

AMENDED IN ASSEMBLY APRIL 18, 2006

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 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~~ *clergy-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 *January 1, 2008*, information regarding caseload standards for counsel representing children before the juvenile court.

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. On or before *January 1, 2008*, the Judicial
2 Council shall report to the Legislature the following information
3 regarding caseload standards established pursuant to Section 317
4 of the Welfare and Institutions Code:

5 (a) Steps taken and progress made toward developing caseload
6 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 *for the parent or guardian*, unless the court finds that the
24 parent or guardian has made a knowing and intelligent waiver of
25 counsel as provided in this section.

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

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

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

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

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

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

36 (g) In a county of the third class, if counsel is to be provided to
37 a child at county expense other than by counsel for the agency,
38 the court shall first utilize the services of the public defender
39 prior to appointing private counsel, to provide legal counsel.
40 Nothing in this subdivision shall be construed to require the

1 appointment of the public defender in any case in which the
2 public defender has a conflict of interest. In the interest of justice,
3 a court may depart from that portion of the procedure requiring
4 appointment of the public defender after making a finding of
5 good cause and stating the reasons therefor on the record.

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

17 SEC. 3. Section 395 of the Welfare and Institutions Code is
18 amended to read:

19 395. (a) (1) A judgment in a proceeding under Section 300
20 may be appealed ~~from~~ in the same manner as any final judgment,
21 and any subsequent order may be appealed ~~from as from~~ *as* an
22 order after judgment. However, that order or judgment shall be
23 stayed by the appeal, unless, pending the appeal, suitable
24 provision is made for the maintenance, care, and custody of the
25 person alleged or found to come within the provisions of Section
26 300, and unless the provision is approved by an order of the
27 juvenile court. The appeal shall have precedence over all other
28 cases in the court to which the appeal is taken.

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

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

36 (4) The record shall be prepared and transmitted immediately
37 after filing of the notice of appeal, without advance payment of
38 fees. If the appellant is able to afford counsel, the county may
39 seek reimbursement for the cost of the transcripts under
40 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. Counsel may not represent
7 another party or county agency whose interests conflict with the
8 child's interests. The Judicial Council shall implement this
9 section by promulgating a rule of court on or before January 1,
10 2008. That rule shall include, but not be limited to, guidelines for
11 appointment of counsel, duties and responsibilities of counsel,
12 and training and experience standards for the attorneys to be
13 appointed.