

AMENDED IN ASSEMBLY MARCH 27, 2006

CALIFORNIA LEGISLATURE—2005—06 REGULAR SESSION

ASSEMBLY BILL

No. 2480

Introduced by Assembly Member Evans

February 23, 2006

An act to amend ~~Section~~ *Sections 317 and 395* of the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

AB 2480, as amended, Evans. Dependent children: counsel.

Existing law authorizes a child or counsel for a child, with the informed consent of the child if the child is found by a court to be of sufficient age and maturity to consent, to invoke the psychotherapist-client privilege, physician-patient privilege, and clergyman-penitent privilege.

This bill would provide that the child shall be presumed to be of sufficient age and maturity to consent if the child is over 12 years of age.

Existing law requires the court to appoint counsel for a child in dependency proceedings at the trial level, unless the court finds that the child would not benefit from the appointment of counsel.

This bill would require the court *of appeal* to appoint counsel for the child in subsequent appellate proceedings unless the court finds that the child would not benefit from the appointment of counsel. *The bill would require the Judicial Council to implement this provision by promulgating a rule of court by January 1, 2008, as specified. The bill would also require the Judicial Council to report to the Legislature, by an unspecified date, information regarding caseload standards for counsel representing children before the juvenile court.*

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

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

1 SECTION 1. *On or before _____, the Judicial Council shall*
2 *report to the Legislature the following information regarding*
3 *caseload standards established pursuant to Section 317 of the*
4 *Welfare and Institutions Code:*

5 (a) *Steps taken and progress made toward developing*
6 *caseload standards.*

7 (b) *The efforts made and the efficacy of putting caseload*
8 *standards in place for counsel representing dependent children.*

9 (c) *Any resources, support, or recommendations that might*
10 *help propel these efforts and ensure implementation statewide of*
11 *reasonable caseloads for dependency attorneys.*

12 SEC. 2. *Section 317 of the Welfare and Institutions Code is*
13 *amended to read:*

14 317. (a) *When it appears to the court that a parent or*
15 *guardian of the child desires counsel but is presently financially*
16 *unable to afford and cannot for that reason employ counsel, the*
17 *court may appoint counsel as provided in this section.*

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

26 (c) ~~Where~~*If a child is not represented by counsel, the court*
27 *shall appoint counsel for the child unless the court finds that the*
28 *child would not benefit from the appointment of counsel. The*
29 *court shall state on the record its reasons for that finding. A*
30 *primary responsibility of any counsel appointed to represent a*
31 *child pursuant to this section shall be to advocate for the*
32 *protection, safety, and physical and emotional well-being of the*
33 *child. Counsel for the child may be a district attorney, public*
34 *defender, or other member of the bar, provided that the counsel*
35 *does not represent another party or county agency whose*

1 interests conflict with the child's. The fact that the district
2 attorney represents the child in a proceeding pursuant to Section
3 300 as well as conducts a criminal investigation or files a
4 criminal complaint or information arising from the same or
5 reasonably related set of facts as the proceeding pursuant to
6 Section 300 is not in and of itself a conflict of interest. The court
7 may fix the compensation for the services of appointed counsel.
8 The appointed counsel shall have a caseload and training that
9 assures adequate representation of the child. The Judicial Council
10 shall promulgate rules of court that establish caseload standards,
11 training requirements, and guidelines for appointed counsel for
12 children and shall adopt rules as required by Section 326.5 no
13 later than July 1, 2001.

14 (d) The counsel appointed by the court shall represent the
15 parent, guardian, or child at the detention hearing and at all
16 subsequent proceedings before the juvenile court. Counsel shall
17 continue to represent the parent or child unless relieved by the
18 court upon the substitution of other counsel or for cause. The
19 representation shall include representing the parent or the child in
20 termination proceedings and in those proceedings relating to the
21 institution or setting aside of a legal guardianship.

22 (e) The counsel for the child shall be charged in general with
23 the representation of the child's interests. To that end, the
24 counsel shall make or cause to have made any further
25 investigations that he or she deems in good faith to be reasonably
26 necessary to ascertain the facts, including the interviewing of
27 witnesses, and he or she shall examine and cross-examine
28 witnesses in both the adjudicatory and dispositional hearings. He
29 or she may also introduce and examine his or her own witnesses,
30 make recommendations to the court concerning the child's
31 welfare, and participate further in the proceedings to the degree
32 necessary to adequately represent the child. In any case in which
33 the child is four years of age or older, counsel shall interview the
34 child to determine the child's wishes and to assess the child's
35 well-being, and shall advise the court of the child's wishes.
36 Counsel for the child shall not advocate for the return of the child
37 if, to the best of his or her knowledge, that return conflicts with
38 the protection and safety of the child. In addition counsel shall
39 investigate the interests of the child beyond the scope of the
40 juvenile proceeding and report to the court other interests of the

1 child that may need to be protected by the institution of other
2 administrative or judicial proceedings. The attorney representing
3 a child in a dependency proceeding is not required to assume the
4 responsibilities of a social worker and is not expected to provide
5 nonlegal services to the child. The court shall take whatever
6 appropriate action is necessary to fully protect the interests of the
7 child.

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

33 (g) In a county of the third class, if counsel is to be provided to
34 a child at county expense other than by counsel for the agency,
35 the court shall first utilize the services of the public defender
36 prior to appointing private counsel, to provide legal counsel.
37 Nothing in this subdivision shall be construed to require the
38 appointment of the public defender in any case in which the
39 public defender has a conflict of interest. In the interest of justice,
40 a court may depart from that portion of the procedure requiring

1 appointment of the public defender after making a finding of
2 good cause and stating the reasons therefor on the record.

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

14 **SECTION 1.**

15 *SEC. 3.* Section 395 of the Welfare and Institutions Code is
16 amended to read:

17 395. (a) (1) A judgment in a proceeding under Section 300
18 may be appealed from in the same manner as any final judgment,
19 and any subsequent order may be appealed from as from an order
20 ~~after judgment; but no such judgment.~~ *However, that* order or
21 judgment shall be stayed by the appeal, unless, pending the
22 appeal, suitable provision is made for the maintenance, care, and
23 custody of the person alleged or found to come within the
24 provisions of Section 300, and unless the provision is approved
25 by an order of the juvenile court. The appeal shall have
26 precedence over all other cases in the court to which the appeal is
27 taken.

28 (2) A judgment or subsequent order entered by a referee shall
29 become appealable whenever proceedings pursuant to Section
30 252, 253, or 254 have become completed or, if proceedings
31 pursuant to Section 252, 253, or 254 are not initiated, when the
32 time for initiating the proceedings has expired.

33 (3) An appellant unable to afford counsel, shall be provided a
34 free copy of the transcript in any appeal.

35 (4) The record shall be prepared and transmitted immediately
36 after filing of the notice of appeal, without advance payment of
37 fees. If the appellant is able to afford counsel, the county may
38 seek reimbursement for the cost of the transcripts under
39 subdivision (d) of Section 68511.3 of the Government Code as

1 though the appellant had been granted permission to proceed in
2 forma pauperis.

3 (b) If a child is not represented by counsel in an appellate
4 proceeding, the court *of appeal* shall appoint counsel for the child
5 unless the court *of appeal* finds that the child would not benefit
6 from the ~~appointment of counsel. The court shall state on the~~
7 ~~record its reasons for that finding. A primary responsibility of~~
8 ~~any counsel appointed to represent a child pursuant to this~~
9 ~~subdivision shall be to advocate for the protection, safety, and~~
10 ~~physical and emotional well being of the child in any appellate~~
11 ~~proceeding.~~ *appointment of counsel.* Counsel may not represent
12 another party or county agency whose interests conflict with the
13 child's interests. *The Judicial Council shall implement this*
14 *section by promulgating a rule of court on or before January 1,*
15 *2008. That rule shall include, but not be limited to, guidelines for*
16 *appointment of counsel, duties and responsibilities of counsel,*
17 *and training and experience standards for the attorneys to be*
18 *appointed.*