

AMENDED IN SENATE SEPTEMBER 4, 1997

AMENDED IN SENATE AUGUST 25, 1997

AMENDED IN SENATE JULY 10, 1997

AMENDED IN SENATE JUNE 11, 1997

AMENDED IN ASSEMBLY APRIL 9, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 939

**Introduced by Assembly Member Ortiz
(Principal coauthor: Assembly Member Ackerman)**

February 27, 1997

An act to amend Section 467.5 of the Business and Professions Code, to amend Section 1775.10 of the Code of Civil Procedure, ~~to amend Section 703.5 of~~, to amend and renumber the heading of Chapter 2 (commencing with Section 1150) of Division 9 of, to add Chapter 2 (commencing with Section 1115) to Division 9 of, and to repeal Sections 1152.5 and 1152.6 of, the Evidence Code, to amend Sections 66032 and 66033 of the Government Code, to amend Sections 10089.80 and 10089.82 of the Insurance Code, to amend Section 65 of the Labor Code, and to amend Section 350 of the Welfare and Institutions Code, relating to mediation.

LEGISLATIVE COUNSEL'S DIGEST

AB 939, as amended, Ortiz. Mediation.

(1) Under existing law, when a person consults a mediator or mediation service for the purpose of retaining mediation

services, or when persons agree to conduct and participate in a mediation for the purpose of compromising, settling, or resolving a civil dispute, anything said in the course of a consultation for mediation services or in the course of the mediation is not admissible in evidence nor subject to discovery, and all communications, negotiations, and settlement discussions by and between participants or mediators are confidential, except as specified. If the testimony of a mediator is sought to be compelled in any civil action or proceeding regarding anything said in the course of a mediation, the court is required to award reasonable attorney's fees and costs to the mediator against the person seeking the testimony. Existing law provides that a mediator may not file, and a court may not consider, any declaration or finding of any kind by the mediator, except as specified.

This bill would, among other things, revise and recast these provisions, as specified, define the terms "mediation," "mediator," and "mediation consultation," specify when a mediation ends, and make corresponding changes.

(2) Existing law provides that if an insured party and an insurer reach an agreement proposed during mediation, the insured will have 3 business days to rescind the agreement.

This bill would provide that if such rescission occurs, the agreement may not be admitted or disclosed unless all the parties to the agreement agree to its disclosure.

(3) Existing law provides that records of the Department of Industrial Relations relating to labor disputes are confidential, except that any decision or award arising out of arbitration proceedings shall be a public record.

This bill would apply the provisions of this bill described in (1) above to a mediation conducted by the California State Mediation and Conciliation Service, and any person conducting the mediation. It would provide that all other records relating to labor disputes are confidential, except as specified.

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 467.5 of the Business and
2 Professions Code is amended to read:

3 467.5. Notwithstanding the express application of
4 Chapter 2 (commencing with Section 1115) of Division
5 9 of the Evidence Code to mediations, all proceedings
6 conducted by a program funded pursuant to this chapter,
7 including, but not limited to, arbitrations and
8 conciliations, are subject to Chapter 2 (commencing with
9 Section 1115) of Division 9 of the Evidence Code.

10 SEC. 2. Section 1775.10 of the Code of Civil Procedure
11 is amended to read:

12 1775.10. All statements made by the parties during
13 the mediation shall be subject to Sections 703.5 and 1152,
14 and Chapter 2 (commencing with Section 1115) of
15 Division 9, of the Evidence Code.

16 ~~SEC. 3. Section 703.5 of the Evidence Code is~~
17 ~~amended to read:~~

18 ~~703.5. No person presiding at any judicial or~~
19 ~~quasi-judicial proceeding, and no arbitrator or mediator,~~
20 ~~shall be competent to testify, in any subsequent~~
21 ~~arbitration, administrative adjudication, civil action, or~~
22 ~~other noncriminal proceeding, as to any statement,~~
23 ~~conduct, decision, or ruling, occurring at or in~~
24 ~~conjunction with the prior proceeding, except as to a~~
25 ~~statement or conduct that could (a) give rise to civil or~~
26 ~~criminal contempt, (b) constitute a crime, (c) be the~~
27 ~~subject of investigation by the State Bar or Commission~~
28 ~~on Judicial Performance, or (d) give rise to~~
29 ~~disqualification proceedings under paragraph (1) or (6)~~
30 ~~of subdivision (a) of Section 170.1 of the Code of Civil~~
31 ~~Procedure. However, this section does not apply to a~~
32 ~~mediator with regard to any mediation under Chapter 11~~
33 ~~(commencing with Section 3160) of Part 2 of Division 8~~
34 ~~of the Family Code.~~

35 ~~SEC. 4.~~

36 SEC. 3. Chapter 2 (commencing with Section 1115)
37 is added to Division 9 of the Evidence Code, to read:

38



CHAPTER 2. MEDIATION

1
2

3 1115. For purposes of this chapter:

4 (a) "Mediation" means a process in which a neutral
5 person or persons facilitate communication between the
6 disputants to assist them in reaching a mutually
7 acceptable agreement.

8 (b) "Mediator" means a neutral person who conducts
9 a mediation. "Mediator" includes any person designated
10 by a mediator either to assist in the mediation or to
11 communicate with the participants in preparation for a
12 mediation.

13 (c) "Mediation consultation" means a communication
14 between a person and a mediator for the purpose of
15 initiating, considering, or reconvening a mediation or
16 retaining the mediator.

17 1116. (a) Nothing in this chapter expands or limits a
18 court's authority to order participation in a dispute
19 resolution proceeding. Nothing in this chapter authorizes
20 or affects the enforceability of a contract clause in which
21 parties agree to the use of mediation.

22 (b) Nothing in this chapter makes admissible evidence
23 that is inadmissible under Section 1152 or any other
24 statute.

25 1117. (a) Except as provided in subdivision (b), this
26 chapter applies to a mediation as defined in Section 1115.

27 (b) This chapter does not apply to either of the
28 following:

29 (1) A proceeding under Part 1 (commencing with
30 Section 1800) of Division 5 of the Family Code or Chapter
31 11 (commencing with Section 3160) of Part 2 of Division
32 8 of the Family Code.

33 (2) A settlement conference pursuant to Rule 222 of
34 the California Rules of Court.

35 1118. An oral agreement "in accordance with Section
36 1118" means an oral agreement that satisfies all of the
37 following conditions:

38 (a) The oral agreement is recorded by a court
39 reporter, tape recorder, or other reliable means of sound
40 recording.



1 (b) The terms of the oral agreement are recited on the
2 record in the presence of the parties and the mediator,
3 and the parties express on the record that they agree to
4 the terms recited.

5 (c) The parties to the oral agreement expressly state
6 on the record that the agreement is enforceable or
7 binding or words to that effect.

8 (d) The recording is reduced to writing and the
9 writing is signed by the parties within 72 hours after it is
10 recorded.

11 1119. Except as otherwise provided in this chapter:

12 (a) No evidence of anything said or any admission
13 made for the purpose of, in the course of, or pursuant to,
14 a mediation or a mediation consultation is admissible or
15 subject to discovery, and disclosure of the evidence shall
16 not be compelled, in any arbitration, administrative
17 adjudication, civil action, or other noncriminal
18 proceeding in which, pursuant to law, testimony can be
19 compelled to be given.

20 (b) No writing, as defined in Section 250, that is
21 prepared for the purpose of, in the course of, or pursuant
22 to, a mediation or a mediation consultation, is admissible
23 or subject to discovery, and disclosure of the writing shall
24 not be compelled, in any arbitration, administrative
25 adjudication, civil action, or other noncriminal
26 proceeding in which, pursuant to law, testimony can be
27 compelled to be given.

28 (c) All communications, negotiations, or settlement
29 discussions by and between participants in the course of
30 a mediation or a mediation consultation shall remain
31 confidential.

32 1120. (a) Evidence otherwise admissible or subject
33 to discovery outside of a mediation or a mediation
34 consultation shall not be or become inadmissible or
35 protected from disclosure solely by reason of its
36 introduction or use in a mediation or a mediation
37 consultation.

38 (b) This chapter does not limit any of the following:

39 (1) The admissibility of an agreement to mediate a
40 dispute.



1 (2) The effect of an agreement not to take a default or
2 an agreement to extend the time within which to act or
3 refrain from acting in a pending civil action.

4 (3) Disclosure of the mere fact that a mediator has
5 served, is serving, will serve, or was contacted about
6 serving as a mediator in a dispute.

7 1121. Neither a mediator nor anyone else may submit
8 to a court or other adjudicative body, and a court or other
9 adjudicative body may not consider, any report,
10 assessment, evaluation, recommendation, or finding of
11 any kind by the mediator concerning a mediation
12 conducted by the mediator, other than a report that is
13 mandated by court rule or other law and that states only
14 whether an agreement was reached, unless all parties to
15 the mediation expressly agree otherwise in writing, or
16 orally in accordance with Section 1118.

17 1122. (a) A communication or a writing, as defined in
18 Section 250, that is made or prepared for the purpose of,
19 or in the course of, or pursuant to, a mediation or a
20 mediation consultation, is not made inadmissible, or
21 protected from disclosure, by provisions of this chapter if
22 either of the following conditions is satisfied:

23 (1) All persons who conduct or otherwise participate
24 in the mediation expressly agree in writing, or orally in
25 accordance with Section 1118, to disclosure of the
26 communication, document, or writing.

27 (2) The communication, document, or writing was
28 prepared by or on behalf of fewer than all the mediation
29 participants, those participants expressly agree in
30 writing, or orally in accordance with Section 1118, to its
31 disclosure, and the communication, document, or writing
32 does not disclose anything said or done or any admission
33 made in the course of the mediation.

34 (b) For purposes of subdivision (a), if the neutral
35 person who conducts a mediation expressly agrees to
36 disclosure, that agreement also binds any other person
37 described in subdivision (b) of Section 1115.

38 1123. A written settlement agreement prepared in
39 the course of, or pursuant to, a mediation, is not made
40 inadmissible, or protected from disclosure, by provisions



1 of this chapter if the agreement is signed by the settling
2 parties and any of the following conditions ~~is~~ *are* satisfied:

3 (a) The agreement provides that it is admissible or
4 subject to disclosure, or words to that effect.

5 (b) The agreement provides that it is enforceable or
6 binding or words to that effect.

7 (c) All parties to the agreement expressly agree in
8 writing, or orally in accordance with Section 1118, to its
9 disclosure.

10 (d) The agreement is used to show fraud, duress, or
11 illegality that is relevant to an issue in dispute.

12 1124. An oral agreement made in the course of, or
13 pursuant to, a mediation is not made inadmissible, or
14 protected from disclosure, by the provisions of this
15 chapter if any of the following conditions ~~is~~ *are* satisfied:

16 (a) The agreement is in accordance with Section 1118.

17 (b) The agreement is in accordance with subdivisions
18 (a), (b), and (d) of Section 1118, and all parties to the
19 agreement expressly agree, in writing or orally in
20 accordance with Section 1118, to disclosure of the
21 agreement.

22 (c) The agreement is in accordance with subdivisions
23 (a), (b), and (d) of Section 1118, and the agreement is
24 used to show fraud, duress, or illegality that is relevant to
25 an issue in dispute.

26 1125. (a) For purposes of confidentiality under
27 ~~Section 703.5~~ or this chapter, a mediation ends when any
28 one of the following conditions is satisfied:

29 (1) The parties execute a written settlement
30 agreement that fully resolves the dispute.

31 (2) An oral agreement that fully resolves the dispute
32 is reached in accordance with Section 1118.

33 (3) The mediator provides the mediation participants
34 with a writing signed by the mediator that states that the
35 mediation is terminated, or words to that effect, which
36 shall be consistent with Section 1121.

37 (4) A party provides the mediator and the other
38 mediation participants with a writing stating that the
39 mediation is terminated, or words to that effect, which
40 shall be consistent with Section 1121. In a mediation



1 involving more than two parties, the mediation may
2 continue as to the remaining parties or be terminated in
3 accordance with this section.

4 (5) For 10 calendar days, there is no communication
5 between the mediator and any of the parties to the
6 mediation relating to the dispute. The mediator and the
7 parties may shorten or extend this time by agreement.

8 (b) For purposes of confidentiality under ~~Section 703.5~~
9 ~~of~~ this chapter, if a mediation partially resolves a dispute,
10 mediation ends when either of the following conditions
11 is satisfied:

12 (1) The parties execute a written settlement
13 agreement that partially resolves the dispute.

14 (2) An oral agreement that partially resolves the
15 dispute is reached in accordance with Section 1118.

16 (c) This section does not preclude a party from ending
17 a mediation without reaching an agreement. This section
18 does not otherwise affect the extent to which a party may
19 terminate a mediation.

20 1126. Anything said, any admission made, or any
21 writing that is inadmissible, protected from disclosure,
22 and confidential under ~~Section 703.5~~ ~~of~~ this chapter
23 before a mediation ends, shall remain inadmissible,
24 protected from disclosure, and confidential to the same
25 extent after the mediation ends.

26 1127. If a person subpoenas or otherwise seeks to
27 compel a mediator to testify or produce a writing, as
28 defined in Section 250, and the court or other adjudicative
29 body determines that the testimony or writing is
30 inadmissible under ~~Section 703.5~~ ~~of~~ this chapter, or
31 protected from disclosure under ~~Section 703.5~~ ~~of~~ this
32 chapter, the court or adjudicative body making the
33 determination shall award reasonable attorney's fees and
34 costs to the mediator against the person seeking the
35 testimony or writing.

36 1128. Any reference to a mediation during any
37 subsequent trial is an irregularity in the proceedings of
38 the trial for the purposes of Section 657 of the Code of
39 Civil Procedure. Any reference to a mediation during any
40 other subsequent noncriminal proceeding is grounds for



1 vacating or modifying the decision in that proceeding, in
2 whole or in part, and granting a new or further hearing
3 on all or part of the issues, if the reference materially
4 affected the substantial rights of the party requesting
5 relief.

6 ~~SEC. 5.~~

7 *SEC. 4.* The heading of Chapter 2 (commencing with
8 Section 1150) of Division 9 of the Evidence Code is
9 amended and renumbered to read:

10
11 CHAPTER 3. OTHER EVIDENCE AFFECTED OR EXCLUDED
12 BY EXTRINSIC POLICIES

13
14 ~~SEC. 6.~~

15 *SEC. 5.* Section 1152.5 of the Evidence Code is
16 repealed.

17 ~~SEC. 7.~~

18 *SEC. 6.* Section 1152.6 of the Evidence Code is
19 repealed.

20 ~~SEC. 8.~~

21 *SEC. 7.* Section 66032 of the Government Code is
22 amended to read:

23 66032. (a) Notwithstanding any provision of law to
24 the contrary, all time limits with respect to an action shall
25 be tolled while the mediator conducts the mediation,
26 pursuant to this chapter.

27 (b) Mediations conducted by a mediator pursuant to
28 this chapter that involve less than a quorum of a
29 legislative body or a state body shall not be considered
30 meetings of a legislative body pursuant to the Ralph M.
31 Brown Act (Chapter 9 (commencing with Section 54950)
32 of Part 1 of Division 2 of Title 5), nor shall they be
33 considered meetings of a state body pursuant to the
34 Bagley-Keene Open Meeting Act (Article 9
35 (commencing with Section 11120) of Chapter 1 of Part 1
36 of Division 3 of Title 2).

37 (c) Any action taken regarding mediation conducted
38 pursuant to this chapter shall be taken in accordance with
39 the provisions of current law.



1 (d) Ninety days after the commencement of the
2 mediation, and every 90 days thereafter, the action shall
3 be reactivated unless the parties to the action do either
4 of the following:

5 (1) Arrive at a settlement and implement it in
6 accordance with the provisions of current law.

7 (2) Agree by written stipulation to extend the
8 mediation for another 90-day period.

9 (e) Section 703.5 and Chapter 2 (commencing with
10 Section 1115) of Division 9 of the Evidence Code apply to
11 any mediation conducted pursuant to this chapter.

12 ~~SEC. 9.~~

13 *SEC. 8.* Section 66033 of the Government Code is
14 amended to read:

15 66033. (a) At the end of the mediation, the mediator
16 shall file a report with the Office of Permit Assistance,
17 consistent with Chapter 2 (commencing with Section
18 1115) of Division 9 of the Evidence Code, containing each
19 of the following:

20 (1) The title of the action.

21 (2) The names of the parties to the action.

22 (3) An estimate of the costs avoided, if any, because
23 the parties used mediation instead of litigation to resolve
24 their dispute.

25 (b) The sole purpose of the report required by this
26 section is the collection of information needed by the
27 office to prepare its report to the Legislature pursuant to
28 Section 66036.

29 ~~SEC. 10.~~

30 *SEC. 9.* Section 10089.80 of the Insurance Code is
31 amended to read:

32 10089.80. (a) The representatives of the insurer shall
33 know the facts of the case and be familiar with the
34 allegations of the complainant. The insurer or the
35 insurer's representative shall produce at the settlement
36 conference a copy of the policy and all documents from
37 the claims file relevant to the degree of loss, value of the
38 claim, and the fact or extent of damage.



1 The insured shall produce, to the extent available, all
2 documents relevant to the degree of loss, value of the
3 claim, and the fact or extent of damage.

4 The mediator may also order production of other
5 documents that the mediator determines to be relevant
6 to the issues under mediation. If a party declines to
7 comply with that order, the mediator may appeal to the
8 commissioner for a determination of whether the
9 documents requested should be produced. The
10 commissioner shall make a determination within 21 days.
11 However, the party ordered to produce the documents
12 shall not be required to produce while the issue is before
13 the commissioner in this 21-day period. If the ruling is in
14 favor of production, any insurer that is subject to an order
15 to participate in mediation issued under subdivision (a)
16 of Section 10089.75 shall comply with the order to
17 produce. Insureds, and those insurers that are not subject
18 to an order to participate in mediation, shall produce the
19 documents or decline to participate further in the
20 mediation after a ruling by the commissioner requiring
21 the production of those other documents. Declination of
22 mediation by the insurer under this section may be
23 considered by the commissioner in exercising authority
24 under subdivision (a) of Section 10089.75.

25 The mediator shall have the authority to protect from
26 disclosure information that the mediator determines to
27 be privileged, including, but not limited to, information
28 protected by the attorney-client or work-product
29 privileges, or to be otherwise confidential.

30 (b) The mediator shall determine prior to the
31 mediation conference whether the insured will be
32 represented by counsel at the mediation. The mediator
33 shall inform the insurer whether the insured will be
34 represented by counsel at the mediation conference. If
35 the insured is represented by counsel at the mediation
36 conference, the insurer's counsel may be present. If the
37 insured is not represented by counsel at the mediation
38 conference, then no counsel may be present.



1 (c) Section 703.5 and Chapter 2 (commencing with
2 Section 1115) of Division 9 of the Evidence Code apply to
3 a mediation conducted under this chapter.

4 (d) The statements made by the parties, negotiations
5 between the parties, and documents produced at the
6 mediation are confidential. However, this confidentiality
7 shall not restrict the access of the department to
8 documents or other information the department seeks in
9 order to evaluate the mediation program or to comply
10 with reporting requirements. This subdivision does not
11 affect the discoverability or admissibility of documents
12 that are otherwise discoverable or admissible.

13 ~~SEC. 11.~~

14 *SEC. 10.* Section 10089.82 of the Insurance Code is
15 amended to read:

16 10089.82. (a) An insured may not be required to use
17 the department's mediation process. An insurer may not
18 be required to use the department's mediation process,
19 except as provided in Section 10089.75.

20 (b) Neither the insurer nor the insured is required to
21 accept an agreement proposed during the mediation.

22 (c) If the parties agree to a settlement agreement, the
23 insured will have three business days to rescind the
24 agreement. Notwithstanding Chapter 2 (commencing
25 with Section 1115) of Division 9 of the Evidence Code, if
26 the insured rescinds the agreement, it may not be
27 admitted in evidence or disclosed unless the insured and
28 all other parties to the agreement expressly agree to its
29 disclosure. If the agreement is not rescinded by the
30 insured, it is binding on the insured and the insurer, and
31 acts as a release of all specific claims for damages known
32 at the time of the mediation presented and agreed upon
33 in the mediation conference. If counsel for the insured is
34 present at the mediation conference and a settlement is
35 agreed upon that is signed by the insured's counsel, the
36 agreement is immediately binding on the insured and
37 may not be rescinded.

38 (d) This section does not affect rights under existing
39 law for claims for damage that were undetected at the
40 time of the settlement conference.



1 (e) All settlements reached as a result of
2 department-referred mediation shall address only those
3 issues raised for the purpose of resolution. Settlements
4 and any accompanying releases are not effective to settle
5 or resolve any claim not addressed by the mediator for the
6 purpose of resolution, nor any claim that the insured may
7 have related to the insurer's conduct in handling the
8 claim.

9 Referral to mediation or the pendency of a mediation
10 under this article is not a basis to prevent or stay the filing
11 of civil litigation arising in whole or in part out of the same
12 facts. Any applicable statute of limitations is tolled for the
13 number of days beginning from the referral to mediation
14 until the date on which the mediation is either completed
15 or declined, or the date on which the insured fails to
16 appear for a scheduled mediation for the second time, or,
17 in the event that a settlement is completed, the expiration
18 of any applicable three business day cooling off period.

19 ~~SEC. 12.~~

20 *SEC. 11.* Section 65 of the Labor Code is amended to
21 read:

22 65. The department may investigate and mediate
23 labor disputes providing any bona fide party to this type
24 of dispute requests intervention by the department and
25 the department may proffer its services to both parties
26 when work stoppage is threatened and neither party
27 requests intervention. In the interest of preventing labor
28 disputes the department shall endeavor to promote
29 sound union-employer relationships. The department
30 may arbitrate or arrange for the selection of boards of
31 arbitration on such terms as all of the bona fide parties to
32 the dispute may agree upon. Any decision or award
33 arising out of an arbitration conducted pursuant to this
34 section is a public record. Section 703.5 and Chapter 2
35 (commencing with Section 1115) of Division 9 of the
36 Evidence Code apply to a mediation conducted by the
37 California State Mediation and Conciliation Service, and
38 any person conducting the mediation. All other records
39 of the department relating to labor disputes are
40 confidential.



1 ~~SEC. 13.~~

2 *SEC. 12.* Section 350 of the Welfare and Institutions
3 Code is amended to read:

4 350. (a) (1) The judge of the juvenile court shall
5 control all proceedings during the hearings with a view
6 to the expeditious and effective ascertainment of the
7 jurisdictional facts and the ascertainment of all
8 information relative to the present condition and future
9 welfare of the person upon whose behalf the petition is
10 brought. Except where there is a contested issue of fact
11 or law, the proceedings shall be conducted in an informal
12 nonadversary atmosphere with a view to obtaining the
13 maximum cooperation of the minor upon whose behalf
14 the petition is brought and all persons interested in his or
15 her welfare with any provisions that the court may make
16 for the disposition and care of the minor.

17 (2) Each juvenile court is encouraged to develop a
18 dependency mediation program to provide a
19 problem-solving forum for all interested persons to
20 develop a plan in the best interests of the child,
21 emphasizing family preservation and strengthening. The
22 Legislature finds that mediation of these matters assists
23 the court in resolving conflict, and helps the court to
24 intervene in a constructive manner in those cases where
25 court intervention is necessary. Notwithstanding any
26 other provision of law, no person, except the mediator,
27 who is required to report suspected child abuse pursuant
28 to the Child Abuse and Neglect Reporting Act (Article 2.5
29 (commencing with Section 11164) of Chapter 2 of Title
30 1 of Part 4 of the Penal Code), shall be exempted from
31 those requirements under Chapter 2 (commencing with
32 Section 1115) of Division 9 of the Evidence Code because
33 he or she agreed to participate in a dependency
34 mediation program established in the juvenile court.

35 If a dependency mediation program has been
36 established in a juvenile court, and if mediation is
37 requested by any person who the judge or referee deems
38 to have a direct and legitimate interest in the particular
39 case, or on the court's own motion, the matter may be set
40 for confidential mediation to develop a plan in the best



1 interests of the child, utilizing resources within the family
2 first and within the community if required.

3 (b) The testimony of a minor may be taken in
4 chambers and outside the presence of the minor's parent
5 or parents, if the minor's parent or parents are
6 represented by counsel, the counsel is present and any of
7 the following circumstances exist:

8 (1) The court determines that testimony in chambers
9 is necessary to ensure truthful testimony.

10 (2) The minor is likely to be intimidated by a formal
11 courtroom setting.

12 (3) The minor is afraid to testify in front of his or her
13 parent or parents.

14 After testimony in chambers, the parent or parents of
15 the minor may elect to have the court reporter read back
16 the testimony or have the testimony summarized by
17 counsel for the parent or parents.

18 The testimony of a minor also may be taken in
19 chambers and outside the presence of the guardian or
20 guardians of a minor under the circumstances specified
21 in this subdivision.

22 (c) At any hearing in which the probation department
23 bears the burden of proof, after the presentation of
24 evidence on behalf of the probation department and the
25 minor has been closed, the court, on motion of the minor,
26 parent, or guardian, or on its own motion, shall order
27 whatever action the law requires of it if the court, upon
28 weighing all of the evidence then before it, finds that the
29 burden of proof has not been met. That action includes,
30 but is not limited to, the dismissal of the petition and
31 release of the minor at a jurisdictional hearing, the return
32 of the minor at an out-of-home review held prior to the
33 permanency planning hearing, or the termination of
34 jurisdiction at an in-home review. If the motion is not
35 granted, the parent or guardian may offer evidence
36 without first having reserved that right.

O

