

Introduced by Senator Mitchell
(Principal coauthor: Assembly Member Levine)

February 23, 2015

An act to amend Section 317 of the Welfare and Institutions Code, relating to dependency proceedings.

LEGISLATIVE COUNSEL'S DIGEST

SB 316, as introduced, Mitchell. Dependency proceedings: counsel.

Existing law requires the juvenile court to appoint counsel for a child or nonminor dependent in dependency proceedings if he or she is not represented by counsel, unless the court determines that there would be no benefit from the appointment of counsel. Existing law authorizes counsel to be a district attorney, public defender, or other member of the bar who satisfies certain conditions. Existing law authorizes the court to fix the compensation for the services of appointed counsel. Existing law requires the Judicial Council to promulgate rules of court to establish caseload standards, training requirements, and guidelines for appointed counsel.

This bill would prohibit counsel representing a child or nonminor dependent in dependency proceedings from having a caseload that exceeds a certain number of clients, as specified. The bill would delete the requirement that the Judicial Council promulgate rules of court to establish caseload standards.

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

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

1 SECTION 1. Section 317 of the Welfare and Institutions Code
2 is amended to read:

3 317. (a) (1) ~~When it~~ *If* appears to the court that a parent or
4 guardian of the child desires counsel but is presently financially
5 unable to afford and cannot for that reason employ counsel, the
6 court may appoint counsel as provided in this section.

7 (2) ~~When it~~ *If* appears to the court that a parent or Indian
8 custodian in an Indian child custody proceeding desires counsel
9 but is presently unable to afford and cannot for that reason employ
10 counsel, the provisions of Section 1912(b) of Title 25 of the United
11 States Code and Section 23.13 of Title 25 of the Code of Federal
12 Regulations shall apply.

13 (b) ~~When~~ *If* it appears to the court that a parent or guardian of
14 the child is presently financially unable to afford and cannot for
15 that reason employ counsel, and the child has been placed in
16 out-of-home care, or the petitioning agency is recommending that
17 the child be placed in out-of-home care, the court shall appoint
18 counsel for the parent or guardian, unless the court finds that the
19 parent or guardian has made a knowing and intelligent waiver of
20 counsel as provided in this section.

21 (c) If a child or nonminor dependent is not represented by
22 counsel, the court shall appoint counsel for the child or nonminor
23 dependent, unless the court finds that the child or nonminor
24 dependent would not benefit from the appointment of counsel. The
25 court shall state on the record its reasons for that finding. A primary
26 responsibility of counsel appointed to represent a child or nonminor
27 dependent pursuant to this section shall be to advocate for the
28 protection, safety, and physical and emotional well-being of the
29 child or nonminor dependent. Counsel may be a district attorney,
30 public defender, or other member of the bar, provided that he or
31 she does not represent another party or county agency whose
32 interests conflict with the child's or nonminor dependent's interests.
33 The fact that the district attorney represents the child or nonminor
34 dependent in a proceeding pursuant to Section 300 as well as
35 conducts a criminal investigation or files a criminal complaint or
36 information arising from the same or reasonably related set of facts
37 as the proceeding pursuant to Section 300 is not in and of itself a
38 conflict of interest. The court may fix the compensation for the

1 services of appointed counsel. The appointed counsel shall have
 2 a caseload and training that ensures adequate representation of the
 3 child or nonminor dependent. *Counsel representing a child or*
 4 *nonminor dependent shall not have a caseload that exceeds 77*
 5 *child or nonminor dependent clients, unless the counsel has the*
 6 *assistance of, at a minimum, a social worker or investigator who*
 7 *is employed on a half-time or greater than half-time basis, in which*
 8 *case the caseload shall not exceed 188 child or nonminor*
 9 *dependent clients.* The Judicial Council shall promulgate rules of
 10 court that establish ~~caseload standards, training requirements,~~
 11 ~~requirements~~ and guidelines for appointed counsel for children
 12 and shall adopt rules as required by Section 326.5 no later than
 13 July 1, 2001. Those training requirements shall include instruction
 14 on cultural competency and sensitivity relating to, and best
 15 practices for, providing adequate care to lesbian, gay, bisexual,
 16 and transgender youth in out-of-home care.

17 (d) Counsel shall represent the parent, guardian, child, or
 18 nonminor dependent at the detention hearing and at all subsequent
 19 proceedings before the juvenile court. Counsel shall continue to
 20 represent the parent, guardian, child, or nonminor dependent unless
 21 relieved by the court upon the substitution of other counsel or for
 22 cause. The representation shall include representing the parent,
 23 guardian, or the child in termination proceedings and in those
 24 proceedings relating to the institution or setting aside of a legal
 25 guardianship. On and after January 1, 2012, in the case of a
 26 nonminor dependent, as described in subdivision (v) of Section
 27 11400, no representation by counsel shall be provided for a parent,
 28 unless the parent is receiving court-ordered family reunification
 29 services.

30 (e) (1) Counsel shall be charged in general with the
 31 representation of the child's interests. To that end, counsel shall
 32 make or cause to have made any further investigations that he or
 33 she deems in good faith to be reasonably necessary to ascertain
 34 the facts, including the interviewing of witnesses, and shall
 35 examine and cross-examine witnesses in both the adjudicatory and
 36 dispositional hearings. Counsel may also introduce and examine
 37 his or her own witnesses, make recommendations to the court
 38 concerning the child's welfare, and participate further in the
 39 proceedings to the degree necessary to adequately represent the
 40 child. When counsel is appointed to represent a nonminor

1 dependent, counsel is charged with representing the wishes of the
2 nonminor dependent except when advocating for those wishes
3 conflicts with the protection or safety of the nonminor dependent.
4 If the court finds that a nonminor dependent is not competent to
5 direct counsel, the court shall appoint a guardian ad litem for the
6 nonminor dependent.

7 (2) If the child is four years of age or older, counsel shall
8 interview the child to determine the child's wishes and assess the
9 child's well-being, and shall advise the court of the child's wishes.
10 Counsel shall not advocate for the return of the child if, to the best
11 of his or her knowledge, return of the child conflicts with the
12 protection and safety of the child.

13 (3) Counsel shall investigate the interests of the child beyond
14 the scope of the juvenile proceeding, and report to the court other
15 interests of the child that may need to be protected by the institution
16 of other administrative or judicial proceedings. Counsel
17 representing a child in a dependency proceeding is not required to
18 assume the responsibilities of a social worker, and is not expected
19 to provide nonlegal services to the child.

20 (4) (A) At least once every year, if the list of educational
21 liaisons is available on the Internet Web site for the State
22 Department of Education, both of the following shall apply:

23 (i) Counsel shall provide his or her contact information to the
24 educational liaison, as described in subdivision (b) of Section
25 48853.5 of the Education Code, of each local educational agency
26 serving counsel's foster child clients in the county of jurisdiction.

27 (ii) If counsel is part of a firm or organization representing foster
28 children, the firm or organization may provide its contact
29 information in lieu of contact information for the individual
30 counsel. The firm or organization may designate a person or
31 persons within the firm or organization to receive communications
32 from educational liaisons.

33 (B) The child's caregiver or other person holding the right to
34 make educational decisions for the child may provide the contact
35 information of the child's attorney to the child's local educational
36 agency.

37 (C) Counsel for the child and counsel's agent may, but are not
38 required to, disclose to an individual who is being assessed for the
39 possibility of placement pursuant to Section 361.3 the fact that the
40 child is in custody, the alleged reasons that the child is in custody,

1 and the projected likely date for the child's return home, placement
2 for adoption, or legal guardianship. Nothing in this paragraph shall
3 be construed to prohibit counsel from making other disclosures
4 pursuant to this subdivision, as appropriate.

5 (5) Nothing in this subdivision shall be construed to permit
6 counsel to violate a child's attorney-client privilege.

7 (6) The changes made to this subdivision during the 2011-12
8 Regular Session of the Legislature by the act adding subparagraph
9 (C) of paragraph (4) and paragraph (5) are declaratory of existing
10 law.

11 (7) The court shall take whatever appropriate action is necessary
12 to fully protect the interests of the child.

13 (f) Either the child or counsel for the child, with the informed
14 consent of the child if the child is found by the court to be of
15 sufficient age and maturity to consent, which shall be presumed,
16 subject to rebuttal by clear and convincing evidence, if the child
17 is over 12 years of age, may invoke the psychotherapist-client
18 privilege, physician-patient privilege, and clergyman-penitent
19 privilege. If the child invokes the privilege, counsel may not waive
20 it, but if counsel invokes the privilege, the child may waive it.
21 Counsel shall be the holder of these privileges if the child is found
22 by the court not to be of sufficient age and maturity to consent.
23 For the sole purpose of fulfilling his or her obligation to provide
24 legal representation of the child, counsel shall have access to all
25 records with regard to the child maintained by a health care facility,
26 as defined in Section 1545 of the Penal Code, health care providers,
27 as defined in Section 6146 of the Business and Professions Code,
28 a physician and surgeon or other health practitioner, as defined in
29 former Section 11165.8 of the Penal Code, as that section read on
30 January 1, 2000, or a child care custodian, as defined in former
31 Section 11165.7 of the Penal Code, as that section read on January
32 1, 2000. Notwithstanding any other law, counsel shall be given
33 access to all records relevant to the case that are maintained by
34 state or local public agencies. All information requested from a
35 child protective agency regarding a child who is in protective
36 custody, or from a child's guardian ad litem, shall be provided to
37 the child's counsel within 30 days of the request.

38 (g) In a county of the third class, if counsel is to be provided to
39 a child at the county's expense other than by counsel for the
40 agency, the court shall first use the services of the public defender

1 before appointing private counsel. Nothing in this subdivision shall
2 be construed to require the appointment of the public defender in
3 any case in which the public defender has a conflict of interest. In
4 the interest of justice, a court may depart from that portion of the
5 procedure requiring appointment of the public defender after
6 making a finding of good cause and stating the reasons therefor
7 on the record.

8 (h) In a county of the third class, if counsel is to be appointed
9 to provide legal counsel for a parent or guardian at the county's
10 expense, the court shall first use the services of the alternate public
11 defender before appointing private counsel. Nothing in this
12 subdivision shall be construed to require the appointment of the
13 alternate public defender in any case in which the public defender
14 has a conflict of interest. In the interest of justice, a court may
15 depart from that portion of the procedure requiring appointment
16 of the alternate public defender after making a finding of good
17 cause and stating the reasons therefor on the record.