

AMENDED IN ASSEMBLY MAY 6, 2010

AMENDED IN SENATE APRIL 14, 2009

AMENDED IN SENATE MARCH 23, 2009

**SENATE BILL**

**No. 179**

---

---

**Introduced by Senator Runner**

February 17, 2009

---

---

An act to amend ~~Sections 248 and 395~~ *Section 248* 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 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 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.~~

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

27 (2) If paragraph (1) is not applicable, service shall be made by  
28 mail, within the time period specified in Section 248.5, to the last  
29 known address of those persons or to the address designated by

1 those persons appearing at the hearing before the referee and the  
2 mailing shall include, if applicable, the written explanation of the  
3 right to seek review of the order. If the parent, guardian, or minor  
4 does not have a last known address designated, then service by  
5 mail shall be to that party in care of his or her counsel.

6 ~~SEC. 2.—Section 395 of the Welfare and Institutions Code is~~  
7 ~~amended to read:~~

8 ~~395. (a) (1) A judgment in a proceeding under Section 300~~  
9 ~~may be appealed in the same manner as any final judgment, and~~  
10 ~~any subsequent order may be appealed as an order after judgment,~~  
11 ~~except as provided in this section. A notice of appeal shall be filed~~  
12 ~~within 30 days after the rendition of the judgment or the making~~  
13 ~~of the order being appealed. In matters heard by a referee not acting~~  
14 ~~as a temporary judge, a notice of appeal must be filed within 30~~  
15 ~~days after the referee's order becomes final pursuant to subdivision~~  
16 ~~(e) of Rule 5.540 of the California Rules of Court, as the rule read~~  
17 ~~on January 1, 2008. However, that order or judgment shall not be~~  
18 ~~stayed by the appeal, unless, pending the appeal, suitable provision~~  
19 ~~is made for the maintenance, care, and custody of the person~~  
20 ~~alleged or found to come within the provisions of Section 300, and~~  
21 ~~unless the provision is approved by an order of the juvenile court.~~  
22 ~~The appeal shall have precedence over all other cases in the court~~  
23 ~~to which the appeal is taken.~~

24 ~~(2) A judgment or subsequent order entered by a referee shall~~  
25 ~~become appealable whenever proceedings pursuant to Section 252,~~  
26 ~~253, or 254 are completed or, if proceedings pursuant to Section~~  
27 ~~252, 253, or 254 are not initiated, when the time for initiating the~~  
28 ~~proceedings has expired.~~

29 ~~(3) An appellant unable to afford counsel shall be provided a~~  
30 ~~free copy of the transcript in any appeal.~~

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

37 ~~(b) (1) In any appellate proceeding in which the child is an~~  
38 ~~appellant, the court of appeal shall appoint separate counsel for~~  
39 ~~the child. If the child is not an appellant, the court of appeal shall~~  
40 ~~appoint separate counsel for the child if the court of appeal~~

1 determines, after considering the recommendation of the trial  
2 counsel or guardian ad litem appointed for the child pursuant to  
3 subdivision (c) of Section 317, Section 326.5, and California Rule  
4 of Court 1448, that appointment of counsel would benefit the child.  
5 In order to assist the court of appeal in making its determination  
6 under this subdivision, the trial counsel or guardian ad litem shall  
7 make a recommendation to the court of appeal that separate counsel  
8 be appointed in any case in which the trial counsel or guardian ad  
9 litem determines that, for the purposes of the appeal, the child's  
10 best interests cannot be protected without the appointment of  
11 separate counsel, and shall set forth the reasons why the  
12 appointment is in the child's best interests. The court of appeal  
13 shall consider that recommendation when determining whether  
14 the child would benefit from the appointment of counsel. The  
15 Judicial Council shall implement this provision by adopting a rule  
16 of court on or before July 1, 2007, to set forth the procedures by  
17 which the trial counsel or guardian ad litem may participate in an  
18 appeal, as well as the factors to be considered by the trial counsel  
19 or guardian ad litem in making a recommendation to the court of  
20 appeal, including, but not limited to, the extent to which there  
21 exists a potential conflict between the interests of the child and  
22 the interests of any respondent.

23 (2) The Judicial Council shall report to the Legislature on or  
24 before July 1, 2008, information regarding the status of appellate  
25 representation of dependent children, the results of implementing  
26 this subdivision, any recommendations regarding the representation  
27 of dependent children in appellate proceedings made by the  
28 California Judicial Council's Blue Ribbon Commission on Children  
29 in Foster Care, any actions taken, including rules of court proposed  
30 or adopted, in response to those recommendations or taken in order  
31 to comply with the Child Abuse Prevention and Treatment Act,  
32 as well as any recommendations for legislative change that are  
33 deemed necessary to protect the best interests of dependent children  
34 in appellate proceedings or ensure compliance with the Child  
35 Abuse Prevention and Treatment Act.

O