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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
FIRST APPELLATE DISTRICT  
DIVISION THREE

In re H.S., a Person Coming Under the  
Juvenile Court Law.

SAN FRANCISCO DEPARTMENT OF  
HUMAN SERVICES.,

Plaintiff and Respondent,

v.

H.S.,

Defendant and Appellant.

A117101

(San Francisco County  
Super. Ct. No. JD993474)

The San Francisco Department of Human Services (the department) filed a petition to terminate its jurisdiction over H.S., a developmentally delayed juvenile who recently turned 20 but who has been under the department's care periodically since birth. The form the department filed in support of its petition, to comply with the mandate of Welfare and Institutions Code section 391, subdivision (b),<sup>1</sup> was a deceptively altered Judicial Council form that lacked information required by the statute and by the approved Judicial Council form. Nonetheless, after receiving testimony from H.S.'s social worker and from the director of his current placement, a residential care home, a commissioner granted the department's petition. Although transportation to the hearing had been made available to him, H.S. was not present at the hearing. His attorney then moved for a

<sup>1</sup> All statutory references are to the Welfare and Institutions Code unless otherwise noted.

rehearing before a judge of the juvenile court. H.S. was present at the hearing on that application but the court did not allow him to testify and, based on the evidence that had been taken before the commissioner, denied the request for rehearing.

Although the department failed to observe important procedural requirements in making its request to terminate jurisdiction, after careful review of the record we are convinced that these deficiencies ultimately were harmless with respect to the determination that termination of jurisdiction would not pose a current or reasonably foreseeable risk of harm to H.S. Nevertheless, since the department failed to provide H.S. with certain information that it is required by statute to provide to a dependant minor when it seeks to terminate jurisdiction, we shall conditionally reverse the order terminating jurisdiction, and remand the matter so that the court may ensure that H.S. receives the information to which he is entitled.

## **BACKGROUND**

When H.S. was born in 1987, both he and his mother tested positive for cocaine. He was placed in the dependency system periodically throughout his childhood and had multiple contacts with the juvenile delinquency system. The most recent dependency petition was filed in December 1999 under section 300, subdivisions (b), (c), (d) and (j),<sup>2</sup> alleging that his mother had a “chronic substance abuse problem,” that “there have been 12 prior . . . referrals concerning this family . . . and the mother has failed to benefit from extensive services offered as a result of those referrals.” In December 2003, a social worker was appointed to act as H.S.’s guardian ad litem after the juvenile court found

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<sup>2</sup> These sections provide that the juvenile court may obtain jurisdiction where “(b) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the child”; “(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage”; (d) “The child has been sexually abused, or there is a substantial risk that the child will be sexually abused”; and “(j) The child’s sibling has been abused or neglected . . . .”

that he was “unable to assist his counsel because he has significant cognitive and developmental delays.”<sup>3</sup>

H.S. turned age 18 in September 2005. His social worker filed a status review report about nine months later, recommending that “dependency status be renewed . . . [H.S.] . . . to remain in . . . out-of-home placement; that long term placement continues to be the permanent plan; continue to 12/19/06 for 6-month review.” The report stated that H.S. was then placed at Victor Youth Services in Redding but that the future plan was to place him elsewhere through a regional center. On July 18, 2006, the juvenile court entered an order that H.S. remain in the care of the department with a permanent plan of foster care.

On August 31, 2006, the department filed a “request to change court order” pursuant to section 388, requesting modification of the July 18 order. The request stated that “H.S. has successfully transitioned into the Regional Center Adult system of care,” and asked that dependency be dismissed because “H.S. is in the adult regional system of care. The juvenile system will not be any use for him at this point.” The application was accompanied with what purported to be a completed Judicial Council Form JV-365, entitled “Termination of Dependency Jurisdiction—Child Attaining Age of Majority.”

On January 8, 2007, the section 388 petition was scheduled to be heard before a commissioner but H.S. was not present. The court granted a motion to continue and “ask[ed] that the Agency take steps to ensure what [H.S.]’s present wishes are concerning attendance at this hearing.” On January 12, 2007, the hearing on the petition to terminate jurisdiction went forward before the commissioner. Present at the hearing were the court appointed special advocate (CASA), H.S.’s guardian ad litem, and the social worker, but not H.S. After concluding that H.S. had elected not to be present and receiving the testimony described more fully below, the commissioner granted the petition.

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<sup>3</sup> The record provides far more detail regarding H.S. and his siblings’ history in the dependency system than is relevant to the limited issue of maintenance of jurisdiction past the age of majority that is presented in this case.

H.S. filed an application for a rehearing pursuant to section 252<sup>4</sup> in which he argued that the commissioner “made numerous errors: 1) Did not require [the department] to file a written report pursuant to 391; 2) Denied minor’s counsel’s request for continuance to produce client as witness; 3) Refused to consider case law & disallowed minor from citing case law; 4) Incorrect factual finding regarding: 391(b); 5) Abuse of discretion regarding: 391(c) & case law.” On February 20, 2007, the juvenile court heard and denied the request for rehearing.

H.S. timely appealed, challenging the commissioner’s order terminating jurisdiction and the juvenile court’s order denying the request for rehearing.

## **DISCUSSION**

### A. Denial of rehearing

Initially, we dispose of any suggestion implicit in H.S.’s argument that the juvenile court judge erred in denying H.S.’s application for a rehearing, and in refusing to permit him to testify when he had not been present at the hearing before the commissioner.<sup>5</sup>

“All rehearsings of matters heard before a referee shall be before a judge of the juvenile court and shall be conducted de novo.” (§ 254.) “ ‘A rehearing de novo “is in no sense a review of the hearing previously held, but is a complete trial of the controversy, the same as if no previous hearing had ever been held.” ’ ” (*Jesse W. v. Superior Court*

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<sup>4</sup> Section 252 provides in relevant part: “At any time prior to the expiration of 10 days after service of a written copy of the order and findings of a referee, a minor or his or her parent or guardian or, in cases brought pursuant to Section 300, the county welfare department may apply to the juvenile court for a rehearing. That application may be directed to all or to any specified part of the order or findings, and shall contain a statement of the reasons the rehearing is requested. . . . All decisions to grant or deny the application . . . shall be expressly made in a written minute order with copies provided to the minor or his or her parent or guardian, and to the attorneys of record.”

<sup>5</sup> In so doing, we address only the issues raised in the parties’ briefs concerning the trial court’s failure to conduct a rehearing de novo and permit H.S. to testify. We do not imply that the trial court should not have acted to ensure full compliance with section 391 and to correct the deficiencies discussed below.

(1979) 26 Cal.3d 41, 44.) If there is a reporter's transcript of the proceedings before the commissioner acting as a referee, the judge of the juvenile court may, after reading the transcript, grant or deny the application for rehearing, whereas if there is no transcript of the proceedings the application for rehearing must be granted as a matter of right. (Cal. Rules of Court, rule 5.542.)

The court opened the hearing on H.S.'s request for a rehearing by stating, "I have read the transcript of the proceedings from January 8, 2007, and January 12, 2007, before [the] commissioner. I have also read the brief filed by [counsel for the department and H.S.] and the exhibits that were introduced at the time of the trial of this matter." After hearing short arguments the court ruled that "[e]xercising my own independent judgment on the issues, it is the judgment of the court that the application for rehearing is denied. I really don't think there is—I think the record was very clear about what [H.S.'s] situation is at the present, and I—you know, there are, obviously, some risks, but I don't see him as any different under the supervision of the regional center than they are under the supervision under the department. I don't see any further services that the department can provide that are not being provided by the regional center. So given his age and the fact that that has been where he has been receiving the services, I am denying the rehearing."

Although the court's language may suggest that the court considered the petition on its merits, the court did no more than deny the application for a rehearing. It did not conduct a de novo hearing, nor was it required to do so. Since there was a complete record of the proceedings before the commissioner, the court was authorized to deny the application after reviewing that record. "An application for rehearing requires a reexamination of the entire record by the juvenile court judge; it is necessary that the judge examine the complete transcript of the proceedings before the referee in order to exercise an informed independent judgment." (*In re John H.* (1978) 21 Cal.3d 18, 25.) Having made such a reexamination, the court had broad discretion to grant or deny the petition. (*In re Robert D.* (1977) 72 Cal.App.3d 180, 188.)

The juvenile court properly exercised its discretion in denying the petition after a full review of the record. Although H.S. was present to testify and had not testified in the

proceedings before the commissioner, in support of the rehearing application no showing was made that H.S. had not voluntarily absented himself from the prior hearing, or that H.S. had any testimony to offer that might affect the appropriateness of terminating juvenile court jurisdiction. Even on appeal, there has been no indication that H.S. had anything to add that might have affected the outcome. Therefore, there was no abuse of discretion in denying the application for a rehearing.

B. Standard for terminating jurisdiction

“The court may retain jurisdiction over any person who is found to be a dependent child of the juvenile court until the ward or dependent child attains the age of 21 years.” (§ 303.) “The burden of proof on the issue of termination rests with the party seeking to terminate jurisdiction.” (*In re Robert L.* (1998) 68 Cal.App.4th 789, 794; *In re Holly H.* (2002) 104 Cal.App.4th 1324, 1330 (*Holly H.*)) “In determining whether to terminate jurisdiction over a child in long-term foster care, the issue to be addressed is the best interest of the child.” (*In re Robert L.*, *supra*, at p. 793.) “[E]xercise of jurisdiction must be based upon existing and reasonably foreseeable future harm to the welfare of the child. [Citation] Similar factors should come into play in determining whether jurisdiction should extend beyond the age of majority.” (*Id.* at p. 794.) The juvenile court has broad discretion to retain or terminate jurisdiction and we review the juvenile court’s actions for abuse of that discretion. (§ 391; *Holly H.*, *supra*, 104 Cal.App.4th at p. 1330.) The department bears the burden of showing by a preponderance of the evidence that termination is in the child’s best interest. (Cal. Rules of Court, rule 5.570(f)(1).) H.S. argues that the commissioner erred by applying the incorrect standard and by shifting the burden of proof from the department to him.

Since the adoption of section 391 in 2000, two published decisions have considered the standard for terminating jurisdiction over a minor who has reached the age of 18. In *Holly H.*, Holly had reached 18 years of age and refused virtually all attempts on the part of the department to help her. Although there was substantial evidence that Holly could benefit from continued services, this court held that “once a young person has reached majority the juvenile court must give substantial deference to the youth’s wishes

before deciding to retain jurisdiction.” (*Holly H.*, *supra*, 104 Cal.App.4th at p. 1327.) This court held that the juvenile court had not abused its discretion in terminating jurisdiction. (*Ibid.*) In the more recent case of *In re Tamika C.* (2005) 131 Cal.App.4th 1153, the department sought to terminate jurisdiction in order to reduce the increased financial burden of keeping Tamika in the system past the age of 19. The appellate court found that “[t]he department and the court turned the burden of proof on its head, requiring ‘extenuating’ or ‘unusual’ reasons (presumably to be brought forth by Tamika) to maintain jurisdiction, rather than requiring the department to prove that termination of jurisdiction was in the best interests of the child.” (*Id.* at p. 1161.)

The evidence here can be summarized briefly as follows: H.S. has been diagnosed with “attention deficit disorder, conduct disorder, . . . [I]level 4 social problems. Family history [of] abuse, neglect.” At the time of the section 388 hearing, he was receiving medication for the attention deficit disorder and his medication was being monitored “through the Far Northern Regional Center’s network of services.” He “was referred to a chemical dependency assessment, he was referred to individual therapy, but he refused. [¶] . . . [¶] He did not want an assessment, and he did not want to see a therapist.”

The status review report, filed on June 23, 2006, stated that H.S. was then placed at Victor Youth Services in Redding and that the plan was to relocate him through a regional center. “North Bay Regional Center stated that [H.S.] is guaranteed a home in a recently approved Regional Center placement. The home is located in Shasta County . . . . It is a Regional Center home that is waiting on final approvals until others can move in. This [social worker] has talked with the caretaker who seems to be invested in [H.S.] and his future in Shasta County. . . . As soon as the home is approved, the Regional Center will take over the case, providing the necessary services that will ensure [H.S.] continued success. The current team helped devise a plan so when the time came for [the department] to close the case, [H.S.]’s physical, mental and educational needs would be met. As soon as [H.S.] is settled in his placement and the department is certain the Regional Center takes over the case, [the department] will look to close [H.S.]’s case and transfer the services.”

At the January 12 hearing, the social worker explained that at the regional center H.S. “has a lot of independence, but they do provide guidance. He has chores. They provide him with independent living skills, education, cooking, cleaning, they supervise his ADLs, which are adult daily living activities. And they ensure his school presence.” He described H.S. as functioning “in the primary school range,” “between first grade and fourth grade” academically. He does not have even half the units needed to graduate from high school. ”Cognitively he has a lot of deficits. He is not insightful, he has problems generating his own hypotheses . . . . So when he is around negative behaviors he tends to be a follower in that respect. But resiliency wise, he is charming, he has people in Redding that truly are invested in making good choices for him, and he has an informal network of support for crisis in Redding. So I think even though the deficits are there, the resiliency really can balance him out.” The social worker continued, “In a survival situation, I find [H.S.] very resourceful for someone [who] has the cognitive deficits that I had explained. He seems to know in some way maybe in a dysfunctional way, how to take care of himself. And [he is] street smart meaning he is aware of jargon, he knows danger, . . . and he’s also expressed that the danger scares him. So he also knows the difference between right and wrong and what is safe for him and what is not.” Functionally, however, the social worker considered H.S. to be “overall . . . between [ages] 11, 13.”

With regard to his current placement, the social worker stated that H.S. “needs more supervision. [¶] . . . [¶] [But] [t]he current placement actually has been very flexible. They could have displaced him several times. But they have been working with [H.S.], and in a phone conversation I had with the care provider at [the current placement] they like [H.S.], they want him to stay, but [H.S.] is refusing services.” The social worker testified that if the court maintained jurisdiction and if H.S. were to lose his placement, the department would be responsible for finding him a new placement. But he stated that Far Northern Regional has “taken that responsibility, if he loses his residence they find another residence for him.”

H.S.'s current caregiver testified. She stated that H.S. had lived in her residential care home "[s]ince October 3, 2006." She stated that she was concerned that H.S. "needs to have more supervision. The level of care that we provide is one staff per six clients, and [H.S.] moved to our care home from a house that was in, I believe it was called in-line supervision, and he was not allowed out of sight of his staff. And the rules of our house and structure allows him too much freedom and he is getting off track. . . . He is doing very well in school, he is student of the month, and I am just trying to work with the service coordinator to get him into a house that has more structure." The caregiver continued, "[T]he kind of house that we have teaches a client to be more independent and move out into the community on their own, and [H.S.] is nowhere near that level. [¶] . . . [¶] He's talked with us verbally . . . about the fact that he feels out of place at the house. He does feel that he has too much freedom also, and he has a problem with smoking marijuana. . . . He says he would like some help with the situation. . . . [H]e needs a different type of system to help this young man. And he shows some desire that he wants that . . . ." She stated that she "believe[s] he still needs Regional Center services. He just needs to live in a different level of care as far as the rating of the Regional Center Level 4, which provides more staff and they have a lot more funding for a lot of other programs . . . like the substance abuse program."

The department argued to the commissioner that "we have complied with section 391 in all respects. . . . We do not believe that there has been sufficient evidence presented to the court that termination of jurisdiction would be harmful to the best interest of this child. On the contrary, we believe that the Far Northern Regional Center is more than adequate to care for his needs. I think even from the testimony of [the person in charge of his current placement] just now, that the Far Northern Regional Agency can cover what he needs, be it residence, drug treatment, assessment, vocational training, et cetera. So we believe that we have shown by clear and convincing evidence, even though that is not the standard, that termination of jurisdiction would be appropriate in this circumstance."

H.S.'s attorney disagreed, "underscor[ing] the importance of the court analyzing whether or not termination of jurisdiction would be harmful to the child's best interest and whether there is an existing harm and whether there is any future foreseeable harm. In this case, I would submit to the court that given [H.S.]'s overall profile that you have been able to hear about this afternoon, we have a minor who has very low functioning academic skills, very low functioning job skills, he has blown out of two placements, he is on his third placement, he is about to go to a fourth placement. He has very few skills. I believe [the social worker] described him to have the functional abilities of between an 11- and 13-year-old. It is therefore foreseeable that some type of harm would be visited upon this youngster without the constant supervision of the Department of Human Services and this court. And . . . [H.S.] in all of those areas with regard to substance abuse, mental health issues, low academic skills, job skills, those are all factors that contribute to homelessness, which is something that the *Holly H.* court noted in its opinion, that 45 to 50 percent of our children that age out of the foster care system wind up homeless. And that is the purpose of why section 391 was enacted, to ensure that this did not happen. So in closing, I would argue that the Department, number one, didn't meet its burden because it did not comply with all of the 391(b) requirements; and furthermore, there is a current existing harm to H.S. and it is not in his best interest for the case to be dismissed."

The commissioner found "based on the evidence that I have heard today that there's been no connection made, or there's been no evidence shown that . . . having [H.S.]'s dependency case dismissed means that he is going to receive any fewer services or is at any higher risk of harm than if it were not dismissed. The court will find that his best interests, the best interests of [H.S.] are promoted by the new order requested in the 388 petition. . . . The petition is sustained. The request is granted."<sup>6</sup>

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<sup>6</sup> At the hearing on the application for a rehearing, the department argued for application of an incorrect standard, stating, "*I don't believe the report [sic] requires that the agency set out for the court if there is any present or future foreseeable harm, although I guess implicitly that information would be provided if there is nothing to suggest that the child is at risk any longer.*"

The commissioner utilized the appropriate standard in making her ultimate order granting the petition, and the record provides sufficient evidence to support the finding that termination of dependency posed no current or reasonably foreseeable risk of future harm. Although it is clear that H.S. needs ongoing care and supervision, he has transitioned to the care of the regional center.<sup>7</sup> His current placement ultimately may not be a permanent one, and another placement may be more appropriate, but the evidence established that the regional center system has appropriate placements. The evidence also supports the finding that the juvenile dependency system no longer has appropriate services to offer H.S., and certainly none that are not available through the regional center. As stated in one of the earlier status review reports concerning H.S., “The sad and unbelievable truth about our current system of care for foster children in sub-acute facilities or children with many mental health issues if they don’t have relatives to live with is that there are not any placements for them when the[y] become 18 years old. [The department’s] only option is to place them at a homeless shelter contracted with [the department] located in the city or to be ‘Conserved’ in a state mental health facility. This [social worker] and [H.S.’s case manager] did not know where [H.S.] was going to be after his 18<sup>th</sup> birthday. [H.S.] has a Transitional Youth Services worker . . . and a CASA . . . who are on board to help with referring [H.S.] to [the regional center] and making sure he receive[s] all the services he needs.”

### C. H.S.’s presence

There is no doubt that H.S. had the right to be present at the hearing on the application to terminate the juvenile court’s jurisdiction. Section 349 provides that “A

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In this case, I think the evidence was clear that [H.S.] was in a circumstance where he had protection from any risk that might present itself to him. He is 19. I believe the court’s ruling was appropriate.” In denying the request for rehearing, the court gave no indication that it concurred in the statement that it was unnecessary for the agency to present evidence of likely future harm, were there any.

<sup>7</sup> As pointed out in *Holly H.*, “Former foster care recipients are now entitled until they are 21 years old to additional services designed to help them make ‘the transition from adolescence to adulthood.’ (42 U.S.C. § 667(a)(5).)” (*Holly H.*, *supra*, 104 Cal.App.4th at p. 1338 & fn. 10.)

minor who is the subject of a juvenile court hearing . . . is entitled to be present at the hearing. . . . If the minor is 10 years of age or older and he or she is not present at the hearing, the court shall determine whether the minor was properly notified of his or her right to attend the hearing.” California Rules of Court, rule 5.534(n) likewise provides that if a child over 10 years of age is not present, “the court must determine whether the child was properly notified of his or her right to attend the hearing and ask why the child is not present at the hearing.” Finally, section 391 provides that “At any hearing to terminate jurisdiction over a dependent child who has reached the age of majority the county welfare department shall . . . : [¶] (a) Ensure that the child is present in court, unless the child does not wish to appear in court, or document efforts by the county welfare department to locate the child when the child is not available.”

On January 8, 2007, H.S. was not present when the case was called. His attorney indicated “that he wishes to be present. We had a most recent phone contact with him this morning, as well as . . . on December 18 in person, and on both occasions he did indicate that he wishes to be present at the hearing today. However, he was not transported.” Because of H.S.’s absence, the hearing was continued, but H.S. was not present on the continued hearing date of January 12. His attorney advised the commissioner that the child welfare worker had made an effort “to get my client here to San Francisco. He not only provided [H.S.] with a bus ticket to travel here to San Francisco from Redding, but he also offered to [H.S.] a ride from his grandmother’s house in Oakland where he was spending the night. [H.S.] did make it here to San Francisco. However, he is not here today. And as to the requirement of section 391(a), I no longer have any issues with that. I believe that the department had made efforts to ensure that [H.S.] was present here today. I have no explanation for you as to why he is not here today.”

In closing, H.S.’s attorney stated, “I had intended to call my client . . . . He is not here. I would just at this time ask the court’s indulgence in allowing me to produce him so that I can present a total case and . . . the best case that I can for [H.S.]” The attorney for the department responded, “I don’t believe [H.S.’s] appearance is essential to this hearing. The statute is clear that we are to ensure his presence unless the child does not

wish to appear. I believe the testimony has established that the agency made every effort to make sure that he was here, and it was by his own choice that he is not here. So I don't believe that the grounds are sufficient to continue." His attorney replied, "I don't have any quarrel with the department fulfilling 391(a). I am requesting an opportunity to produce [H.S.] based on procedural due process grounds so that I may be able to present a full case on his behalf." The court denied the request for a continuance, stating, "It seems clear to the court that [H.S.] chose not to appear today."

We cannot agree that there was any error, much less a deprivation of constitutional rights, in proceeding without H.S. under these circumstances. *In re Stacy T.* (1997) 52 Cal.App.4th 1415, relied upon by H.S., is not helpful in resolving this issue. In that case, a parent failed to appear at a detention hearing and, pursuant to local rule, the juvenile court entered the parent's "default" by proceeding to determine jurisdiction and disposition, granting the Department's request for out of home placement. The appellate court held that this procedure denied the parent due process. "[A]ppellant was *not* advised at the detention hearing that a failure to appear at the settlement conference would result in her 'default,' let alone the consequences of a 'default.' [¶] Those consequences, as it turned out, were many. With the failure to appear at the settlement conference and entry of 'default,' the court proceeded immediately to the jurisdictional and dispositional hearings. With the default, appellant missed her opportunity to call, confront and cross-examine witnesses, . . . and to present her own evidence. Moreover, with the default, she missed out on the opportunity to be advised that she had these and other rights in the first instance and would be foregoing them by failing to appear at the settlement conference." (*Id.* at p. 1424.) The court concluded that "A parent's fundamental right to adequate notice and the opportunity to be heard in dependency matters involving potential deprivation of the parental interest [citation] has little, if any, value unless the parent is advised of the nature of the hearing giving rise to that opportunity, including what will be decided therein. Only with adequate advisement can one choose to appear or not, to prepare or not, and to defend or not." (*Ibid.*)

Here, the evidence is uncontroverted that H.S. was advised of his right to be present at the hearing, and that the department went to considerable effort to ensure that he could be present by buying him a bus ticket from Redding and offering him transportation from his grandmother's house to the hearing. H.S. declined a ride to the hearing and then failed to appear. The commissioner's conclusion that H.S. chose not to be present was supported by substantial evidence. Whether H.S. was told the consequences of failing to appear is not clear, but due process requires no such advisement before terminating jurisdiction over a youth who has opted not to appear at the proceedings. (See, e.g., *In re Crystal J.* (1993) 12 Cal.App.4th 407, 412-413 ["Due process requirements in the context of child dependency litigation have . . . focused principally on the right to a hearing and the right to notice"].) Moreover, H.S.'s attorney was present and cross-examined the agency's witnesses and argued to the court on his behalf. As indicated above, in his application for a rehearing H.S. offered no explanation for his absence from the original hearing or any reason to believe he was not present because of circumstances beyond his control. Moreover, at no time did H.S. make a proffer of testimony he might have offered that was likely to have affected the outcome of the proceedings. Thus, for numerous reasons, there was no error in proceeding in H.S.'s absence.

*D. Section 391, subdivision (b) requirements*

H.S. argues that the department did not comply with the requirements set forth in section 391, and that the trial court erred in admitting an "adulterated" JV-365 form and the social history report because it was "never attached as required to the Judicial Council form and was submitted on the morning of the hearing in violation of the 10-day notice rule (Cal. Rules of Court, rule 5.740(d)) and did not comport with the statutory reporting requirements" of section 391, subdivision (b). We agree that there were disturbing irregularities in the manner in which the department proceeded. These practices must not be permitted to recur. And while the department's derelictions proved harmless with respect to determining the appropriateness of terminating jurisdiction, H.S. was deprived of services to which he is entitled before jurisdiction is terminated.

“Section 391 contains a legislative directive that before jurisdiction of the juvenile court over a dependent child who has reached age 18 is terminated, certain minimal assistance and documentation be afforded the youth.” (*In re Holly H., supra*, 104 Cal.App.4th at p. 1333.) “Section 391 was enacted in 2000 and is a checklist of things that the department must furnish (with some exceptions) to a minor who has reached the age of majority before dependency jurisdiction can be terminated.” (*In re Tamika C., supra*, 131 Cal.App.4th at p. 1161.)

The requirements of section 391 are clearly specified in the statute. Section 391, subdivision (b) provides that the department must “Submit a report verifying that the following information, documents, and services have been provided to the child: [¶] (1) Written information concerning the child’s dependency case, including his or her family history and placement history, the whereabouts of any siblings under the jurisdiction of the juvenile court, unless the court determines that sibling contact would jeopardize the safety or welfare of the sibling, directions on how to access the documents the child is entitled to inspect under Section 827, and the date on which the jurisdiction of the juvenile court would be terminated. [¶] (2) The following documents, where applicable: social security card, certified birth certificate, health and education summary as described in subdivision (a) of Section 16010, identification card, as described in Section 13000 of the Vehicle Code, death certificate of parent or parents, and proof of citizenship or residence. [¶] (3) Assistance in completing an application for Medi-Cal or assistance in obtaining other health insurance; referral to transitional housing, if available, or assistance in securing other housing; and assistance in obtaining employment or other financial support. [¶] (4) Assistance in applying for admission to college or to a vocational training program or other educational institution and in obtaining financial aid, where appropriate. [¶] (5) Assistance in maintaining relationships with individuals who are important to a child who has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care, based on the child’s best interests.”

As required by the statute (§ 391, subd. (d)), the Judicial Council created form JV-365 for use when the department seeks to confirm its compliance with section 391. When the department filed its section 388 application in this case, the form JV-365 in use was the form as modified January 1, 2006. A copy of that form is attached to this opinion as appendix A.<sup>8</sup> We attach as appendix B the form that the department filed in this case. The department does not deny that it materially altered the Judicial Council form, nor that it failed to bring to the court’s attention that the form had been altered in ways that were not apparent from the face of the document. It argues only that the juvenile court’s decision may not be reversed for noncompliance with section 391 absent a miscarriage of justice.

As appears from a comparison of appendices A and B, the department deleted from the form it filed with the court the three alternatives in paragraph 1 that are provided to be checked concerning the minor’s presence or absence at the hearing, replacing them with an explanation that on its face is unsatisfactory.<sup>9</sup> More significantly, the altered form submitted by the department deleted altogether the second numbered paragraph of the Judicial Council form, which calls for attaching a report containing numerous categories of information that section 391, subdivision (b)(1) specifies must be furnished to the youth, including “directions on how to access the documents the child is entitled to inspect under Section 827 . . . .”<sup>10</sup> This paragraph was omitted entirely, with no indication

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<sup>8</sup> We grant H.S.’s request for judicial notice of this form, and of the form as it was modified January 1, 2007.

<sup>9</sup> The form submitted by the department states, “The child is unavailable to sign this form. Evidence of reasonable efforts to locate the child and to obtain the child’s signature is attached. At the last 3 times this [social worker] has visited [H.S.], he has either been on outings or not present, but this PSW has talked about closing the case for at least 6 months. He was aware of this action. The child lives in Pedro Cedro in a Regional Center Home.” Contrary to this statement, there is no attachment to the form. There is no indication of when the last three visits from the social worker occurred, or whether H.S. was made aware of the court date for the termination petition or whether he was merely made aware that the department planned to seek termination of jurisdiction at some as yet undetermined date in the future.

<sup>10</sup> The Judicial Council form contains, as paragraph 2, a box to be checked confirming the following: “Attached is a report verifying that the child has received written information concerning his or her dependency case—including information about the child’s family history,

that it had been deleted. To the contrary, the department's form renumbered paragraph 3 as paragraph 2, masking the omission of the Judicial Council's paragraph 2. And in the renumbered paragraph 2, the department's form deleted from the checklist of documents that the department must confirm it has provided the minor two categories of documents, including "Death certificate of parent or parents, if applicable." H.S.'s father was killed in 1996 but there is no indication on the filed form that a death certificate is required by the statute, let alone that one was provided. The form continues on a second page, on which no changes were made and the department properly confirmed that it had provided H.S. with various forms of assistance required by the statute. Finally, the line following "Number of pages attached" is left blank and the form was signed by the social worker on October 12, 2006. H.S.'s signature appears after his typed name under the words, "I certify that I have received the information and services that I initialed above." His initials appear nowhere on the form.<sup>11</sup>

The department argued to the commissioner that the form, supplemented with an undated social history report that it first submitted to H.S.'s counsel and the court at the

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the child's placement history, the whereabouts of any siblings under the jurisdiction of the juvenile court, the procedures for accessing the documents that the child is entitled to inspect under Welfare and Institutions Code section 827, and the date on which the jurisdiction of the court will be terminated." Section 827, subdivision (a)(1)(C) provides that a minor who has been the subject of juvenile court proceedings may inspect the court's records of those proceedings.

<sup>11</sup> At the termination hearing, the social worker testified that the agency had prepared "a JV-365. It is a document that we submit to the court when we want to dismiss our case in the juvenile dependency system." He stated that the form did not have H.S.'s signature on it, but stated that H.S. had signed a different document. He stated that the document was signed "at his school. I was with the new sub-acute worker . . . and we were visiting him and getting an update finding out how things were, and we talked about—because I told him that I felt he was ready to be on his own, that he had the help he needed. and I wanted to discuss that with him, make sure he understood it. I told him that I will always be here for him, he has my number, I am here for referrals, but as far as depending on me for things that he needs, he has other people. He asked me, 'So are you saying you can't place me?' And I said, 'No, I cannot place you in foster care, you have placement now through [his case manager for Far Northern Regional]. [¶] . . . [¶] And we had the paper there because I went over everything with him, and he said, 'Well, I want to sign this.' And I told him, 'No, do not sign this paper because [your attorney] is not here.' And he said, 'I don't care, I want to sign it. You can't help me anymore.' "

January 12 hearing, were sufficient to comply with section 391. The commissioner ruled that although the department had not provided H.S. with a copy of his father's death certificate, "that is de minimis, and doesn't really make the case undismissible, as it were."

The procedures followed by the department in this case were unacceptable; indeed, they were sanctionable. The provisions of section 391 are requirements, not suggestions. Satisfying section 391 is "[o]ne of the requirements that must be met before dependency jurisdiction over a child who has reached the age of majority may be terminated." (*In re Tamika C.*, *supra*, 131 Cal.App.4th at p. 1161.) The department is required to use the approved Judicial Council form to confirm its compliance with the statute (Gov. Code, § 68511<sup>12</sup>) and certainly must not modify an approved form without clearly indicating that it has done so. Although not the basis on which it reversed a termination order, the court in *Tamika C.* spoke disapprovingly of practices less egregious but similar in several respects to those observed here.<sup>13</sup>

The department not only failed initially to provide a report as required by section 391, subdivision (b), but at the hearing it introduced as exhibit 2 a report purporting to

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<sup>12</sup> Government Code section 68511 provides that "The Judicial Council may prescribe by rule the form and content of forms used in the court of this state. When any such form has been so prescribed by the Judicial Council, no court may use a different form which has as its aim the same function as that for which the Judicial Council's prescribed form is designed. . . ."

<sup>13</sup> "We begin by noting the problems we perceive from the form signed by Tamika and the social worker and the section 391 report signed by the social worker. . . . [O]n the form signed by Tamika, above her signature it states: 'I certify that I have received the information and services that I initialed above.' There are no initials on the form. In addition, the form stated that six pages were attached, yet these pages are not attached to the form in the clerk's transcript. There is a six-page report later in the record and this appears to be the report purportedly referred to as the attachment to the termination of jurisdiction form signed by Tamika. Although this appears to be the correct report, the report is dated and signed by the social worker on February 18, 2005, nine days after Tamika and the social worker signed the form. We further note that the form, signed by Tamika and the social worker, states 'I declare under penalty of perjury . . . that the foregoing and all the attachments are true and correct.' " (*In re Tamika C.*, *supra*, 131 Cal.App.4th at pp. 1161-1162.)

satisfy the statutory requirements, but which did so only incompletely.<sup>14</sup> Moreover, the department failed to comply with the applicable time requirements. California Rules of Court, rule 5.740(d) requires the department to file that form “with the court at least 10 calendar days before the hearing to terminate dependency jurisdiction based on the child’s age and [to] provide copies to the child, the parents or guardians, any CASA volunteer, and all counsel of record at least 10 calendar days before the hearing.” In considering the significance of the failure to timely file a status report required before a hearing to terminate reunification services under section 366.21, subdivision (f), the court in *Judith P. v. Superior Court* (2002) 102 Cal.App.4th 535, 548-549 noted the important procedural safeguards that timely filing of the report provides. “The 10-day time period assures that the decision maker has an adequate opportunity to review and consider not simply the social worker's recommendations, but the factual bases for such recommendations, and to formulate questions about any discrepancies, omissions, or other matters of concern raised by the report. [¶] In addition, the 10-day time period allows parents and counsel for minors the time not only to review and consider the contents of the report and the recommendations, but also to assemble their own evidence that contradicts or explains information contained in the report, to analyze the

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<sup>14</sup> H.S.’s petition for rehearing asserts the following deficiencies in the report “The report did not adequately reflect [H.S.]’s delinquent history (particularly the conclusion [H.S.] did not suffer a discrete sexual pathology), omitted the circumstance’s of [H.S.]’s father’s death, contained no description of the effect of the toxic environment of his childhood on his siblings, only mentioned a fragmented educational history, omitted his physical and mental health history, and provided no information how to contact his siblings.” His petition requests that the department be required to provide him “with an up-to-date, coherent family and placement history, a health and education passport, his father’s death certificate, sibling contact information, and information how to access his court files.” Section 391, subdivision (b)(2) requires the report to include, inter alia, a “health and educational summary as described in subdivision (a) of Section 16010” and the latter provision describes numerous categories of information that must be included. It is readily apparent that not all information required by the statute is included in exhibit 2, although we do not necessarily concur in all of the criticisms that counsel directs to the report. Since the parties’ briefing has not addressed with specificity the respects in which the document does or does not provide details required by the statute, we leave to the trial court on remand the responsibility to ensure that a final report contains all of the necessary information.

recommendations in light of such other information, and to generate alternative recommendations and persuasive arguments in support of such alternative recommendations. . . . It also allows counsel time to subpoena witnesses to be present at the hearing, to prepare for questioning and cross-examination of witnesses, and, of course, to consult with their clients. Obviously, counsel appointed to represent parents and children in such significant proceedings are entitled to sufficient time to meet such minimum standards of practice. . . . It is clear that the Legislature concluded that 10 days was the minimum time necessary to allow such standards to be met, as well as to allow a parent to obtain the kinds of evidence relevant to the parent's progress." (Fns. omitted.) The 10-day requirement has much the same importance in the present context for many of the reasons articulated in *Judith P.* We do not believe the commissioner should have overlooked the department's noncompliance as it did in this case.

Nonetheless, we do not believe that the reasons for which the *Judith P.* court concluded that the 10-day requirement under section 366.21, subdivision (f) is mandatory, invalidating action that does not comply with that requirement, apply in the present context. The 10-day requirement in *Judith P.* was imposed by the statute itself, whereas the requirement here appears only in the implementing rules of court. More importantly, while in the context of terminating reunification services the 10 day requirement promotes the underlying objective of keeping families together (*Judith P. v. Superior Court, supra*, 102 Cal.App.4th at p. 550), the purpose behind section 391 is not necessarily to extend dependency proceedings but to ensure that the necessary services have been provided before dependency is terminated. Neither of the two tests described in *Judith P.* for determining whether a statutory requirement should be considered mandatory or merely directory (*id.* at pp. 549-551) compels the conclusion that the late filing of the report required by section 391, subdivision (b) necessarily precludes the court from going forward with the termination proceedings. Termination may still be appropriate if the court is satisfied that the minor in fact has been provided the "information, documents, and services" required by section 391, and that the department

has carried its burden of establishing that termination will not give rise to present or foreseeable risk of harm to the youth and is in his or her best interests.

“Although subdivision (b) provides that the welfare department ‘*shall* . . . [¶] . . . [¶] [s]ubmit a report verifying that [the enumerated] information, documents, and services have been provided to the child’ (italics added), subdivision (c) provides that ‘[t]he court *may* continue jurisdiction if it finds that the county welfare department has not met the requirements of subdivision (b) *and* that termination of jurisdiction would be harmful to the best interests of the child.’ (Italics added.) Thus, although subdivision (b) states that the department ‘shall’ submit a report confirming that it has provided the dependent child with certain basic services, the decision to continue jurisdiction remains within the discretion of the court even if the department has not met its duties under that subdivision.” (*Holly H., supra*, 104 Cal.App.4th at p. 1333.)<sup>15</sup>

Here, despite the deficiencies in the department’s performance, the commissioner determined that the department had made satisfactory arrangements with the regional center so that termination of the juvenile court’s jurisdiction would not threaten H.S.’s well-being and was in his best interest. In denying H.S.’s application for a rehearing, the juvenile court judge reviewed the record and satisfied herself of the appropriateness of this determination. We have reviewed the record and find no basis to question this ultimate conclusion. In neither H.S.’s application for a rehearing in the juvenile court nor in his appellate briefs is there any indication of any additional information that was not considered that might affect the appropriateness of this conclusion.

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<sup>15</sup> Subdivision (c) of section 391 provides, “The court may continue jurisdiction if it finds that the county welfare department has not met the requirements of subdivision (b) and that termination of jurisdiction would be harmful to the best interests of the child. If the court determines that continued jurisdiction is warranted pursuant to this section, the continuation shall only be ordered for that period of time necessary for the county welfare department to meet the requirements of subdivision (b). This section shall not be construed to limit the discretion of the juvenile court to continue jurisdiction for other reasons. The court may terminate jurisdiction if the county welfare department has offered the required services, and the child either has refused the services or, after reasonable efforts by the county welfare department, cannot be located.”

We do not agree, however, that the department provided H.S. with all of the information, documents and services required by section 391. Nor do we agree that the failure to provide H.S. with his father’s death certificate and other information can be dismissed as “de minimus.” H.S.’s dependency should not be terminated until all materials and information required by the statute have been provided to him. .

**DISPOSITION**

The order terminating jurisdiction is reversed and the matter is remanded with directions to order the department promptly to comply fully with the requirements of section 391, subdivision (b). When the court is satisfied that the department has fully complied, it shall reinstate the order terminating jurisdiction

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Pollak, Acting P. J.

We concur:

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Siggins, J.

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Horner, J.\*

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\* Judge of the Alameda County Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.

JV-365

ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):		FOR COURT USE ONLY
TELEPHONE NO.:	FAX NO. (Optional):	
E-MAIL ADDRESS (Optional):		
ATTORNEY FOR (Name):		
SUPERIOR COURT OF CALIFORNIA, COUNTY OF		
STREET ADDRESS:		
MAILING ADDRESS:		
CITY AND ZIP CODE:		
BRANCH NAME:		
CHILD'S NAME:		
CHILD'S DATE OF BIRTH:		
HEARING DATE AND TIME:	DEPT.:	
TERMINATION OF DEPENDENCY JURISDICTION— CHILD ATTAINING AGE OF MAJORITY		CASE NUMBER:

**Directions for the social worker:** Check the appropriate boxes in items 1 through 4, complete item 5, attach documents as required, and then sign and date item 6.

**Directions for the child (if available):** Review the boxes checked by the social worker in items 1 through 4. Sign your initials after each item that correctly indicates the information and services that you have received. Then sign and date item 7.

1. a.  The child has indicated that he or she intends to be present at the termination hearing.
- b.  The child does not wish to attend the termination hearing. The petitioner has attached verification that the child has been informed of the potential consequences of failure to attend the termination hearing.
- c.  The child is unavailable and/or has refused to sign this form. Evidence of reasonable efforts to locate the child and to obtain the child's signature is attached.
  
2.  Attached is a report verifying that the child has received written information concerning his or her dependency case—including information about the child's family history, the child's placement history, the whereabouts of any siblings under the jurisdiction of the juvenile court, the procedures for accessing the documents that the child is entitled to inspect under Welfare and Institutions Code section 827, and the date on which the jurisdiction of the court will be terminated.
  
3. The child has been provided with the following documents:
  - a.  Certified birth certificate
  - b.  Social security card
  - c.  Identification card and/or driver's license
  - d.  Proof of citizenship or residency status
  - e.  Death certificate of parent or parents, if applicable

APPENDIX A



JV-365

ATTORNEY OR PARTY WITHOUT ATTORNEY Name, State Bar Number and address:		FOR COURT USE ONLY	
SAN FRANCISCO DEPARTMENT OF HUMAN SERVICES P. O. BOX 7888 SAN FRANCISCO, CA 94120-8988 415-557-5000 SOCIAL WORKER #: J345 - KENNETH SEARS TELEPHONE NUMBER: (415) 558-2810 FAX NO. (Optional): E-MAIL ADDRESS (Optional): ATTORNEY Name:			
SUPERIOR COURT OF CALIFORNIA, COUNTY OF SAN FRANCISCO STREET ADDRESS: MAILING ADDRESS: 400 MCALLISTER STREET CITY AND ZIP CODE: SAN FRANCISCO, CA 94102 BRANCH NAME: JUVENILE COURT, DEPT. #408			
CHILD'S NAME: . . . . . CHILD'S DATE OF BIRTH: . . . . . HEARING DATE:			
<b>TERMINATION OF DEPENDENCY JURISDICTION-          CHILD ATTAINING AGE OF MAJORITY</b>		CASE NUMBER: <b>JD99-3474</b>	

Directions for the social worker: Check the appropriate boxes in items 1 through 4, complete item 5, attach documents as required, and then sign and date item 6.

Directions for the child (if available): Review the boxes checked by the social worker in items 1 through 4. Sign your initials after each item that correctly indicates the information and services that you have received. Then sign and date item 7.

- The child is unavailable to sign this form. Evidence of reasonable efforts to locate the child and to obtain the child's signature is attached. At the last 3 times this PSW has visited [redacted], he has either been on outings or not present, but this PSW has talked about closing the case for at least 6 months. He was aware of this action.  
The child lives in Pedro Cedro in a Regional Center Home.
- The child has been provided with the following documents:
  - Certified birth certificate
  - Social security card
  - Identification card and/or driver's license
 These documents were sent to his current caregiver on 07/26/06.



APPENDIX B

CHILD'S NAME: .....	CASE NUMBER: JD99-3474
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4. The following assistance has been provided to the child:

- Application for Medi-Cal or other health insurance has been completed.
- Application for college, vocational training program, or other educational or employment program has been completed.
- works on school site and gets vocational training through the school program. FNRC also stated they provide him with job training.
- Information on obtaining, or application to obtain, financial assistance for educational and employment programs has been provided.
- receives both SSI and SSA. His payee is Far Northern Regional Center.
- Referral to transitional housing, if available, or assistance in securing other housing has been provided.
- Far Northern Regional Center is in charge of placement.
- Assistance in obtaining employment or other financial support has been provided.
- Far Northern Regional Center is in charge of his finances.
- Assistance in maintaining relationships with individuals who are important to the child, consistent with the child's best interest, has been provided. (Required only if the child has been in out-of-home placement in a group home for six months or longer from the date the child entered foster care.)
- Far Northern Regional Center and the placement stated they have been in contact with 's family and he visits, although they think the visits are not good for him.
- Other services have been ordered by the court (specify): Far Northern Regional Center provides referrals for mental health services and is aware of the ILSP program.

5. Number of pages attached: \_\_\_\_\_

6. I declare under penalty of perjury under the laws of the State of California that the foregoing and all attachments are true and correct.

Date:

Kenneth Sears  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
SIGNATURE OF SOCIAL WORKER

7. I certify that I have received the information and services that I initialed above.

Date:

.....  
(TYPE OR PRINT NAME)

\_\_\_\_\_  
CHILD'S SIGNATURE