

GENERAL INFORMATION ABOUT THE STANDARD OF PROOF IN
DEPENDENCY PROCEEDINGS

Dependency Proceedings are informal.

Many clients have stated that they thought the proceedings were not very thorough and didn't seem like a real trial. It is understandable for parents to feel that way about dependency proceedings if they have been involved in the legal system in either criminal or civil matters. Dependency proceedings are different than both criminal and civil matters in that they are relatively informal and designed to be friendlier to encourage parents to accept services and trust the service providers. It is hoped that a non-adversarial and cooperative atmosphere will enable parents to reunify with their children. Unfortunately, when the department and the parents disagree, the court may consider evidence that could not normally be introduced in a criminal or civil court, due to the informal nature of the proceedings.

It is easier to permanently remove a child from his parents than to convict a person of a crime.

Dependency proceedings have different standards of proof and evidentiary requirements than criminal proceedings. In order to be convicted of a crime, a jury needs to find beyond a reasonable doubt that the person committed the crime. In order to have your children removed, and ultimately adopted, a juvenile court needs to find by clear and convincing evidence that the child is unsafe in the home, must be removed, and cannot be returned. The clear and convincing evidence burden of proof is the same burden that is required in criminal probation revocation hearings. For that reason, it is much more difficult to convict a person of a crime than it is to remove children from a parent's custody based on the allegation that they have committed the crime. There are occasions where parents are arrested for a crime and ultimately not convicted, but nonetheless their children are removed and eventually lost to adoption because they were unable to reunify while they were incarcerated awaiting trial. (On dependency matters other than removal and adoption decisions, the court must make findings by a preponderance of the evidence, which is an even lower standard than clear and convincing evidence.)

In dependency cases, unlike criminal probation revocation hearings requiring real evidence, the department is allowed by statute to rely on social worker reports and police reports that contain hearsay evidence. The court can also consider petitions that were filed and allegations made on behalf of siblings. Parents are given the opportunity to subpoena and cross-examine social workers who prepared the reports. Though I have rarely seen it done, parents can also subpoena witnesses and police officers that the social workers relied upon in preparing the report and reaching conclusions. In contrast, in criminal and civil

cases, police reports are hearsay, the officers and witnesses are required to testify regarding the information in the reports, and the reports are not admissible as evidence.

In addition, in dependency proceedings the court only needs to find clear and convincing evidence that the child is neglected or abused, or at the risk thereof, depending on which subdivision of section 300 the department alleged. In situations where the parent has been accused and arrested for a crime, the department does not need to prove the parent committed the crime. In many cases, it is enough that the parent has been accused, arrested and incarcerated for the crime. Thus, a parent's guilt or innocence of criminal charges is irrelevant. Unfortunately, for some parents who are ultimately found innocent of the criminal charges against them, it is usually too late to make a difference in dependency proceedings because the California legislature has decided that children are better served by a quick adoption than to wait for their parents to be released from incarceration or make the changes in their lives that are necessary to provide safe and protective homes for their children.

For that reason, it is common for parents to feel as though they did not have a real trial (or their "day in court" so to speak), and to also feel like they did not have enough time to reunify with their children. Nonetheless, because of the different evidentiary standards and standards of proof, the dependency proceedings I have seen on appeal usually have complied with the informal evidentiary requirements of dependency proceedings. On appeal, I examine the record to determine whether the evidence that was submitted was sufficient to support the decision rendered, whether the juvenile court made any legal errors, and whether the juvenile court abused its discretion based on the evidence that was submitted.

CONCLUSION

Do not be concerned if you do not completely understand the standards of proof explained above, or the general rules of appellate procedure explained below. They are difficult concepts for anyone, even attorneys and trial judges, to understand.

Please contact me if you have any questions.