

Introduced by Senator Runner

February 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 amended, 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~~ *allow* service to 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 those cases that are assigned to
 4 him or her by the presiding judge of the juvenile court, with the
 5 same powers as a judge of the juvenile court, except that a referee
 6 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 those persons to seek review of the order by the juvenile court.

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

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

27 (2) If paragraph (1) is not applicable, service shall be made by
 28 mail to the last known address of those persons or to the address
 29 designated by those persons appearing at the hearing before the
 30 referee and the mailing shall include, if applicable, the written

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

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

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

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

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

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

1 The appeal shall have precedence over all other cases in the court
2 to which the appeal is taken.

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

8 (3) An appellant unable to afford counsel; shall be provided a
9 free copy of the transcript in any appeal.

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

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

1 exists a potential conflict between the interests of the child and
2 the interests of any respondent.

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

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