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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~~ *a child over 12 years of age* 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, *subject to rebuttal by clear and convincing evidence*.

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.

1 (b) When it appears to the court that a parent or guardian of
2 the child is presently financially unable to afford and cannot for
3 that reason employ counsel, and the child has been placed in
4 out-of-home care, or the petitioning agency is recommending that
5 the child be placed in out-of-home care, the court shall appoint
6 counsel for the parent or guardian, unless the court finds that the
7 parent or guardian has made a knowing and intelligent waiver of
8 counsel as provided in this section.

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

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

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

27 (f) Either the child or, *if the child is represented by counsel,*
28 the counsel for the child, with the informed consent of the child if
29 the child is found by the court to be of sufficient age and maturity
30 to so consent, ~~which shall be presumed, subject to rebuttal by~~
31 ~~clear and convincing evidence, if the child is over 12 years of~~
32 ~~age,~~ may invoke the psychotherapist-client privilege,
33 physician-patient privilege, and clergy-penitent privilege; and if
34 the child invokes the privilege, counsel may not waive it, but if
35 counsel invokes the privilege, the child may waive it. *Subject to*
36 *rebuttal by clear and convincing evidence, a child over 12 years*
37 *of age shall be presumed to be of sufficient age and maturity to*
38 *consent.* Counsel shall be holder of these privileges if the child is
39 found by the court not to be of sufficient age and maturity to so
40 consent. For the sole purpose of fulfilling his or her obligation to

1 provide legal representation of the child, counsel for a child shall
2 have access to all records with regard to the child maintained by
3 a health care facility, as defined in Section 1545 of the Penal
4 Code, health care providers, as defined in Section 6146 of the
5 Business and Professions Code, a physician and surgeon or other
6 health practitioner, as defined in former Section 11165.8 of the
7 Penal Code, as that section read on January 1, 2000, or a child
8 care custodian, as defined in former Section 11165.7 of the Penal
9 Code, as that section read on January 1, 2000. Notwithstanding
10 any other law, counsel shall be given access to all records
11 relevant to the case which are maintained by state or local public
12 agencies. All information requested from a child protective
13 agency regarding a child who is in protective custody, or from a
14 child's guardian ad litem, shall be provided to the child's counsel
15 within 30 days of the request.

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

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

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

39 395. (a) (1) A judgment in a proceeding under Section 300
40 may be appealed in the same manner as any final judgment, and

1 any subsequent order may be appealed as an order after
2 judgment. However, that order or judgment shall be stayed by the
3 appeal, unless, pending the appeal, suitable provision is made for
4 the maintenance, care, and custody of the person alleged or found
5 to come within the provisions of Section 300, and unless the
6 provision is approved by an order of the juvenile court. The
7 appeal shall have precedence over all other cases in the court to
8 which the appeal is taken.

9 (2) A judgment or subsequent order entered by a referee shall
10 become appealable whenever proceedings pursuant to Section
11 252, 253, or 254 have become completed or, if proceedings
12 pursuant to Section 252, 253, or 254 are not initiated, when the
13 time for initiating the proceedings has expired.

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

16 (4) The record shall be prepared and transmitted immediately
17 after filing of the notice of appeal, without advance payment of
18 fees. If the appellant is able to afford counsel, the county may
19 seek reimbursement for the cost of the transcripts under
20 subdivision (d) of Section 68511.3 of the Government Code as
21 though the appellant had been granted permission to proceed in
22 forma pauperis.

23 (b) (1) In any appellate proceeding in which the child is an
24 appellant, the court of appeal shall appoint separate counsel for
25 the child. If the child is not an appellant, the court of appeal shall
26 appoint separate counsel for the child if the court of appeal
27 determines, after considering the recommendation of the trial
28 counsel or guardian ad litem appointed for the child pursuant to
29 subdivision (e) of Section 317, Section 326.5, and California
30 Rule of Court 1448, that appointment of counsel would benefit
31 the child. In order to assist the court of appeal in making its
32 determination under this subdivision, the trial counsel or
33 guardian ad litem shall make a recommendation to the court of
34 appeal that separate counsel be appointed in any case in which
35 the trial counsel or guardian ad litem determines that, for the
36 purposes of the appeal, the child's best interests cannot be
37 protected without the appointment of separate counsel, and shall
38 set forth the reasons why the appointment is in the child's best
39 interests. The court of appeal shall consider that recommendation
40 when determining whether the child would benefit from the

1 appointment of counsel. The Judicial Council shall implement
2 this provision by adopting a rule of court on or before July 1,
3 2007, to set forth the procedures by which the trial counsel or
4 guardian ad litem may participate in an appeal, as well as the
5 factors to be considered by the trial counsel or guardian ad litem
6 in making a recommendation to the court of appeal, including,
7 but not limited to, the extent to which there exists a potential
8 conflict between the interests of the child and the interests of any
9 respondent.

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

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