

Introduced by Senator RunnerFebruary 17, 2009

An act to amend Sections 248, 250, and 395 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 179, as introduced, Runner. Juvenile law: referee.

Existing law requires a referee to hear cases assigned to him or her by the presiding judge of the juvenile court. Existing law provides that all orders of a juvenile court referee become immediately effective, except as specified. Existing law requires the referee to furnish to the presiding judge and the minor, if the minor is 14 years of age or older or makes that request, and to serve upon the minor's attorney and the minor's parent, guardian, or adult relative and that person's attorney, a written copy of the referee's findings and order, and to furnish to the minor and the parent, guardian, or adult relative, with the findings and order, a written explanation of the right of those persons to seek review of the order by the juvenile court. Existing law requires that service made pursuant to these provisions be made by mail, as specified.

This bill would require that service be made in court on a minor, parent, or guardian who is present in court on the date that the findings and order of the referee are made. The bill would require service of the findings and order by mail to a minor, parent, or guardian who was not present in court when those findings and order were made, except as specified, and would require the mailing to include the written explanation of the right to seek review of the order, as required pursuant to the provision described above. The bill would require that a notice of appeal be filed within 30 days after rendition of a judgment or the making of the order being appealed, or, in matters heard by a referee

not acting as a temporary judge, within 30 days after the referee’s order becomes final. The bill would also provide that an order of a referee becomes final no later than 180 days after it is made.

Vote: majority. Appropriation: no. Fiscal committee: no.
 State-mandated local program: no.

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

1 SECTION 1. Section 248 of the Welfare and Institutions Code
 2 is amended to read:

3 248. (a) A referee shall hear ~~such~~ *those* cases ~~as that~~ are
 4 assigned to him or her by the presiding judge of the juvenile court,
 5 with the same powers as a judge of the juvenile court, except that
 6 a referee shall not conduct any hearing to which the state or federal
 7 constitutional prohibitions against double jeopardy apply unless
 8 all of the parties thereto stipulate in writing that the referee may
 9 act in the capacity of a temporary judge. A referee shall promptly
 10 furnish to the presiding judge of the juvenile court and the minor,
 11 if the minor is 14 or more years of age or if younger has so
 12 requested, and shall serve upon the minor’s attorney of record and
 13 the minor’s parent or guardian or adult relative and the attorney
 14 of record for the minor’s parent or guardian or adult relative a
 15 written copy of his or her findings and order and shall also furnish
 16 to the minor, if the minor is 14 or more years of age or if younger
 17 has so requested, and to the parent or guardian or adult relative,
 18 with the findings and order, a written explanation of the right of
 19 ~~such~~ *those* persons to seek review of the order by the juvenile
 20 court.

21 (b) Service, as provided in this section, shall be *made as follows*:

22 (1) *If a minor, parent, or guardian is present in court at the*
 23 *time the findings and order are made, then the findings and order*
 24 *shall be served in court on any minor, parent, or guardian who is*
 25 *present in court on that date and a written explanation of the right*
 26 *to seek review of the order as required pursuant to subdivision (a)*
 27 *shall be furnished at that time.*

28 (2) *If paragraph (1) is not applicable, service shall be made by*
 29 *mail to the last known address of ~~such~~ those persons or to the*
 30 *address designated by ~~such~~ those persons appearing at the hearing*
 31 *before the referee and the mailing shall include, if applicable, the*
 32 *written explanation of the right to seek review of the order. If the*

1 *parent, guardian, or minor does not have a last known address*
2 *designated, then service by mail shall be to that party in care of*
3 *his or her counsel. If a parent or guardian does not have a last*
4 *known address designated, and is not represented by counsel,*
5 *service by mail or otherwise to that person is not required.*

6 SEC. 2. Section 250 of the Welfare and Institutions Code is
7 amended to read:

8 250. Except as provided in Section 251, all orders of a referee
9 other than those specified in Section 249 shall become immediately
10 effective, subject also to the right of review as hereinafter provided,
11 and shall continue in full force and effect until vacated or modified
12 upon rehearing by order of the judge of the juvenile court. In a
13 case in which an order of a referee becomes effective without
14 approval of a judge of the juvenile court, it becomes final on the
15 expiration of the time allowed by Section 252 for application for
16 rehearing, if application therefor is not made within ~~such~~ *that* time
17 and if the judge of the juvenile court has not within ~~such~~ *that* time
18 ordered a rehearing pursuant to Section 253. *Notwithstanding any*
19 *other law, an order of a referee becomes final no later than 180*
20 *days after the order is made.*

21 Where a referee sits as a temporary judge, his or her orders
22 become final in the same manner as orders made by a judge.

23 SEC. 3. Section 395 of the Welfare and Institutions Code is
24 amended to read:

25 395. (a) (1) A judgment in a proceeding under Section 300
26 may be appealed in the same manner as any final judgment, and
27 any subsequent order may be appealed as an order after judgment,
28 *except as provided in this section. A notice of appeal shall be filed*
29 *within 30 days after the rendition of the judgment or the making*
30 *of the order being appealed. In matters heard by a referee not*
31 *acting as a temporary judge, a notice of appeal must be filed within*
32 *30 days after the referee's order becomes final pursuant to*
33 *subdivision (c) of Rule 5.540 of the California Rules of Court, as*
34 *the rule read on January 1, 2008. However, that order or judgment*
35 *shall not be stayed by the appeal, unless, pending the appeal,*
36 *suitable provision is made for the maintenance, care, and custody*
37 *of the person alleged or found to come within the provisions of*
38 *Section 300, and unless the provision is approved by an order of*
39 *the juvenile court. The appeal shall have precedence over all other*
40 *cases in the court to which the appeal is taken.*

1 (2) A judgment or subsequent order entered by a referee shall
2 become appealable whenever proceedings pursuant to Section 252,
3 253, or 254 have become completed or, if proceedings pursuant
4 to Section 252, 253, or 254 are not initiated, when the time for
5 initiating the proceedings has expired.

6 (3) An appellant unable to afford counsel, shall be provided a
7 free copy of the transcript in any appeal.

8 (4) The record shall be prepared and transmitted immediately
9 after filing of the notice of appeal, without advance payment of
10 fees. If the appellant is able to afford counsel, the county may seek
11 reimbursement for the cost of the transcripts under subdivision (d)
12 of Section 68511.3 of the Government Code as though the appellant
13 had been granted permission to proceed in forma pauperis.

14 (b) (1) In any appellate proceeding in which the child is an
15 appellant, the court of appeal shall appoint separate counsel for
16 the child. If the child is not an appellant, the court of appeal shall
17 appoint separate counsel for the child if the court of appeal
18 determines, after considering the recommendation of the trial
19 counsel or guardian ad litem appointed for the child pursuant to
20 subdivision (e) of Section 317, Section 326.5, and California Rule
21 of Court 1448, that appointment of counsel would benefit the child.
22 In order to assist the court of appeal in making its determination
23 under this subdivision, the trial counsel or guardian ad litem shall
24 make a recommendation to the court of appeal that separate counsel
25 be appointed in any case in which the trial counsel or guardian ad
26 litem determines that, for the purposes of the appeal, the child's
27 best interests cannot be protected without the appointment of
28 separate counsel, and shall set forth the reasons why the
29 appointment is in the child's best interests. The court of appeal
30 shall consider that recommendation when determining whether
31 the child would benefit from the appointment of counsel. The
32 Judicial Council shall implement this provision by adopting a rule
33 of court on or before July 1, 2007, to set forth the procedures by
34 which the trial counsel or guardian ad litem may participate in an
35 appeal, as well as the factors to be considered by the trial counsel
36 or guardian ad litem in making a recommendation to the court of
37 appeal, including, but not limited to, the extent to which there
38 exists a potential conflict between the interests of the child and
39 the interests of any respondent.

1 (2) The Judicial Council shall report to the Legislature on or
2 before July 1, 2008, information regarding the status of appellate
3 representation of dependent children, the results of implementing
4 this subdivision, any recommendations regarding the representation
5 of dependent children in appellate proceedings made by the
6 California Judicial Council's Blue Ribbon Commission on Children
7 in Foster Care, any actions taken, including rules of court proposed
8 or adopted, in response to those recommendations or taken in order
9 to comply with the Child Abuse Prevention and Treatment Act,
10 as well as any recommendations for legislative change that are
11 deemed necessary to protect the best interests of dependent children
12 in appellate proceedings or ensure compliance with the Child
13 Abuse Prevention and Treatment Act.

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