

AMENDED IN SENATE AUGUST 7, 2006

AMENDED IN ASSEMBLY MAY 26, 2006

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 clergy-penitent privilege.

This bill would provide that the child shall be presumed, *subject to rebuttal by clear and convincing evidence*, 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, in any appellate proceeding in which the child is an appellant, to appoint separate counsel for the child. The bill would also require the court of appeal,

if the child is not an appellant, to appoint separate counsel for the child if the court of appeal determines, after considering recommendations of the trial counsel or guardian ad litem for the child, that appointment of counsel would benefit the child. The bill would require the Judicial Council to implement this provision by promulgating a rule of court by July, 1, 2007, as specified.

The bill would also require the Judicial Council to report to the Legislature, by July 1, 2008, information regarding the status of appellate representation of dependent children, the results of implementing those provisions, and other recommendations regarding the representation of dependent children in appellate proceedings. The bill would further require the Judicial Council to report to the Legislature by January 1, 2008, information regarding case load 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

1 the child be placed in out-of-home care, the court shall appoint
2 counsel for the parent or guardian, unless the court finds that the
3 parent or guardian has made a knowing and intelligent waiver of
4 counsel as provided in this section.

5 (c) If a child is not represented by counsel, the court shall
6 appoint counsel for the child unless the court finds that the child
7 would not benefit from the appointment of counsel. The court
8 shall state on the record its reasons for that finding. A primary
9 responsibility of any counsel appointed to represent a child
10 pursuant to this section shall be to advocate for the protection,
11 safety, and physical and emotional well-being of the child.
12 Counsel for the child may be a district attorney, public defender,
13 or other member of the bar, provided that the counsel does not
14 represent another party or county agency whose interests conflict
15 with the child's interests. The fact that the district attorney
16 represents the child in a proceeding pursuant to Section 300 as
17 well as conducts a criminal investigation or files a criminal
18 complaint or information arising from the same or reasonably
19 related set of facts as the proceeding pursuant to Section 300 is
20 not in and of itself a conflict of interest. The court may fix the
21 compensation for the services of appointed counsel. The
22 appointed counsel shall have a caseload and training that ensures
23 adequate representation of the child. The Judicial Council shall
24 promulgate rules of court that establish caseload standards,
25 training requirements, and guidelines for appointed counsel for
26 children and shall adopt rules as required by Section 326.5 no
27 later than July 1, 2001.

28 (d) The counsel appointed by the court shall represent the
29 parent, guardian, or child at the detention hearing and at all
30 subsequent proceedings before the juvenile court. Counsel shall
31 continue to represent the parent or child unless relieved by the
32 court upon the substitution of other counsel or for cause. The
33 representation shall include representing the parent or the child in
34 termination proceedings and in those proceedings relating to the
35 institution or setting aside of a legal guardianship.

36 (e) The counsel for the child shall be charged in general with
37 the representation of the child's interests. To that end, the
38 counsel shall make or cause to have made any further
39 investigations that he or she deems in good faith to be reasonably
40 necessary to ascertain the facts, including the interviewing of

1 witnesses, and he or she shall examine and cross-examine
2 witnesses in both the adjudicatory and dispositional hearings. He
3 or she may also introduce and examine his or her own witnesses,
4 make recommendations to the court concerning the child's
5 welfare, and participate further in the proceedings to the degree
6 necessary to adequately represent the child. In any case in which
7 the child is four years of age or older, counsel shall interview the
8 child to determine the child's wishes and to assess the child's
9 well-being, and shall advise the court of the child's wishes.
10 Counsel for the child shall not advocate for the return of the child
11 if, to the best of his or her knowledge, that return conflicts with
12 the protection and safety of the child. In addition, counsel shall
13 investigate the interests of the child beyond the scope of the
14 juvenile proceeding and report to the court other interests of the
15 child that may need to be protected by the institution of other
16 administrative or judicial proceedings. The attorney representing
17 a child in a dependency proceeding is not required to assume the
18 responsibilities of a social worker and is not expected to provide
19 nonlegal services to the child. The court shall take whatever
20 appropriate action is necessary to fully protect the interests of the
21 child.

22 (f) Either the child or the counsel for the child, with the
23 informed consent of the child if the child is found by the court to
24 be of sufficient age and maturity to so consent, which shall be
25 presumed, *subject to rebuttal by clear and convincing evidence*,
26 if the child is over 12 years of age, may invoke the
27 psychotherapist-client privilege, physician-patient privilege, and
28 clergy-penitent privilege; and if the child invokes the privilege,
29 counsel may not waive it, but if counsel invokes the privilege, the
30 child may waive it. Counsel shall be holder of these privileges if
31 the child is found by the court not to be of sufficient age and
32 maturity to so consent. For the sole purpose of fulfilling his or
33 her obligation to provide legal representation of the child,
34 counsel for a child shall have access to all records with regard to
35 the child maintained by a health care facility, as defined in
36 Section 1545 of the Penal Code, health care providers, as defined
37 in Section 6146 of the Business and Professions Code, a
38 physician and surgeon or other health practitioner, as defined in
39 former Section 11165.8 of the Penal Code, as that section read on
40 January 1, 2000, or a child care custodian, as defined in former

1 Section 11165.7 of the Penal Code, as that section read on
2 January 1, 2000. Notwithstanding any other law, counsel shall be
3 given access to all records relevant to the case which are
4 maintained by state or local public agencies. All information
5 requested from a child protective agency regarding a child who is
6 in protective custody, or from a child's guardian ad litem, shall
7 be provided to the child's counsel within 30 days of the request.

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

18 (h) In a county of the third class, if counsel is to be appointed
19 for a parent or guardian at county expense, the court shall first
20 utilize the services of the alternate public defender, prior to
21 appointing private counsel, to provide legal counsel. Nothing in
22 this subdivision shall be construed to require the appointment of
23 the alternate public defender in any case in which the public
24 defender has a conflict of interest. In the interest of justice, a
25 court may depart from that portion of the procedure requiring
26 appointment of the alternate public defender after making a
27 finding of good cause and stating the reasons therefor on the
28 record.

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

31 395. (a) (1) A judgment in a proceeding under Section 300
32 may be appealed in the same manner as any final judgment, and
33 any subsequent order may be appealed as an order after
34 judgment. However, that order or judgment shall be stayed by the
35 appeal, unless, pending the appeal, suitable provision is made for
36 the maintenance, care, and custody of the person alleged or found
37 to come within the provisions of Section 300, and unless the
38 provision is approved by an order of the juvenile court. The
39 appeal shall have precedence over all other cases in the court to
40 which the appeal is taken.

1 (2) A judgment or subsequent order entered by a referee shall
2 become appealable whenever proceedings pursuant to Section
3 252, 253, or 254 have become completed or, if proceedings
4 pursuant to Section 252, 253, or 254 are not initiated, when the
5 time for initiating the proceedings has expired.

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

8 (4) The record shall be prepared and transmitted immediately
9 after filing of the notice of appeal, without advance payment of
10 fees. If the appellant is able to afford counsel, the county may
11 seek reimbursement for the cost of the transcripts under
12 subdivision (d) of Section 68511.3 of the Government Code as
13 though the appellant had been granted permission to proceed in
14 forma pauperis.

15 (b) (1) In any appellate proceeding in which the child is an
16 appellant, the court of appeal shall appoint separate counsel for
17 the child. If the child is not an appellant, the court of appeal shall
18 appoint separate counsel for the child if the court of appeal
19 determines, after considering the recommendation of the trial
20 counsel or guardian ad litem appointed for the child pursuant to
21 subdivision (e) of Section 317, Section 326.5, and California
22 Rule of Court 1448, that appointment of counsel would benefit
23 the child. In order to assist the court of appeal in making its
24 determination under this subdivision, the trial counsel or
25 guardian ad litem shall make a recommendation to the court of
26 appeal that separate counsel be appointed in any case in which
27 the trial counsel or guardian ad litem determines that, for the
28 purposes of the appeal, the child's best interests cannot be
29 protected without the appointment of separate counsel, and shall
30 set forth the reasons why the appointment is in the child's best
31 interests. The court of appeal shall consider that recommendation
32 when determining whether the child would benefit from the
33 appointment of counsel. The Judicial Council shall implement
34 this provision by adopting a rule of court on or before July 1,
35 2007, to set forth the procedures by which the trial counsel or
36 guardian ad litem may participate in an appeal, as well as the
37 factors to be considered by the trial counsel or guardian ad litem
38 in making a recommendation to the court of appeal, including,
39 but not limited to, the extent to which there exists a potential

1 conflict between the interests of the child and the interests of any
2 respondent.

3 (2) The Judicial Council shall report to the Legislature on or
4 before July 1, 2008, information regarding the status of appellate
5 representation of dependent children, the results of implementing
6 this subdivision, any recommendations regarding the
7 representation of dependent children in appellate proceedings
8 made by the California Judicial Council's Blue Ribbon
9 Commission on Children in Foster Care, any actions taken,
10 including rules of court proposed or adopted, in response to those
11 recommendations or taken in order to comply with the Child
12 Abuse Prevention and Treatment Act, as well as any
13 recommendations for legislative change that are deemed
14 necessary to protect the best interests of dependent children in
15 appellate proceedings or ensure compliance with the Child Abuse
16 Prevention and Treatment Act.