

AMENDED IN ASSEMBLY MARCH 29, 2012

CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1757

Introduced by Assembly Member Fletcher

February 17, 2012

~~An act to amend Section 8811 of the Family Code, relating to family law.~~ *An act to amend Sections 7663, 7870, 7880, 8700, 8714, 8801.7, 8802, 8810, 8912, and 9211 of, to add Section 8700.5 to, and to repeal Sections 7828 and 7829 of, the Family Code, to amend Section 1513 of, and to add Section 1513.5 to, the Probate Code, and to amend Section 329 of the Welfare and Institutions Code, relating to adoption.*

LEGISLATIVE COUNSEL'S DIGEST

AB 1757, as amended, Fletcher. Family law: adoption.

(1) *Existing law provides for the termination of parental rights in adoption proceedings. In connection with those proceedings, existing law requires a court to inquire of the mother and other specified persons and entities in an effort to identify the natural father of the child to be adopted.*

This bill would permit a court to extend its inquiry as to the child's parentage, in cases involving stepparent adoptions, to the licensed clinical social worker or licensed marriage and family therapist investigating the adoption, if applicable.

(2) *Existing law provides that parental rights may be terminated under certain circumstances, including where the child has been abandoned, neglected, or abused by his or her parent or parents, and if the child has been declared a dependent of the juvenile court.*

This bill would eliminate superseded statutory provisions concerning the termination of the parental rights of dependent children.

(3) *Under existing law, when a petition to declare a child free from parental custody and control is filed, the person having custody or control of the child must be served with a citation requiring that person and the child to appear in court, except as specified. A proceeding to declare a child free from parental custody and control is required to be set for trial within 45 days of service of the petition.*

This bill would require the party or attorney responsible for serving the citation in a proceeding to declare a child free from parental custody and control to attempt to serve the citation promptly. The bill would further require the hearing on the petition be held within 45 days of the filing of the petition. Additionally, this bill would authorize a court to issue an order in that proceeding without a trial if service has been completed and no interested person appears to contest the petition.

(4) *Existing law requires an adoption service provider to witness the signature of the adoption placement agreement and to offer to interview the birth parent, as specified, after the child has been placed with prospective adoptive parents. Existing law also prohibits an adoption service provider from entering into a contractual relationship with prospective adoptive parents, an attorney or representative of prospective adoptive parents, or any individual or organization that provides services to prospective adoptive parents for a fee, except for advising and counseling the birth parents.*

This bill would permit a licensed private adoption agency acting as an adoption service provider to render services to a placing birth parent or parents and to the prospective adoptive parent or parents if the placing birth parent or parents agree in writing, the placing birth parent or parents are assigned different social workers than the prospective adoptive parent or parents, and the placing birth parent or parents are represented by independent legal counsel at no cost to the birth parent or parents.

(5) *Existing law provides that, after a consent to an adoption is signed by the birth parent or parents, the birth parent or parents signing the consent have 30 days to take one of specified actions, including signing a waiver of the right to revoke consent. Under existing law, a waiver must be signed in the presence of a representative of the department or the delegated county adoption agency, the adoption service provider who advised the birth mother and witnessed the signing of the consent to the adoption if the birth parent or parents are represented by independent legal counsel, or if the birth parent or parents are represented by independent legal counsel, the waiver can also be signed*

in the presence of a judicial officer of the court of record or an adoption service provider.

This bill would permit a relinquishing birth parent to sign a waiver of the right to revoke relinquishment in the presence of a representative of the department or delegated county adoption agency, a public adoption agency of another state, or, if the birth parent or parents are represented by independent legal counsel, an authorized representative of a licensed private adoption agency in or outside of California, or by a judicial officer of a court in or outside of California. The bill would also set forth the role of independent legal counsel, as specified. The bill would set forth a specified certificate for that counsel to use in those proceedings. To the extent that this bill would impose new duties on county agencies, it would impose a state-mandated local program.

(6) Under existing law, a petition for adoption may be filed in the county in which the petitioner resides, where the birth parent or parents relinquished the child, where the placing birth parent or parents resided when the adoption placement agreement was signed, where the adoption agency, department, or public adoption agency is located, or, in the case of a dependent child, in the county where the child was freed for adoption.

This bill would revise and consolidate these provisions by providing that an adoption petition of a nondependent child may be filed in any of those locations. The bill would not alter the venue provisions for the adoption of dependent children.

(7) Existing law requires prospective adoptive parents to pay a fee to the department or delegated county adoption agency for the cost of investigating the adoption petition. Petitioners with valid preplacement evaluations are charged a lesser fee for that investigation.

Under this bill, petitioners with an agency adoption home study less than 2 years old would also be eligible for this lesser fee. In addition, this bill would provide that petitioners with a valid preplacement evaluation are eligible for the lesser fee only if that evaluation is less than one year old.

(8) Existing law permits a court investigator, probation officer, or domestic relations investigator to investigate and file a report containing recommendations concerning a proposed guardianship of a person. If the investigation reveals that any party to the proposed guardianship is alleging that the minor's parent is unfit, the court is required to refer the case to the county agency designated to investigate potential dependencies. Under existing law, the guardianship proceedings cannot

be completed until the dependency investigation is completed and the probate court receives the agency’s report.

This bill would give a court in a guardianship proceeding involving a minor discretion to order an investigation by Child Protective Services. Under the bill, the probate court could take any reasonable steps the court deemed necessary to protect the child’s safety, including appointing a temporary guardian or issuing a temporary restraining order. The bill would also provide that the author of any guardianship investigation reports and dependency investigation reports could be examined in probate court concerning the report, and would authorize the court to make the final decision regarding guardianship. Further, this bill would make all guardianship investigation reports and dependency investigation reports confidential.

(9) The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.

~~Existing law governs the adoption of unmarried minors. Under existing law, the State Department of Social Services or a delegated county adoption agency must fingerprint and perform a criminal background investigation on a prospective adoptive parent. Existing law also prohibits the State Department of Social Services and delegated county adoption agencies from giving final approval to an adoption if a prospective adoptive parent or an adult who lives in the prospective adoptive home has specified criminal convictions.~~

~~This bill would make technical, nonsubstantive changes to these provisions:~~

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

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

1 SECTION 1. Section 7663 of the Family Code is amended to
2 read:

1 7663. (a) In an effort to identify the natural father, the court
2 shall cause inquiry to be made of the mother and any other
3 appropriate person by one of the following:

- 4 (1) The State Department of Social Services.
- 5 (2) A licensed county adoption agency.
- 6 (3) The licensed adoption agency to which the child is to be
7 relinquished.
- 8 (4) In the case of a stepparent adoption, ~~at the option of the~~
9 ~~board of supervisors, the licensed clinical social worker or licensed~~
10 ~~marriage and family therapist who is performing the investigation~~
11 ~~pursuant to Section 9001, if applicable. In the case of a stepparent~~
12 ~~adoption in which no licensed clinical social worker or licensed~~
13 ~~marriage and family therapist is performing the investigation~~
14 ~~pursuant to Section 9001, the board of supervisors may assign~~
15 ~~those inquiries to a licensed county adoption agency, the county~~
16 ~~department designated by the board of supervisors to administer~~
17 ~~the public social services program, or the county probation~~
18 ~~department.~~

- 19 (b) The inquiry shall include all of the following:
 - 20 (1) Whether the mother was married at the time of conception
21 of the child or at any time thereafter.
 - 22 (2) Whether the mother was cohabiting with a man at the time
23 of conception or birth of the child.
 - 24 (3) Whether the mother has received support payments or
25 promises of support with respect to the child or in connection with
26 her pregnancy.
 - 27 (4) Whether any man has formally or informally acknowledged
28 or declared his possible paternity of the child.
 - 29 (5) The names and whereabouts, if known, of every man
30 presumed or alleged to be the father of the child, and the efforts
31 made to give notice of the proposed adoption to each man
32 identified.

33 (c) The agency that completes the inquiry shall file a written
34 report of the findings with the court.

35 *SEC. 2. Section 7828 of the Family Code is repealed.*

36 ~~7828. (a) A proceeding under this part may be brought where~~
37 ~~all of the following requirements are satisfied:~~

- 38 ~~(1) The child is one who has been in out-of-home placement~~
39 ~~under the supervision of the juvenile court, the county welfare~~

1 department, or other public or private licensed child-placing agency
2 for a one-year period.

3 ~~(2) The court finds that return of the child to the child’s parent~~
4 ~~or parents would be detrimental to the child and that the parent or~~
5 ~~parents have failed during the one-year period, and are likely to~~
6 ~~fail in the future, to maintain an adequate parental relationship~~
7 ~~with the child, which includes providing both a home and care and~~
8 ~~control for the child.~~

9 ~~(b) If the child has been adjudged a dependent child of the~~
10 ~~juvenile court and placed in out-of-home placement pursuant to~~
11 ~~Section 361 of the Welfare and Institutions Code, the one-year~~
12 ~~period is calculated from the date of the dispositional hearing at~~
13 ~~which the child was placed in out-of-home placement pursuant to~~
14 ~~that section.~~

15 ~~(c) If the child is in placement under the supervision of a county~~
16 ~~welfare department or other public or private licensed child-placing~~
17 ~~agency, pursuant to a voluntary placement, as described in Section~~
18 ~~16507.4 of the Welfare and Institutions Code, the one-year period~~
19 ~~is calculated from the date the child entered out-of-home~~
20 ~~placement.~~

21 ~~(d) Trial placement of the child in the physical custody of the~~
22 ~~parent or visitation of the child with the parent during the one-year~~
23 ~~period, when the trial placement or visitation does not result in~~
24 ~~permanent placement of the child with the parent, does not interrupt~~
25 ~~the running of the one-year period.~~

26 ~~(e) The court shall make a determination that reasonable services~~
27 ~~have been provided or offered to the parents which were designed~~
28 ~~to aid the parents to overcome the problems which led to the~~
29 ~~deprivation or continued loss of custody and that despite the~~
30 ~~availability of these services, return of the child to the parents~~
31 ~~would be detrimental to the child. The probation officer or social~~
32 ~~worker currently assigned to the case of the child shall appear at~~
33 ~~the termination proceedings. If the child has been adjudged to be~~
34 ~~a dependent child of the court pursuant to Section 300 of the~~
35 ~~Welfare and Institutions Code, the court shall review and consider~~
36 ~~the contents of the juvenile court file in determining if the services~~
37 ~~offered were reasonable under the circumstances.~~

38 *SEC. 3. Section 7829 of the Family Code is repealed.*

39 ~~7829. A proceeding under this part may be brought where both~~
40 ~~of the following requirements are satisfied:~~

1 ~~(a) The child has been found to be a dependent child of the~~
2 ~~juvenile court.~~

3 ~~(b) The juvenile court has determined, pursuant to paragraph~~
4 ~~(3), (4), or (5) of subdivision (b) of Section 361.5 of the Welfare~~
5 ~~and Institutions Code, that reunification services shall not be~~
6 ~~provided to the child's parent or guardian.~~

7 *SEC. 4. Section 7870 of the Family Code is amended to read:*

8 7870. (a) It is the public policy of this state that judicial
9 proceedings to declare a child free from parental custody and
10 control shall be fully determined as expeditiously as possible.

11 (b) Notwithstanding any other provision of law, a proceeding
12 to declare a child free from parental custody and control pursuant
13 to this part shall be set for ~~trial~~ *hearing* not more than 45 days after
14 ~~filing notification therefor and completion of service thereon in~~
15 ~~the manner prescribed by law for service of civil process.~~ *of the*
16 *petition. If, at the time set for hearing, or at any continuance*
17 *thereof, service has been completed and no interested person*
18 *appears to contest, the court may issue an order based on the*
19 *verified pleadings and any other evidence as may be submitted. If*
20 *any interested person appears to contest the matter, the court shall*
21 *set the matter for trial.* The matter so set has precedence over all
22 other civil matters on the date set for trial.

23 (c) The court may continue the proceeding as provided in
24 Section 7864 or Section 7871.

25 *SEC. 5. Section 7880 of the Family Code is amended to read:*

26 7880. (a) Upon the filing of the petition, a citation shall issue
27 requiring any person having the custody or control of the child, or
28 the person with whom the child is, to appear at a time and place
29 stated in the citation.

30 (b) The citation shall also require the person to appear with the
31 child except that, if the child is under the age of 10 years,
32 appearance with the child is required only upon order of the court
33 after necessity has been shown.

34 (c) Service of the citation shall be made in the manner prescribed
35 by law for service of civil process at least 10 days before the time
36 stated in the citation for the appearance. *The party or attorney*
37 *responsible for serving the citation shall attempt to do so in a*
38 *timely manner in order to maximize the response time available*
39 *to the party being served.*

40 *SEC. 6. Section 8700 of the Family Code is amended to read:*

1 8700. (a) Either birth parent may relinquish a child to the
2 department or a licensed adoption agency for adoption by a written
3 statement signed before two subscribing witnesses and
4 acknowledged before an authorized official of the department or
5 agency. The relinquishment, when reciting that the person making
6 it is entitled to the sole custody of the child and acknowledged
7 before the officer, is prima facie evidence of the right of the person
8 making it to the sole custody of the child and the person's sole
9 right to relinquish.

10 (b) A relinquishing parent who is a minor has the right to
11 relinquish his or her child for adoption to the department or a
12 licensed adoption agency, and the relinquishment is not subject to
13 revocation by reason of the minority.

14 (c) If a relinquishing parent resides outside this state and the
15 child is being cared for and is or will be placed for adoption by
16 the department or a licensed adoption agency, the relinquishing
17 parent may relinquish the child to the department or agency by a
18 written statement signed by the relinquishing parent before a notary
19 on a form prescribed by the department, and previously signed by
20 an authorized official of the department or agency, that signifies
21 the willingness of the department or agency to accept the
22 relinquishment.

23 (d) If a relinquishing parent and child reside outside this state
24 and the child will be cared for and will be placed for adoption by
25 the department or a licensed adoption agency, the relinquishing
26 parent may relinquish the child to the department or agency by a
27 written statement signed by the relinquishing parent, after that
28 parent has satisfied the following requirements:

29 (1) Prior to signing the relinquishment, the relinquishing parent
30 shall have received, from a representative of an agency licensed
31 or otherwise approved to provide adoption services under the laws
32 of the relinquishing parent's state of residence, the same counseling
33 and advisement services as if the relinquishing parent resided in
34 this state.

35 (2) The relinquishment shall be signed before a representative
36 of an agency licensed or otherwise approved to provide adoption
37 services under the laws of the relinquishing parent's state of
38 residence whenever possible or before a licensed social worker on
39 a form prescribed by the department, and previously signed by an
40 authorized official of the department or agency, that signifies the

1 willingness of the department or agency to accept the
2 relinquishment.

3 (e) (1) The relinquishment authorized by this section has no
4 effect until a certified copy is sent to, and filed with, the
5 department. The licensed adoption agency shall send that copy by
6 certified mail, return receipt requested, or by overnight courier or
7 messenger, with proof of delivery, to the department no earlier
8 than the end of the business day following the signing thereof. The
9 agency shall inform the birth parent that during this time period
10 he or she may request that the relinquishment be withdrawn and
11 that, if he or she makes the request, the relinquishment shall be
12 withdrawn. The relinquishment shall be final 10 business days
13 after receipt of the filing by the department, unless any of the
14 following apply:

15 (A) The department sends written acknowledgment of receipt
16 of the relinquishment prior to the expiration of that 10-day period,
17 at which time the relinquishment shall be final.

18 (B) A longer period of time is necessary due to a pending court
19 action or some other cause beyond control of the department.

20 (C) *The birth parent signs a waiver of right to revoke*
21 *relinquishment pursuant to Section 8700.5, in which case the*
22 *relinquishment shall become final as provided in that section.*

23 (2) After the relinquishment is final, it may be rescinded only
24 by the mutual consent of the department or licensed adoption
25 agency to which the child was relinquished and the birth parent or
26 parents relinquishing the child.

27 (f) The relinquishing parent may name in the relinquishment
28 the person or persons with whom he or she intends that placement
29 of the child for adoption be made by the department or licensed
30 adoption agency.

31 (g) Notwithstanding subdivision (e), if the relinquishment names
32 the person or persons with whom placement by the department or
33 licensed adoption agency is intended and the child is not placed
34 in the home of the named person or persons or the child is removed
35 from the home prior to the granting of the adoption, the department
36 or agency shall mail a notice by certified mail, return receipt
37 requested, to the birth parent signing the relinquishment within 72
38 hours of the decision not to place the child for adoption or the
39 decision to remove the child from the home.

1 (h) The relinquishing parent has 30 days from the date on which
2 the notice described in subdivision (g) was mailed to rescind the
3 relinquishment.

4 (1) If the relinquishing parent requests rescission during the
5 30-day period, the department or licensed adoption agency shall
6 rescind the relinquishment.

7 (2) If the relinquishing parent does not request rescission during
8 the 30-day period, the department or licensed adoption agency
9 shall select adoptive parents for the child.

10 (3) If the relinquishing parent and the department or licensed
11 adoption agency wish to identify a different person or persons
12 during the 30-day period with whom the child is intended to be
13 placed, the initial relinquishment shall be rescinded and a new
14 relinquishment identifying the person or persons completed.

15 (i) If the parent has relinquished a child, who has been found
16 to come within Section 300 of the Welfare and Institutions Code
17 or is the subject of a petition for jurisdiction of the juvenile court
18 under Section 300 of the Welfare and Institutions Code, to the
19 department or a licensed adoption agency for the purpose of
20 adoption, the department or agency accepting the relinquishment
21 shall provide written notice of the relinquishment within five court
22 days to all of the following:

23 (1) The juvenile court having jurisdiction of the child.

24 (2) The child's attorney, if any.

25 (3) The relinquishing parent's attorney, if any.

26 (j) The filing of the relinquishment with the department
27 terminates all parental rights and responsibilities with regard to
28 the child, except as provided in subdivisions (g) and (h).

29 (k) The department shall adopt regulations to administer the
30 provisions of this section.

31 *SEC. 7. Section 8700.5 is added to the Family Code, to read:*

32 *8700.5. (a) A relinquishing birth parent may elect to sign a*
33 *waiver of the right to revoke relinquishment in the presence of any*
34 *of the following:*

35 *(1) A representative of the department or the delegated county*
36 *adoption agency, or any public adoption agency of another state.*

37 *(2) A judicial officer of a court of record, within or outside of*
38 *California, if the birth parent is represented by independent legal*
39 *counsel.*

1 (3) *An authorized representative of a licensed private adoption*
2 *agency within or outside of California, including a representative*
3 *of the adoption agency that witnessed or accepted the*
4 *relinquishment, if the birth parent is represented by independent*
5 *legal counsel.*

6 (b) *The waiver of the right to revoke relinquishment may not*
7 *be signed until the department, delegated county adoption agency,*
8 *or public adoption agency of another state has completed an*
9 *interview, unless the waiver is signed in the presence of a judicial*
10 *officer of a court of record of any state or an authorized*
11 *representative of a private adoption agency licensed within or*
12 *outside of California. If the waiver is signed in the presence of a*
13 *judicial officer, the interview and witnessing of the signing of the*
14 *waiver shall be conducted by the judicial officer. If the waiver is*
15 *signed in the presence of an authorized representative of a licensed*
16 *adoption agency, the interview shall be conducted by the*
17 *independent legal counsel for the birth parent or parents, who*
18 *shall:*

19 (1) *Review the waiver with the birth parent or parents.*

20 (2) *Counsel the birth parent or parents about the nature of the*
21 *intended waiver.*

22 (3) *Sign and deliver to the birth parent or parents and the*
23 *licensed adoption agency a certificate in substantially the following*
24 *form:*

25
26 *I, (name of attorney), have counseled my client, (name of client),*
27 *about the nature and legal effect of the waiver of the right to revoke*
28 *the relinquishment for adoption. I am so disassociated from the*
29 *interest of the prospective adoptive parent(s) and the licensed*
30 *adoption agency as to be in a position to advise my client*
31 *impartially and confidentially as to the consequences of the waiver.*
32 *My client is aware that California law provides an indeterminate*
33 *period, usually 2 to 10 business days, during which a birth parent*
34 *may revoke a relinquishment for adoption. On the basis of this*
35 *counsel, I conclude that it is the intent of my client to waive the*
36 *right to revoke, and to make a permanent and irrevocable*
37 *relinquishment for adoption. My client understands that upon*
38 *signing this waiver, he or she will not be able to regain custody*
39 *of the child unless the prospective adoptive parent or parents agree*

1 to withdraw the petition for adoption or the court denies the
2 adoption petition.

3
4 (c) If the placing birth parent signs the waiver in front of a
5 judicial officer or the department, the relinquishment shall become
6 final and irrevocable at the time the waiver is signed. If the waiver
7 is signed in the presence of an authorized representative of a
8 private licensed adoption agency, the relinquishment shall become
9 final and irrevocable at the close of the next business day.

10 (d) The licensed adoption agency shall submit the waiver and
11 certificate to the department with the relinquishment, unless the
12 relinquishment was submitted to the department before the waiver
13 was signed, in which case the waiver and certificate shall be
14 submitted to the department no later than two business days after
15 signing.

16 SEC. 8. Section 8714 of the Family Code is amended to read:

17 8714. (a) A person desiring to adopt a child may for that
18 purpose file a petition in the county in which the petitioner resides
19 or, if the petitioner is not a resident of this state, in the county in
20 which the birth parent or birth parents resided when the
21 relinquishment of parental rights for the purpose of adoption was
22 signed an adoption request in a county authorized by Section 9211.

23 Where If a child has been adjudged to be a dependent of the
24 juvenile court pursuant to Section 300 of the Welfare and
25 Institutions Code, and has thereafter been freed for adoption by
26 the juvenile court, the petition may be filed either in the county
27 where the petitioner resides or in the county where the child was
28 freed for adoption.

29 (b) The court clerk shall immediately notify the department at
30 Sacramento in writing of the pendency of the proceeding and of
31 any subsequent action taken.

32 (c) If the petitioner has entered into a postadoption contact
33 agreement with the birth parent as set forth in Section 8616.5, the
34 agreement, signed by the participating parties, shall be attached
35 to and filed with the petition for adoption under subdivision (a).

36 (d) The caption of the adoption petition shall contain the names
37 of the petitioners, but not the child's name. The petition shall state
38 the child's sex and date of birth. The name the child had before
39 adoption shall appear in the joinder signed by the licensed adoption
40 agency.

1 (e) If the child is the subject of a guardianship petition, the
2 adoption petition shall so state and shall include the caption and
3 docket number or have attached a copy of the letters of the
4 guardianship or temporary guardianship. The petitioners shall
5 notify the court of any petition for guardianship or temporary
6 guardianship filed after the adoption petition. The guardianship
7 proceeding shall be consolidated with the adoption proceeding.

8 (f) The order of adoption shall contain the child's adopted name,
9 but not the name the child had before adoption.

10 *SEC. 9. Section 8801.7 of the Family Code is amended to read:*

11 8801.7. (a) An adoption service provider shall also witness
12 the signature of the adoption placement agreement and offer to
13 interview the birth parent after the placement of the child with
14 prospective adoptive parents. The interview shall occur within 10
15 working days after the placement of the child for adoption and
16 shall include a consideration of any concerns or problems the birth
17 parent has with the placement, a advisement of the rights of the
18 birth parent, and the taking of the health and social history of the
19 birth parent, if not taken previously.

20 (b) The adoption service provider shall immediately notify the
21 department or delegated county adoption agency if the birth parent
22 is not interviewed as provided in subdivision (a) or if there are any
23 concerns regarding the placement. If the birth parent wishes to
24 revoke the consent, the adoption service provider shall assist the
25 birth parent in obtaining the return of the child.

26 (c) The adoption service provider owes a very high duty of care
27 to the birth parent being advised, regardless of who pays the
28 provider's fees. The duty of care specifically does not include a
29 duty to investigate information provided by the birth parents,
30 prospective adoptive parents, or their attorneys or agents. ~~No~~
31 ~~adoption service provider shall have a contractual relationship with~~
32 ~~prospective adoptive parents, an attorney or representative for~~
33 ~~prospective adoptive parents, or any individual or organization~~
34 ~~providing services of any type to prospective adoptive parents for~~
35 ~~which the adoptive parents are paying a fee, except as relates to~~
36 ~~the payment of the fees for the advising and counseling of the birth~~
37 ~~parents.~~

38 ~~(d) This section shall become operative on January 1, 1995.~~

39 *(d) Except as provided in subdivision (e), no adoption service*
40 *provider shall have a contractual relationship with prospective*

1 *adoptive parents, an attorney or representative for prospective*
2 *adoptive parents, or any individual or organization providing*
3 *services of any type to prospective adoptive parents for which the*
4 *adoptive parents are paying a fee, except as relates to the payment*
5 *of fees for the advising and counseling of the birth parents.*

6 *(e) A licensed private adoption agency acting as an adoption*
7 *service provider may render services to the placing birth parent*
8 *or parents and to the prospective adoptive parent or parents if all*
9 *of the following requirements are met:*

10 *(1) The placing birth parent or parents agree in writing that*
11 *the agency may provide services to the prospective adoptive parent*
12 *or parents.*

13 *(2) The agency assigns different social workers to the placing*
14 *birth parent or parents and the prospective adoptive parent or*
15 *parents.*

16 *(3) The placing birth parent or parents are represented by*
17 *independent counsel at no cost pursuant to Section 8800.*

18 *SEC. 10. Section 8802 of the Family Code is amended to read:*

19 *8802. (a) (1) Any of the following persons who desire to adopt*
20 *a child may, for that purpose, file a petition in the county in which*
21 *the petitioner resides or, if the petitioner is not a resident of this*
22 *state, in the county in which the placing birth parent or birth parents*
23 *resided when the adoption placement agreement was signed, or*
24 *the county in which the placing birth parent or birth parents resided*
25 *when the petition was filed: file an adoption request in a county*
26 *authorized by Section 9211:*

27 *(A) An adult who is related to the child or the child's half sibling*
28 *by blood or affinity, including all relatives whose status is preceded*
29 *by the words "step," "great," "great-great," or "grand," or the*
30 *spouse of any of these persons, even if the marriage was terminated*
31 *by death or dissolution.*

32 *(B) A person named in the will of a deceased parent as an*
33 *intended adoptive parent where the child has no other parent.*

34 *(C) A person with whom a child has been placed for adoption.*

35 *(D) (i) A legal guardian who has been the child's legal guardian*
36 *for more than one year.*

37 *(ii) If the child is alleged to have been abandoned pursuant to*
38 *Section 7822, a legal guardian who has been the child's legal*
39 *guardian for more than six months. The legal guardian may file a*

1 petition pursuant to Section 7822 in the same court and
2 concurrently with a petition under this section.

3 (iii) However, if the parent nominated the guardian for a purpose
4 other than adoption for a specified time period, or if the
5 guardianship was established pursuant to Section 360 of the
6 Welfare and Institutions Code, the guardianship shall have been
7 in existence for not less than three years.

8 (2) If the child has been placed for adoption, a copy of the
9 adoptive placement agreement shall be attached to the petition.
10 The court clerk shall immediately notify the department at
11 Sacramento in writing of the pendency of the proceeding and of
12 any subsequent action taken.

13 (3) If the petitioner has entered into a postadoption contact
14 agreement with the birth parent as set forth in Section 8616.5, the
15 agreement, signed by the participating parties, shall be attached
16 to and filed with the petition for adoption.

17 (b) The petition shall contain an allegation that the petitioners
18 will file promptly with the department or delegated county adoption
19 agency information required by the department in the investigation
20 of the proposed adoption. The omission of the allegation from a
21 petition does not affect the jurisdiction of the court to proceed or
22 the validity of an adoption order or other order based on the
23 petition.

24 (c) The caption of the adoption petition shall contain the names
25 of the petitioners, but not the child's name. The petition shall state
26 the child's sex and date of birth and the name the child had before
27 adoption.

28 (d) If the child is the subject of a guardianship petition, the
29 adoption petition shall so state and shall include the caption and
30 docket number or have attached a copy of the letters of the
31 guardianship or temporary guardianship. The petitioners shall
32 notify the court of any petition for guardianship or temporary
33 guardianship filed after the adoption petition. The guardianship
34 proceeding shall be consolidated with the adoption proceeding,
35 and the consolidated case shall be heard and decided in the court
36 in which the adoption is pending.

37 (e) The order of adoption shall contain the child's adopted name,
38 but not the name the child had before adoption.

39 *SEC. 11. Section 8810 of the Family Code is amended to read:*

1 8810. (a) Except as otherwise provided in this section,
2 whenever a petition is filed under this chapter for the adoption of
3 a child, the petitioner shall pay a nonrefundable fee to the
4 department or to the delegated county adoption agency for the cost
5 of investigating the adoption petition. Fifty percent of the payment
6 shall be made to the department or delegated county adoption
7 agency at the time the adoption petition is filed, and the remaining
8 balance shall be paid no later than the date determined by the
9 department or the delegated county adoption agency in an amount
10 as follows:

11 (1) For petitions filed on and after October 1, 2008, four
12 thousand five hundred dollars (\$4,500).

13 (2) For petitioners who have a valid preplacement evaluation
14 *less than one year old or a valid agency adoption home study less*
15 *than two years old* at the time of filing a petition pursuant to
16 Section 8811.5, one thousand five hundred fifty dollars (\$1,550)
17 for a postplacement evaluation pursuant to Sections 8806 and 8807.

18 (b) Revenues produced by fees collected by the department
19 pursuant to subdivision (a) shall be used, when appropriated by
20 the Legislature, to fund only the direct costs associated with the
21 state program for independent adoptions. Revenues produced by
22 fees collected by the delegated county adoption agency pursuant
23 to subdivision (a) shall be used by the county to fund the county
24 program for independent adoptions.

25 (c) The department or delegated county adoption agency may
26 reduce the fee, to no less than five hundred dollars (\$500) when
27 the prospective adoptive parents are very low income, according
28 to the income limits published by the Department of Housing and
29 Community Development, and making the required payment would
30 be detrimental to the welfare of an adopted child. The department
31 shall develop additional guidelines regarding income and assets
32 to determine the financial criteria for reduction of the fee under
33 this subdivision.

34 (d) This section shall become operative on October 1, 2008.

35 *SEC. 12. Section 8912 of the Family Code is amended to read:*

36 8912. (a) ~~A person desiring to adopt a child may for that~~
37 ~~purpose file a petition in the county in which the petitioner resides.~~
38 *An international adoption or readoption request may be filed by*
39 *a resident of this state in a county authorized by Section 9211. The*
40 *court clerk shall immediately notify the department at Sacramento*

1 in writing of the pendency of the proceeding and of any subsequent
2 action taken.

3 (b) The caption of the adoption petition shall contain the names
4 of the petitioners, but not the child's name. The petition shall state
5 the child's sex and date of birth. The name the child had before
6 adoption shall appear in the joinder signed by the licensed adoption
7 agency.

8 (c) If the child is the subject of a guardianship petition, the
9 adoption petition shall so state and shall include the caption and
10 docket number or have attached a copy of the letters of the
11 guardianship or temporary guardianship. The petitioners shall
12 notify the court of any petition for guardianship or temporary
13 guardianship filed after the adoption petition. The guardianship
14 proceeding shall be consolidated with the adoption proceeding.

15 (d) The order of adoption shall contain the child's adopted name,
16 but not the name the child had before adoption.

17 (e) If the petitioner has entered into a postadoption contact
18 agreement with the birth parent as set forth in Section 8616.5, the
19 agreement, signed by the participating parties, shall be attached
20 to and filed with the petition for adoption.

21 *SEC. 13. Section 9211 of the Family Code is amended to read:*

22 9211. (a) ~~A person who is a resident of this state may file a~~
23 ~~petition for the adoption of a child~~ *An adoption request for the*
24 *adoption of a nondependent minor may be filed* with the court in
25 the county in which one of the following applies:

26 (1)

27 (a) The petitioner resides.

28 (2)

29 (b) The child was born or resides at the time of filing.

30 (3)

31 (c) An office of the agency that placed the child for adoption is
32 located.

33 (4)

34 (d) An office of the department or a public adoption agency that
35 is investigating the petition is located.

36 ~~(b) A petitioner who is not a resident of this state may file a~~
37 ~~petition for the adoption of a child with the court in a county in~~
38 ~~which paragraph (2), (3), or (4) of subdivision (a) applies.~~

1 (e) *The county in which a placing birth parent or parents resided*
2 *when the adoptive placement agreement, consent, or*
3 *relinquishment was signed.*

4 (f) *The county in which a placing birth parent or parents resided*
5 *when the petition was filed.*

6 (g) *The county in which the child was freed for adoption.*

7 SEC. 14. *Section 1513 of the Probate Code is amended to read:*

8 1513. (a) Unless waived by the court, a court investigator,
9 probation officer, or domestic relations investigator ~~may~~ *shall*
10 make an investigation and file with the court a report and
11 recommendation concerning each proposed guardianship of the
12 person or guardianship of the estate. Investigations where the
13 proposed guardian is a relative shall be made by a court
14 investigator. Investigations where the proposed guardian is a
15 nonrelative shall be made by the county agency designated to
16 investigate potential dependency. The report for the guardianship
17 of the person shall include, but need not be limited to, an
18 investigation and discussion of all of the following:

19 (1) A social history of the guardian.

20 (2) A social history of the proposed ward, including, to the
21 extent feasible, an assessment of any identified developmental,
22 emotional, psychological, or educational needs of the proposed
23 ward and the capability of the petitioner to meet those needs.

24 (3) The relationship of the proposed ward to the guardian,
25 including the duration and character of the relationship, where
26 applicable, the circumstances whereby physical custody of the
27 proposed ward was acquired by the guardian, and a statement of
28 the proposed ward’s attitude concerning the proposed guardianship,
29 unless the statement of the attitude is affected by the proposed
30 ward’s developmental, physical, or emotional condition.

31 (4) The anticipated duration of the guardianship and the plans
32 of both natural parents and the proposed guardian for the stable
33 and permanent home for the child. The court may waive this
34 requirement for cases involving relative guardians.

35 ~~(b) The report shall be read and considered by the court prior~~
36 ~~to ruling on the petition for guardianship, and shall be reflected in~~
37 ~~the minutes of the court. The person preparing the report may be~~
38 ~~called and examined by any party to the proceeding.~~

39 (b) *At the initiation of guardianship proceedings, if the child is*
40 *or may be described by Section 300 of the Welfare and Institutions*

1 Code, the court may refer the matter to the local child welfare
2 services agency to initiate an investigation of the referral pursuant
3 to Sections 328 and 329 of the Welfare and Institutions Code and
4 to report the findings of that investigation to the court. Pending
5 completion of the investigation, the court may take any reasonable
6 steps it deems appropriate to protect the child's safety, including,
7 but not limited to, appointment of a temporary guardian or
8 issuance of a temporary restraining order. If dependency
9 proceedings are initiated, the guardianship proceedings shall be
10 stayed in accordance with Section 304 of the Welfare and
11 Institutions Code. Nothing in this section shall affect the
12 applicability of Section 16504 or 16506 of the Welfare and
13 Institutions Code.

14 ~~(e) If the investigation finds that any party to the proposed~~
15 ~~guardianship alleges the minor's parent is unfit, as defined by~~
16 ~~Section 300 of the Welfare and Institutions Code, the case shall~~
17 ~~be referred to the county agency designated to investigate potential~~
18 ~~dependencies. Guardianship proceedings shall not be completed~~
19 ~~until the investigation required by Sections 328 and 329 of the~~
20 ~~Welfare and Institutions Code is completed and a report is provided~~
21 ~~to the court in which the guardianship proceeding is pending.~~

22 (c) Prior to ruling on the petition for guardianship, the court
23 shall read and consider all reports submitted pursuant to this
24 section, which shall be reflected in the minutes or stated on the
25 record. Any person who reports to the court pursuant to this section
26 may be called and examined by any party to the proceeding. After
27 considering the reports and any other evidence received, the court
28 shall make an independent determination as to whether a
29 guardianship is reasonable or necessary to serve the best interests
30 of the minor.

31 ~~(d) The report—All reports~~ authorized by this section ~~is are~~
32 confidential and shall only be made available to persons who have
33 been served in the proceedings or their attorneys. The clerk of the
34 court shall make provisions ~~for the limitation of the report to limit~~
35 ~~access to the reports~~ exclusively to persons entitled to its receipt.
36 ~~The reports shall be made available to all parties entitled to receipt~~
37 ~~no less than three court days before the hearing on the~~
38 ~~guardianship petition.~~

39 (e) For the purpose of writing ~~the either~~ report authorized by
40 this section, the person making the investigation and report shall

1 have access to the proposed ward’s school records, probation
2 records, and public and private social services records, and to an
3 oral or written summary of the proposed ward’s medical records
4 and psychological records prepared by any physician, psychologist,
5 or psychiatrist who made or who is maintaining those records. The
6 physician, psychologist, or psychiatrist shall be available to clarify
7 information regarding these records pursuant to the investigator’s
8 responsibility to gather and provide information for the court.

9 (f) This section does not apply to guardianships resulting from
10 a permanency plan for a dependent child pursuant to Section 366.26
11 of the Welfare and Institutions Code.

12 (g) For purposes of this section, a “relative” means a person
13 who is a spouse, parent, stepparent, brother, sister, stepbrother,
14 stepsister, half-brother, half-sister, uncle, aunt, niece, nephew, first
15 cousin, or any person denoted by the prefix “grand” or “great,” or
16 the spouse of any of these persons, even after the marriage has
17 been terminated by death or dissolution.

18 (h) In an Indian child custody proceeding, ~~the~~ any person making
19 ~~the~~ an investigation and report shall consult with the Indian child’s
20 tribe and include in the report information provided by the tribe.

21 *SEC. 15. Section 1513.5 is added to the Probate Code, to read:*

22 *1513.5. (a) If the child who is the subject of a guardianship*
23 *proceeding is or may be described by Section 300 of the Welfare*
24 *and Institutions Code, the court may refer the matter to the local*
25 *child welfare services agency to conduct an investigation of the*
26 *allegations pursuant to Section 328 of the Welfare and Institutions*
27 *Code and to report the findings of that investigation to the probate*
28 *court.*

29 *(b) After a referral made pursuant to subdivision (a), and*
30 *pending completion of the investigation, the court may take any*
31 *reasonable steps it deems appropriate to protect the child’s safety,*
32 *including, but not limited to, appointment of a temporary guardian*
33 *or issuance of a temporary restraining order.*

34 *(c) If a dependency proceeding is initiated, the guardianship*
35 *proceeding shall be stayed in accordance with Section 304 of the*
36 *Welfare and Institutions Code. If a dependency proceeding is not*
37 *initiated, the probate court shall retain jurisdiction to hear the*
38 *guardianship matter.*

39 *(d) Nothing in this section shall affect the applicability of Section*
40 *16504 or 16506 of the Welfare and Institutions Code.*

1 *SEC. 16. Section 329 of the Welfare and Institutions Code is*
2 *amended to read:*

3 329. Whenever any person applies to the social worker to
4 commence proceedings in the juvenile court, the application shall
5 be in the form of an affidavit alleging that there was or is within
6 the county, or residing therein, a child within the provisions of
7 Section 300, and setting forth facts in support thereof. The social
8 worker shall immediately investigate as he or she deems necessary
9 to determine whether proceedings in the juvenile court should be
10 commenced. If the social worker does not take action under Section
11 ~~330~~ 301 and does not file a petition in the juvenile court within
12 three weeks after the application, he or she shall endorse upon the
13 affidavit of the applicant his or her decision not to proceed further,
14 *including any recommendation to the applicant to consider*
15 *commencing a probate guardianship for the child*, and his or her
16 reasons therefor and shall immediately notify the applicant of the
17 action taken or the decision rendered by him or her under this
18 section. The social worker shall retain the affidavit and his or her
19 endorsement thereon for a period of 30 days after notifying the
20 applicant.

21 *SEC. 17. If the Commission on State Mandates determines that*
22 *this act contains costs mandated by the state, reimbursement to*
23 *local agencies and school districts for those costs shall be made*
24 *pursuant to Part 7 (commencing with Section 17500) of Division*
25 *4 of Title 2 of the Government Code.*

26 ~~SECTION 1. Section 8811 of the Family Code is amended to~~
27 ~~read:~~

28 ~~8811. (a) The department or delegated county adoption agency~~
29 ~~shall require each person filing an adoption petition to be~~
30 ~~fingerprinted and shall secure from the appropriate law enforcement~~
31 ~~agency any criminal record of that person to determine whether~~
32 ~~the person has ever been convicted of a crime other than a minor~~
33 ~~traffic violation. The department or delegated county adoption~~
34 ~~agency may also secure the person’s full criminal record, if any.~~
35 ~~Any federal-level criminal offender record requests to the~~
36 ~~Department of Justice shall be submitted with fingerprint images~~
37 ~~and related information required by the Department of Justice for~~
38 ~~the purposes of obtaining information as to the existence and~~
39 ~~content of a record of an out-of-state or federal conviction or arrest~~
40 ~~of a person or information regarding any out-of-state or federal~~

1 crimes or arrests for which the Department of Justice establishes
2 that the person is free on bail, or on his or her own recognizance
3 pending trial or appeal. The Department of Justice shall forward
4 to the Federal Bureau of Investigation any requests for federal
5 summary criminal history information received pursuant to this
6 section. The Department of Justice shall review the information
7 returned from the Federal Bureau of Investigation and shall compile
8 and disseminate a response to the department or delegated county
9 adoption agency.

10 (b) Notwithstanding subdivision (c), the criminal record, if any,
11 shall be taken into consideration when evaluating the prospective
12 adoptive parent, and an assessment of the effects of any criminal
13 history on the ability of the prospective adoptive parent to provide
14 adequate and proper care and guidance to the child shall be
15 included in the report to the court.

16 (c) (1) Under no circumstances shall the department or a
17 delegated county adoption agency give final approval for an
18 adoptive placement in any home where the prospective adoptive
19 parent or any adult living in the prospective adoptive home has
20 either of the following:

21 (A) A felony conviction for child abuse or neglect, spousal
22 abuse, crimes against a child, including child pornography, or for
23 a crime involving violence, including rape, sexual assault, or
24 homicide, but not including other physical assault and battery. For
25 purposes of this subdivision, crimes involving violence means the
26 violent crimes contained in clause (i) of subparagraph (A), and
27 subparagraph (B), of paragraph (1) of subdivision (g) of Section
28 1522 of the Health and Safety Code.

29 (B) A felony conviction that occurred within the last five years
30 for physical assault, battery, or a drug or alcohol-related offense.

31 (2) This subdivision shall become operative on October 1, 2008,
32 and shall remain operative only to the extent that compliance with
33 its provisions is required by federal law as a condition of receiving
34 funding under Title IV-E of the federal Social Security Act (42
35 U.S.C. 670 and following).

36 (d) Any fee charged by a law enforcement agency for
37 fingerprinting or for checking or obtaining the criminal record of
38 the petitioner shall be paid by the petitioner. The department or
39 delegated county adoption agency may defer, waive, or reduce the
40 fee when its payment would cause economic hardship to the

- 1 ~~prospective adoptive parents detrimental to the welfare of the~~
- 2 ~~adopted child, when the child has been in the foster care of the~~
- 3 ~~prospective adoptive parents for at least one year, or if necessary~~
- 4 ~~for the placement of a special-needs child.~~

O