Assembly Bill No. 1710

CHAPTER 365

An act to amend Section 7121 of the Family Code, to amend Sections 68087 and 77209 of the Government Code, to amend Section 1465.7 of, and to add Section 11105.04 to, the Penal Code, and to amend Sections 213.5 and 355 of, and to add Section 213.6 to, the Welfare and Institutions Code, relating to courts.

[Approved by Governor September 11, 2003. Filed with Secretary of State September 12, 2003.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1710, Committee on Judiciary. Courts.

(1) Existing law authorizes a minor to petition the superior court of the county in which he or she resides or is temporarily domiciled for a declaration of emancipation. Existing law requires the clerk of the court to notify the district attorney of the county where the matter is to be heard of the proceeding. If the minor is a ward or dependent child of the court, existing law requires that the notice be given to the probation department.

This bill would require the clerk of the court to notify the local child support agency, rather than the district attorney, and, if the minor is a dependent child of the court, to notify the county welfare department, rather than the probation department.

(2) Existing law establishes the Trial Court Trust Fund.

Existing law also provides, until July 1, 2007, for the imposition of a 10% state surcharge on specified court fees. Existing law requires the clerk to transmit the amount collected to the Trial Court Trust Fund.

This bill would exempt jury fees and fees for court reporter services, as specified, from that surcharge.

(3) Existing law establishes the Trial Court Improvement Fund in the State Treasury, to be administered by the Judicial Council.

This bill would provide that royalties received from the publication of uniform jury instructions be deposited in the Trial Court Improvement Fund.

(4) Existing law imposes, until July 1, 2007, a state surcharge of 20% on a base fine imposed and collected by a court for a criminal offense, as specified.

Existing law also requires the clerk of the court to collect a fee from persons ordered or permitted to attend traffic violator schools or other

court-supervised programs of traffic safety instruction, in an amount equal to the total bail, as defined, set forth for the eligible offense.

This bill would revise the provision imposing a 20% state surcharge to provide that the term ''total bail'' as used in the latter provision does not include that surcharge.

(5) Existing law specifies the persons who may receive summary criminal history information.

This bill would enact a provision operative July 1, 2004, authorizing Court Appointed Special Advocate programs to submit fingerprint images and related information of employment and volunteer candidates to the Department of Justice in order to obtain information regarding convictions and arrests, as specified.

(6) Existing law authorizes the juvenile court to issue ex parte orders, after a petition has been filed to declare a child to be a ward of the juvenile court, enjoining any person from molesting, attacking, threatening, sexually assaulting, stalking, or battering the child.

This bill would additionally authorize the juvenile court to issue an ex parte order enjoining any person from engaging in those acts against any other child in the household.

The bill would provide that if a person who was named in a temporary restraining order or emergency protective order is personally served with the order and a notice of hearing with respect to a subsequent restraining order or protective order based thereon, but that person fails to appear at the hearing either in person or represented by counsel, and if the terms and conditions of the subsequent order are the same as the prior order, except for the duration of the order, the subsequent order may be served on the person by first-class mail. The bill would require that judicial forms for these orders include a specified statement.

The bill would also make various technical changes.

The people of the State of California do enact as follows:

SECTION 1. Section 7121 of the Family Code is amended to read:

7121. (a) Before the petition for a declaration of emancipation is heard, notice the court determines is reasonable shall be given to the minor's parents, guardian, or other person entitled to the custody of the minor, or proof shall be made to the court that their addresses are unknown or that for other reasons the notice cannot be given.

(b) The clerk of the court shall also notify the local child support agency of the county in which the matter is to be heard of the proceeding. If the minor is a ward of the court, notice shall be given to the probation department. If the child is a dependent child of the court, notice shall be given to the county welfare department.

(c) The notice shall include a form whereby the minor's parents, guardian, or other person entitled to the custody of the minor may give their written consent to the petitioner's emancipation. The notice shall include a warning that a court may void or rescind the declaration of emancipation and the parents may become liable for support and medical insurance coverage pursuant to Chapter 2 (commencing with Section 4000) of Part 2 of Division 9 and Sections 17400, 17402, 17404, and 17422.

SEC. 2. Section 68087 of the Government Code is amended to read:

68087. (a) A state surcharge of 10 percent shall be levied on any fee specified in paragraph (1) of subdivision (c) of Section 68085, except those fees established pursuant to Section 631.3 of the Code of Civil Procedure, and Section 68086. This surcharge shall be in addition to any other court-related fee.

(b) The clerk of the court shall cause the amount collected to be transmitted to the Trial Court Trust Fund.

(c) It is the intent of the Legislature that nothing in this section shall change the existing distribution or amounts of the fees specified in paragraph (1) of subdivision (c) of Section 68085 provided to local jurisdictions and the state.

(d) This section shall become inoperative on July 1, 2007, and as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends that date.

SEC. 3. Section 77209 of the Government Code is amended to read:

77209. (a) There is in the State Treasury the Trial Court Improvement Fund.

(b) The Judicial Council shall reserve funds for the following projects by allocating 1 percent of the annual appropriation for the trial courts to the Trial Court Improvement Fund as follows:

(1) At least one-half of 1 percent of the total appropriation for trial court operations shall be set aside as a reserve which shall not be allocated prior to March 15 of each year unless allocated to a court or courts for urgent needs.

(2) Up to one-quarter of 1 percent of the total appropriation for trial court operations may be allocated from the fund to courts which have fully unified to the extent permitted by law and which meet additional criteria as may be established by the Judicial Council.

(3) Up to one-quarter of 1 percent of the total appropriation for trial court operations may be allocated from the fund for statewide projects or programs for the benefit of the trial courts.

(c) Any funds in the Trial Court Improvement Fund that are unencumbered at the end of the fiscal year shall be reappropriated to the Trial Court Improvement Fund for the following fiscal year.

(d) Moneys deposited in the Trial Court Improvement Fund shall be placed in an interest bearing account. Any interest earned shall accrue to the fund and shall be disbursed pursuant to subdivision (e).

(e) Moneys deposited in the Trial Court Improvement Fund may be disbursed for purposes of this section.

(f) Moneys deposited in the Trial Court Improvement Fund pursuant to Section 68090.8 shall be allocated by the Judicial Council for automated recordkeeping system improvements pursuant to that section and in furtherance of Rule 991 of the California Rules of Court, as it read on July 1, 1996.

(g) Moneys deposited in the Trial Court Improvement Fund shall be administered by the Judicial Council. The Judicial Council may, with appropriate guidelines, delegate to the Administrative Director of the Courts the administration of the fund. Moneys in the fund may be expended to implement trial court projects approved by the Judicial Council. Expenditures may be made to vendors or individual trial courts that have the responsibility to implement approved projects.

(h) Notwithstanding other provisions of this section, the 2 percent automation fund moneys deposited in the Trial Court Improvement Fund pursuant to Section 68090.8 shall be allocated by the Judicial Council to individual courts of the counties for deposit in the Trial Court Operations Fund of the county from which the money was collected in an amount not less than the revenues collected in the local 2 percent automation funds in fiscal year 1994–95. The Judicial Council shall allocate the remainder of the moneys deposited in the Trial Court Improvement Fund as specified in this section.

For the purposes of this subdivision, the term ‘‘2 percent automation fund’’ means the fund established pursuant to Section 68090.8 as it read on June 30, 1996.

(i) Royalties received from the publication of uniform jury instructions shall be deposited in the Trial Court Improvement Fund and used for the improvement of the jury system.

(j) The Judicial Council shall present an annual report to the Legislature on the use of the Trial Court Improvement Fund. The report shall include appropriate recommendations.

SEC. 4. Section 1465.7 of the Penal Code is amended to read:

1465.7. (a) A state surcharge of 20 percent shall be levied on the base fine used to calculate the state penalty assessment as specified in subdivision (a) of Section 1464.

(b) This surcharge shall be in addition to the state penalty assessed pursuant to Section 1464 of the Penal Code and may not be included in the base fine used to calculate the state penalty assessment as specified in subdivision (a) of Section 1464.

(c) After a determination by the court of the amount due, the clerk of the court shall cause the amount of the state surcharge collected to be transmitted to the General Fund.

(d) Notwithstanding Chapter 12 (commencing with Section 76000) of Title 8 of the Government Code and subdivision (b) of Section 68090.8 of the Government Code, the full amount of the surcharge shall be transmitted to the State Treasury to be deposited in the General Fund. Of the amount collected from the total amount of the fines, penalties, and surcharges imposed, the amount of the surcharge established by this section shall be transmitted to the State Treasury to be deposited in the General Fund.

(e) When any deposited bail is made for an offense to which this section applies, and for which a court appearance is not mandatory, the person making the deposit shall also deposit a sufficient amount to include the surcharge prescribed by this section.

(f) When amounts owed by an offender as a result of a conviction are paid in installment payments, payments shall be credited pursuant to Section 1203.1d. The amount of the surcharge established by this section shall be transmitted to the State Treasury prior to the county retaining or disbursing the remaining amount of the fines, penalties, and forfeitures imposed.

(g) Notwithstanding Sections 40512.6 and 42007 of the Vehicle Code, the term ''total bail'' as used in subdivision (a) of Section 42007 of the Vehicle Code does not include the surcharge set forth in this section. The surcharge set forth in this section shall be levied on what would have been the base fine had the provisions of Section 42007 not been invoked and the proceeds from the imposition of the surcharge shall be treated as otherwise set forth in this section.

(h) This section shall become inoperative on July 1, 2007, and as of January 1, 2008, is repealed, unless a later enacted statute, that becomes operative on or before January 1, 2008, deletes or extends that date.

SEC. 5. Section 11105.04 is added to the Penal Code, to read:

11105.04. (a) A designated Court Appointed Special Advocate (CASA) program may submit to the Department of Justice fingerprint images and related information of employment and volunteer candidates for the purpose of obtaining information as to the existence and nature of any record of state or federal level convictions or state or federal level arrests for which the department establishes that the applicant was released on bail or on his or her own recognizance pending trial. Requests for federal level criminal offender record information received by the department pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the department.

(b) When requesting state level criminal offender record information pursuant to this section, the designated CASA program shall request subsequent arrest notification, pursuant to Section 11105.2 of the Penal Code, for all employment and volunteer candidates.

(c) The department shall respond to the designated CASA program with information as delineated in subdivision (p) of Section 11105 of the Penal Code.

(d) The department shall charge a fee sufficient to cover the cost of processing the requests for state and federal level criminal offender record information.

(e) For purposes of this section, a designated CASA program is a local court-appointed special advocate program that has adopted and adheres to the guidelines established by the Judicial Council and which has been designated by the local presiding juvenile court judge to recruit, screen, select, train, supervise, and support lay volunteers to be appointed by the court to help define the best interests of children in juvenile court dependency and wardship proceedings. For purposes of this section, there shall be only one designated CASA program in each California county.

(f) This section shall become operative on July 1, 2004.

SEC. 6. Section 213.5 of the Welfare and Institutions Code is amended to read:

213.5. (a) After a petition has been filed pursuant to Section 311 to declare a child a dependent child of the juvenile court, and until the time that the petition is dismissed or dependency is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, striking, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; and (3) enjoining any person from behavior, including contacting, threatening, or disturbing the peace of the child, that the court determines is necessary to effectuate orders under paragraph (1) or (2). A court issuing an ex parte order pursuant to this subdivision may simultaneously issue an ex parte order enjoining any person from contacting, threatening, molesting, attacking, striking, sexually assaulting, stalking, battering, or disturbing the peace of any parent, legal guardian, or current caretaker of the child, regardless of whether the child resides with that parent, legal guardian, or current caretaker, upon application in the manner provided by Section 527 of the Code of Civil Procedure.

(b) After a petition has been filed pursuant to Section 601 or 602 to declare a child a ward of the juvenile court, and until the time that the

petition is dismissed or wardship is terminated, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any person from molesting, attacking, threatening, sexually assaulting, stalking, or battering the child or any other child in the household; (2) excluding any person from the dwelling of the person who has care, custody, and control of the child; or (3) enjoining the child from contacting, threatening, stalking, or disturbing the peace of any person the court finds to be at risk from the conduct of the child, or with whom association would be detrimental to the child.

(c) In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. The court may, upon its own motion or the filing of an affidavit by the person seeking the restraining order, find that the person to be restrained could not be served within the time required by law and to reissue an order previously issued and dissolved by the court for failure to serve the person to be restrained. The reissued order shall state on its face the date of expiration of the order. Any hearing pursuant to this section may be held simultaneously with any regularly scheduled hearings held in proceedings to declare a child a dependent child or ward of the juvenile court pursuant to Section 300, 601, or 602, or subsequent hearings regarding the dependent child or ward.

(d) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivisions (a), (b), and (c). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed three years, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(e) (1) The juvenile court may issue an order made pursuant to subdivision (a), (c), or (d) excluding a person from a residence or dwelling. This order may be issued for the time and on the conditions that the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling.

(2) The court may issue an order under paragraph (1) only on a showing of all of the following:

(A) Facts sufficient for the court to ascertain that the party who will stay in the dwelling has a right under color of law to possession of the premises.

(B) That the party to be excluded has assaulted or threatens to assault the other party or any other person under the care, custody, and control of the other party, or any minor child of the parties or of the other party.

(C) That physical or emotional harm would otherwise result to the other party, to any person under the care, custody, and control of the other party, or to any minor child of the parties or of the other party.

(f) Any order issued pursuant to subdivision (a), (b), (c), or (d) shall state on its face the date of expiration of the order.

(g) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a), (b), (c), or (d), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the child and other locations where the court determines that acts of domestic violence or abuse against the child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a), (b), (c), or (d) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(h) Any willful and knowing violation of any order granted pursuant to subdivision (a), (b), (c), or (d) shall be a misdemeanor punishable under Section 273.65 of the Penal Code.

(i) A juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be issued on forms adopted by the Judicial Council of California and that have been approved by the Department of Justice pursuant to subdivision (i) of Section 6380 of the Family Code. However, the fact that an order issued by a court pursuant to this section was not issued on forms adopted by the Judicial Council and approved by the Department of Justice shall not, in and of itself, make the order unenforceable.

(j) Information on any juvenile court restraining order related to domestic violence issued by a court pursuant to this section shall be transmitted to the Department of Justice in accordance with subdivision (b) of Section 6380 of the Family Code.

(k) (1) Prior to a hearing on the issuance or denial of an order under this part, a search shall be conducted as described in subdivision (a) of Section 6306 of the Family Code.

(2) Prior to deciding whether to issue an order under this part, the court shall consider the following information obtained pursuant to a search conducted under paragraph (1): any conviction for a violent felony specified in Section 667.5 of the Penal Code or a serious felony specified in Section 1192.7 of the Penal Code; any misdemeanor conviction involving domestic violence, weapons, or other violence; any outstanding warrant; parole or probation status; any prior restraining order; and any violation of a prior restraining order.

(3) (A) If the results of the search conducted pursuant to paragraph (1) indicate that an outstanding warrant exists against the subject of the search, the court shall order the clerk of the court to immediately notify, by the most effective means available, appropriate law enforcement officials of any information obtained through the search that the court determines is appropriate. The law enforcement officials so notified shall take all actions necessary to execute any outstanding warrants or any other actions, as appropriate and as soon as practicable.

(B) If the results of the search conducted pursuant to paragraph (1) indicate that the subject of the search is currently on parole or probation, the court shall order the clerk of the court to immediately notify, by the most effective means available, the appropriate parole or probation officer of any information obtained through the search that the court determines is appropriate. The parole or probation officer so notified shall take all actions necessary to revoke any parole or probation, or any other actions, with respect to the subject person, as appropriate and as soon as practicable.

(*l*) Upon making any order for custody or visitation pursuant to this section, the court shall follow the procedures specified in subdivisions (c) and (d) of Section 6323 of the Family Code.

SEC. 7. Section 213.6 is added to the Welfare and Institutions Code, to read:

213.6. (a) If a person named in a temporary restraining order or emergency protective order issued under this part is personally served with the order and notice of hearing with respect to a subsequent restraining order or protective order based thereon, but the person does not appear at the hearing either in person or by counsel, and the terms and conditions of the restraining order or protective order are identical to those of the prior temporary restraining order, except for the duration of the order, the subsequent restraining order or protective order may be served on the person by first-class mail sent to that person at the most current address for the person available to the court.

(b) The judicial forms for temporary restraining orders or emergency protective orders issued under this part shall contain a statement in substantially the following form:

''If you have been personally served with a temporary restraining order or emergency protective order and notice of hearing, but you do not appear at the hearing either in person or by counsel, and a restraining order or protective order is issued at the hearing that does not differ from the prior temporary restraining order or protective order except with respect to the duration of the order, a copy of the order will be served upon you by mail at the following address: ____ . If that address is not correct or if you wish to verify that the temporary order was made permanent without substantive change, call the clerk of the court at ____.''

SEC. 8. Section 355 of the Welfare and Institutions Code is amended to read:

355. (a) At the jurisdictional hearing, the court shall first consider only the question whether the minor is a person described by Section 300. Any legally admissible evidence that is relevant to the circumstances or acts that are alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be received in evidence. Proof by a preponderance of evidence must be adduced to support a finding that the minor is a person described by Section 300. Objections that could have been made to evidence introduced shall be deemed to have been made by any parent or guardian who is present at the hearing and unrepresented by counsel, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of the right to counsel. Objections that could have been made to evidence introduced shall be deemed to have been made by any unrepresented child.

(b) A social study prepared by the petitioning agency, and hearsay evidence contained in it, is admissible and constitutes competent evidence upon which a finding of jurisdiction pursuant to Section 300 may be based, to the extent allowed by subdivisions (c) and (d).

(1) For the purposes of this section, ''social study'' means any written report furnished to the juvenile court and to all parties or their counsel by the county probation or welfare department in any matter involving the custody, status, or welfare of a minor in a dependency proceeding pursuant to Articles 6 (commencing with Section 300) to 12 (commencing with Section 385), inclusive, of Chapter 2 of Division 2.

(2) The preparer of the social study shall be made available for cross-examination upon a timely request by any party. The court may deem the preparer available for cross-examination if it determines that the preparer is on telephone standby and can be present in court within a reasonable time of the request.

(3) The court may grant a reasonable continuance not to exceed 10 days upon request by any party if the social study is not provided to the parties or their counsel within a reasonable time before the hearing.

(c) (1) If any party to the jurisdictional hearing raises a timely objection to the admission of specific hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the petitioner establishes one or more of the following exceptions:

(A) The hearsay evidence would be admissible in any civil or criminal proceeding under any statutory or decisional exception to the prohibition against hearsay.

(B) The hearsay declarant is a minor under the age of 12 years who is the subject of the jurisdictional hearing. However, the hearsay statement of a minor under the age of 12 years shall not be admissible if the objecting party establishes that the statement is unreliable because it was the product of fraud, deceit, or undue influence.

(C) The hearsay declarant is a peace officer as defined by Chapter 4.5 (commencing with Section 830) of Title 3 of Part 2 of the Penal Code, a health practitioner described in paragraphs (21) to (28), inclusive, of subdivision (a) of Section 11165.7 of the Penal Code, a social worker licensed pursuant to Chapter 14 (commencing with Section 4990) of Division 2 of the Business and Professions Code, or a teacher who holds a credential pursuant to Chapter 2 (commencing with Section 44200) of Part 24 of Division 3 of Title 2 of the Education Code. For the purpose of this subdivision, evidence in a declaration is admissible only to the extent that it would otherwise be admissible under this section or if the declarant were present and testifying in court.

(D) The hearsay declarant is available for cross-examination. For purposes of this section, the court may deem a witness available for cross-examination if it determines that the witness is on telephone standby and can be present in court within a reasonable time of a request to examine the witness.

(2) For purposes of this subdivision, an objection is timely if it identifies with reasonable specificity the disputed hearsay evidence and it gives the petitioner a reasonable period of time to meet the objection prior to a contested hearing.

(d) This section shall not be construed to limit the right of any party to the jurisdictional hearing to subpoena a witness whose statement is contained in the social study or to introduce admissible evidence

relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

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