

SUPPLEMENTAL AND SUBSEQUENT PETITIONS

Subsequent petition (Welf. & Inst. Code, § 342) when allege new grounds for jurisdiction; supplemental petition (Welf. & Inst. Code, § 387) when remove the minor because prior orders ineffective (to protect the minor on the same grounds as the original jurisdictional petition); modification petition (Welf. & Inst. Code, § 388) by CPS when change any prior order (on other grounds). (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1075.) Should file supplemental or subsequent petition if allege new grounds for jurisdiction; petition for modification to change post-jurisdiction orders. (*In re Jessica C.* (2001) 93 Cal.App.4th 1027, 1041, fn. 13.)

Supplemental petition if same grounds for jurisdiction but [new removal in that] previous disposition not effective in protection the minor and must place the minor in a more restrictive placement. (Welf. & Inst. Code, § 387; *In re Fred J.* (1979) 89 Cal.App.3d 168.) The court can remove the minor from the parent's home under § 387 simply in order to "rehabilitate" the minor, so can remove the older sibling for abusing a younger one. (*In re Javier G.* (2006) 137 Cal.App.4th 453, 459-460.)

Need not file supplemental petition or petition for modification if change permanent plan from long term foster care to legal guardianship, but must give adequate notice under section 366.3, subdivision (c) and California Rules of Court, rule 1465(b). (*In re Cynthia C.* (1997) 58 Cal.App.4th 1479 [after terminated parental rights].) Need not file supplemental petition to change placement after the termination of parental rights. (*In re A.O.* (2004) 120 Cal.App.4th 1054, 1061.)

Must give notice of the supplemental petition to the parents or guardian. (*In re Kelly L.* (1998) 64 Cal.App.4th 1279, 1285.)

Subsequent petition if [new grounds in that] minor already found to be a dependent and: (1) new facts alleged for further jurisdiction under section 300; (2) need to remove after placed with parent in a dependency case under section 300, subdivisions (a), (d), or (e); or (3) family not cooperate with reunification services. (Welf. & Inst. Code, §§ 342, 360, 364; see *Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1075.)

Welfare and Institutions Code section 385 gives the court the inherent power to modify any order, so long as it gives some advance warning to the parties.

Need file only modification petition if change placement within the same class of restrictiveness. (*In re Stephanie M.* (1994) 7 Cal.4th 295, 317.)

Error to file a second section 300 petition to make new allegation; the department

should file a subsequent petition. (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 202.) Error to file a section 388 petition when removing the minor from relative guardianship for placement with non-relative in foster care. (*In re Jessica C.* (2007) 151 Cal.App.4th 474, 480-482.)

There is not substantial evidence that placement fails when CPS withdraws approval of the foster parents. (*In re Manuel E.* (2004) 120 Cal.App.4th 521, 547.)

An allegation in a petition or evidence simply that there was a prior allegation of unfitness is not substantial evidence without evidence the allegation was substantiated. (*In re Manuel E.* (2004) 120 Cal.App.4th 521, 547.)

Cannot decrease visitation (during reunification services) without a 388 petition. (*In re Lance V.* (2001) 90 Cal.App.4th 668, 676; see *In re Manolito L.* (2001) 90 Cal.App.4th 753, 759 [must still find detriment].)

Error to file a supplemental petition after dismissing the original dependency, but error was harmless since the department had the same burden of proof. (*In re Joshua G.* (2005) 129 Cal.App.4th 189, 203.)

Burden of proof is clear and convincing evidence for removal in supplemental petition. (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067, 1077 [dicta: same standard would apply in modification petition]; *In re Fred J.* (1979) 89 Cal.App.3d 168; but see *In re Jonique W.* (1994) 26 Cal.App.4th 685, 697-698.)

Need not give more services for family when minor removed after 18 months of services. (*Carolyn R. v. Superior Court* (1995) 41 Cal.App.4th 159, 164; *In re Barbara P.* (1994) 30 Cal.App.4th 836, 834; *In re Michael S.* (1987) 188 Cal.App.3d 1448.)

Follow the same jurisdiction and dispositional procedures as would for the original petition. (*Kimberly R. v. Superior Court* (2002) 96 Cal.App.4th 1067.)

The court has the power to modify an order on its own, with notice it deems fit, under section 385 and article VI section 1 of the state Constitution. (*Nickolas F. v. Superior Court* (2006) 144 Cal.App.4th 92, 110-118)

Waiver: Waive the argument that the court lacked the power to make its decision without the filing of modification petition when there was no objection in the juvenile court. (*In re X.V.* (2005) 132 Cal.App.4th 794, 806; *In re Joshua G.* (2005) 129 Cal.App.4th 189, 197-198.)

Standard of review: Review the removal of the minor from relative's home for substantial evidence. (*In re H.G.* (2006) 146 Cal.App.4th 1, 10.)