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CLERK OF THE NAPA SUPERIOR COURT
BY _____ DEPUTY

Superior Court of California
County of Napa

THIRD AMENDED TEMPORARY EMERGENCY ORDER MODIFYING DEPENDENCY COURT-ORDERED VISITATION AND PERMITTING REMOTE SERVICES IN LIGHT OF COVID-19 PANDEMIC

On March 18, 2020, Napa County Public Health, a division of the Health and Human Services Agency (HHSA), issued a Shelter-at-Home Order directing residents to shelter at their places of residence based on evidence of increasing occurrence of COVID-19 within Napa County (County) and throughout the Bay Area. The Shelter-at-Home Order has since been amended, and was last issued on May 7, 2020 with no expiration date. Since the original issuance of the first Shelter-at-Home Order on March 18, the County has been able to keep the curve "flattened" and the prevalence of COVID-19 in the community remains relatively low. As of May 26, 2020 the overall positive test rate in the County is 1.9%. This is significantly lower than the statewide average and lower than surrounding counties.

As a result of the County's overall low positivity rate and other public health metrics, on May 19, 2020, the County received State-approval of its Variance Attestation Report lodged with the California Department of Public Health (CDPH), which effectively allows the County to reopen at a faster rate than other counties due to regional conditions. As of May 19, 2020, the County has entered into a phase of Governor Newsom's Pandemic Roadmap for Reopening California knows as "Expanded Stage 2." This has allowed many businesses and activities to reopen, including but not limited to, retail, restaurants, places of worship, and offices. Accordingly, many workplaces and businesses have reopened or are reopening, such as the Superior Court of Napa County, which will reopen on June 1, 2020. Notably, HHSA has remained open throughout the Shelter-at-Home Order since it is a provider of essential services to our most vulnerable residents. The Child Welfare Services Division of HHSA (CWS) is among those essential service providers that have continued to ensure that legal mandates and obligations to children and families have been honored throughout the Shelter-at-Home period. Many of these children are placed in out-of-home care and have court orders for visitation with their parents and siblings multiple times per week.

Welfare and Institutions Code section 361.2 mandates that visitation between children in out-of-home care and their parents must be as frequent as possible, consistent with the well-being of the child. Section 361.2 also outlines the importance of preserving and promoting sibling relationships. All dependency court stakeholders recognize that regular visitation is vital to families and is the cornerstone of reunification. In making this third amended order, the court is once again balancing the importance of visitation against the current pressing public health imperatives. Due to health concerns, it may not be prudent to have some children who are in out-of-home care visit face to face with other family members at this time. It is recommended that CWS assess each situation in order to make this determination. CWS should work to maintain face-to-face visits, which allow children to continue to develop critical bonds with their parent, unless there are individual health-related risks that prevent this from happening. All youth may struggle with changes to their visitation routines, and a lack of in-person visits may be especially difficult for children who are very young.

FOR GOOD CAUSE SHOWN, THE COURT FINDS AND ORDERS AS FOLLOWS:

1. Effective June 1, 2020, the visitation ordered by dependency court judges for all dependency court cases shall be conducted in-person or by remote means at the discretion of CWS based on its individual assessment of each case in light of the considerations and requirements set forth below.

2. In-person visitation shall be the preferred method of visitation. Such visitation shall occur at the time, place and manner set forth by the assigned protective services worker. The caregiver, parent, and child shall follow Center for Disease Control recommendations around hygiene practices, including washing hands before and after visits. The caregiver shall assess the parent and child before the visit for presence of symptoms and shall not allow the visit to proceed if either show any symptoms of illness. The caregiver shall immediately notify the social worker when a visit is cancelled due to symptoms.

3. Due to logistical and safety considerations, and the fact that parties to the visitation could have or develop symptoms warranting that the visit not occur in-person, CWS maintains the discretion to continue remote visitation. Such visits will continue to take place via teleconferencing until visits in that case can safely be transitioned to in-person visitation. For those cases not yet transitioned, visitation will take place via applications such as FaceTime, Facebook Messenger, or WhatsApp, etc., or by telephone where the parent and the caregiver both have necessary equipment to accomplish one of these forms of visitation. In instances where the parent or caregiver lacks necessary equipment for one of the above-named methods, CWS shall make all reasonable efforts to ensure telephonic or video contact occurs, understanding that such contact may not ultimately take place.

4. Where the child is in a confidential placement and in-person visitation cannot be arranged, CWS may arrange three-way Skype (or similar method) or telephone calls that protect the confidentiality of both caregiver and parent. CWS will devote dedicated staff to arrange these calls unless the juvenile court has made a finding that such visitation is detrimental to the child.

5. Additionally, for cases that have not transitioned to in-person visitation, where the caregiver and the parent have necessary equipment, the caregiver will send periodic photographs of the child to the parent via email or by telephone. Such photos can be sent through the social worker where the placement is confidential.

6. The "court partners," specifically CWS, its attorneys, and the attorneys for the parent(s) and the minor(s), will each analyze the pending cases in which parents are receiving both family reunification services and unsupervised visits, and the cases in which a child is in out-of-home care pending a jurisdiction or disposition hearing. Upon email request by any court partner, the attorneys and assigned social worker will convene via teleconference to discuss whether a parent and child can be safely reunited or authorized for an extended visit immediately despite the lack of a pending court date. Where all court partners agree, CWS shall authorize an extended visit. In instances where all court partners agree to immediate return, CWS shall e-file an Application and Order requesting that the Court order the child returned to the parent on a plan of Family Maintenance.

7. For families still engaging in remote visits, social workers may authorize and encourage expanded telephone, text message, and social media contact between age-appropriate youth and their parents where this can be accomplished, consistent with the well-being of the youth.

8. If the parent and child currently have overnight visitation, there is a presumption that ceasing such overnight visits would be significantly emotionally harmful to the child. As overnight visitation is a vital component in any reunification, CWS will submit information to the Court for any cases in which a determination is made to terminate overnight visits, expand to an extended visit, or recommend the case be transferred to family maintenance.

9. Sibling visitation shall be suspended during the duration of this order, unless it falls within one of the exceptions outlined in this order for parent and child visitation.

10. In any cases that have not transitioned to in-person visitation, CWS shall promote increased telephonic and video contact when it has been determined by the social worker to be safe for the minor, consistent with the best interests of the minor, and CWS has the actual logistical ability to implement the increase.

11. All changes in the manner of visitation during this time period must be made on a case-by-case basis, balance public health directives with the best interest of the child; and take into consideration whether in-person visitation can take place safely.

12. Visitation may only be suspended if a detriment finding is made in a particular case based on the facts unique to that case. A detriment finding must not be based solely on the existence of the impact of the state of emergency related to the COVID-19 pandemic or related public health directives.

13. The attorney for the child or parent may ask the juvenile court to review a change in manner of visitation. The child or parent has the burden of showing that a change is not in the best interest of the child or is not based on current public health directives. A request for the court to review the change in visitation during this time period must be made within 14 court days of the change.

14. The court partners shall meet once every two weeks by teleconference to discuss the provisions of this order and the effectiveness of its implementation. If an emergency conference is needed, any court partner or the court can schedule a meeting.

15. The court recognizes the importance of drug testing in certain cases, and this order gives CWS the discretion to drug test in instances where drug testing can be arranged in a safe manner consistent with all local public health guidance.

16. Any in-person counseling sessions required in a case plan are also temporarily suspended until further notice from the court. However, when feasible, and in a child's best interest, CWS is encouraged to arrange for video therapy

17. Any service in a case plan that requires in-person contact while any Shelter-at-Home Order remains in effect in Napa County, the State of California, or any other county where a dependent child may be placed or a parent may reside, may proceed telephonically or by video until further order of this court if CWS determines, in its reasonable discretion, that in-person contact would be inconsistent with public health guidance in that individual case.

IT IS SO ORDERED,

The Honorable Mark Boessenecker
Presiding Judge of the Juvenile Court

DATE: May 29, 2020