§ 361.5(b)(14) Waiver. Once a parent affirmatively waives reunification services, parent cannot undo the waiver. (*Cynthia C. v. Superior Court* (1999) 72 Cal.App.4th 1196, 1201.)

Noncustodial parent who did not receive placement of the child is not entitled to reunification services unless the parent requests them. (*Robert L. v. Superior Court* (1996) 45 Cal.App.4th 919, 626-629; *In re Terry H.* (1994) 27 Cal.App.4th 1847, 1855.)

§ 361.5(b)(15) Abducts a child.

§ 361.5(e)(1): Incarcerated parent. Cannot deny reunification services just because the parent is in custody unless the court makes the requisite findings under section 361.5, subdivision (e). (*In re Maria S.* (2000) 82 Cal.App.4th 1032, 1040; *In re*

Dylan T. (1998) 65 Cal.App.4th 765, 775; *In re Jonathan M.* (1997) 53 Cal.App.4th 1234, 1238; *In re Brittany S.* (1993) 17 Cal.App.4th 1399, 1406 [“go to jail, lose your child” is not the law]; but see *In re James C.* (2002) 104 Cal.App.4th 470, 485-486 [enough that in prison and would not be released within 12 months].)

“Incarcerated” includes those in jail and prison. (*Edgar O. v. Superior Court* (2000) 84 Cal.App.4th 13, 18.)

§300.1. Relinquishment [300(h)].

Standard of review: Whether the department met the burden to bypass reviewed for substantial evidence. (*In re Brooke C.* (2005) 127 Cal.App.4th 377, 382.) There is substantial evidence when the appropriate language for bypass was in the sustained petition. (*Tyrone W. v. Superior Court* (2007) 151 Cal.App.4th 839, 854.)

Standard of review: Review for abuse of discretion the court’s determination whether bypass would be in the minor’s best interests. (*In re Ethan N.* (2004) 122 Cal.App.4th 55, 64-65; see *In re Albert T.* (2006) 144 Cal.App.4th 207, 219 [doubting that an implied finding is enough for denying services].)

“We affirm an order denying reunification services if supported by substantial evidence.” (*In re Harmon B.* (2005) 125 Cal.App.4th 831, 839.)