

AMENDED IN SENATE AUGUST 22, 2006
AMENDED IN SENATE AUGUST 14, 2006
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 a child over 12 years of age shall be presumed 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.~~

The bill would incorporate additional changes to Section 317 of the Welfare and Institutions Code made by SB 678 and this bill to take effect if both bills are enacted and this bill becomes operative last.

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.~~

1 ~~SEC. 2.~~

2 ~~SECTION 1.~~ Section 317 of the Welfare and Institutions
3 Code is amended to read:

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

8 (b) When it appears to the court that a parent or guardian of
9 the child is presently financially unable to afford and cannot for
10 that reason employ counsel, and the child has been placed in
11 out-of-home care, or the petitioning agency is recommending that
12 the child be placed in out-of-home care, the court shall appoint
13 counsel for the parent or guardian, unless the court finds that the
14 parent or guardian has made a knowing and intelligent waiver of
15 counsel as provided in this section.

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

39 (d) The counsel appointed by the court shall represent the
40 parent, guardian, or child at the detention hearing and at all

1 subsequent proceedings before the juvenile court. Counsel shall
2 continue to represent the parent or child unless relieved by the
3 court upon the substitution of other counsel or for cause. The
4 representation shall include representing the parent or the child in
5 termination proceedings and in those proceedings relating to the
6 institution or setting aside of a legal guardianship.

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

33 (f) Either the child or, if the child is represented by counsel,
34 the counsel for the child, with the informed consent of the child if
35 the child is found by the court to be of sufficient age and maturity
36 to so consent, may invoke the psychotherapist-client privilege,
37 physician-patient privilege, and clergy-penitent privilege; and if
38 the child invokes the privilege, counsel may not waive it, but if
39 counsel invokes the privilege, the child may waive it. Subject to
40 rebuttal by clear and convincing evidence, a child over 12 years

1 of age shall be presumed to be of sufficient age and maturity to
2 consent. Counsel shall be holder of these privileges if the child is
3 found by the court not to be of sufficient age and maturity to so
4 consent. For the sole purpose of fulfilling his or her obligation to
5 provide legal representation of the child, counsel for a child shall
6 have access to all records with regard to the child maintained by
7 a health care facility, as defined in Section 1545 of the Penal
8 Code, health care providers, as defined in Section 6146 of the
9 Business and Professions Code, a physician and surgeon or other
10 health practitioner, as defined in former Section 11165.8 of the
11 Penal Code, as that section read on January 1, 2000, or a child
12 care custodian, as defined in former Section 11165.7 of the Penal
13 Code, as that section read on January 1, 2000. Notwithstanding
14 any other law, counsel shall be given access to all records
15 relevant to the case which are maintained by state or local public
16 agencies. All information requested from a child protective
17 agency regarding a child who is in protective custody, or from a
18 child's guardian ad litem, shall be provided to the child's counsel
19 within 30 days of the request.

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

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

1 *SEC. 1.5. Section 317 of the Welfare and Institutions Code is*
2 *amended to read:*

3 317. (a) (1) When it appears to the court that a parent or
4 guardian of the child desires counsel but is presently financially
5 unable to afford and cannot for that reason employ counsel, the
6 court may appoint counsel as provided in this section.

7 (2) *When it appears to the court that a parent or Indian*
8 *custodian in an Indian child custody proceeding desires counsel*
9 *but is presently unable to afford and cannot for that reason*
10 *employ counsel, the provisions of subsection (b) of Section 1912*
11 *of the Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.) and*
12 *Section 23.13 of Title 25 of the Code of Federal Regulations are*
13 *applicable.*

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

22 (c) ~~Where~~ *If* a child is not represented by counsel, the court
23 shall appoint counsel for the child unless the court finds that the
24 child would not benefit from the appointment of counsel. The
25 court shall state on the record its reasons for that finding. A
26 primary responsibility of any counsel appointed to represent a
27 child pursuant to this section shall be to advocate for the
28 protection, safety, and physical and emotional well-being of the
29 child. Counsel for the child may be a district attorney, public
30 defender, or other member of the bar, provided that the counsel
31 does not represent another party or county agency whose
32 interests conflict with the child's *interests*. The fact that the
33 district attorney represents the child in a proceeding pursuant to
34 Section 300 as well as conducts a criminal investigation or files a
35 criminal complaint or information arising from the same or
36 reasonably related set of facts as the proceeding pursuant to
37 Section 300 is not in and of itself a conflict of interest. The court
38 may fix the compensation for the services of appointed counsel.
39 The appointed counsel shall have a caseload and training that
40 ~~assures~~ *ensures* adequate representation of the child. The Judicial

1 Council shall promulgate rules of court that establish caseload
2 standards, training requirements, and guidelines for appointed
3 counsel for children and shall adopt rules as required by Section
4 326.5 no later than July 1, 2001.

5 (d) The counsel appointed by the court shall represent the
6 parent, guardian, or child at the detention hearing and at all
7 subsequent proceedings before the juvenile court. Counsel shall
8 continue to represent the parent, *guardian*, or child unless
9 relieved by the court upon the substitution of other counsel or for
10 cause. The representation shall include representing the parent,
11 *guardian*, or the child in termination proceedings and in those
12 proceedings relating to the institution or setting aside of a legal
13 guardianship.

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

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

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

38 (h) In a county of the third class, if counsel is to be appointed
39 for a parent or guardian at county expense, the court shall first
40 utilize the services of the alternate public defender, prior to

1 appointing private counsel, to provide legal counsel. Nothing in
2 this subdivision shall be construed to require the appointment of
3 the alternate public defender in any case in which the public
4 defender has a conflict of interest. In the interest of justice, a
5 court may depart from that portion of the procedure requiring
6 appointment of the alternate public defender after making a
7 finding of good cause and stating the reasons therefor on the
8 record.

9 ~~SEC. 3.~~

10 *SEC. 2.* Section 395 of the Welfare and Institutions Code is
11 amended to read:

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

22 (2) A judgment or subsequent order entered by a referee shall
23 become appealable whenever proceedings pursuant to Section
24 252, 253, or 254 have become completed or, if proceedings
25 pursuant to Section 252, 253, or 254 are not initiated, when the
26 time for initiating the proceedings has expired.

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

29 (4) The record shall be prepared and transmitted immediately
30 after filing of the notice of appeal, without advance payment of
31 fees. If the appellant is able to afford counsel, the county may
32 seek reimbursement for the cost of the transcripts under
33 subdivision (d) of Section 68511.3 of the Government Code as
34 though the appellant had been granted permission to proceed in
35 forma pauperis.

36 (b) (1) In any appellate proceeding in which the child is an
37 appellant, the court of appeal shall appoint separate counsel for
38 the child. If the child is not an appellant, the court of appeal shall
39 appoint separate counsel for the child if the court of appeal
40 determines, after considering the recommendation of the trial

1 counsel or guardian ad litem appointed for the child pursuant to
2 subdivision (e) of Section 317, Section 326.5, and California
3 Rule of Court 1448, that appointment of counsel would benefit
4 the child. In order to assist the court of appeal in making its
5 determination under this subdivision, the trial counsel or
6 guardian ad litem shall make a recommendation to the court of
7 appeal that separate counsel be appointed in any case in which
8 the trial counsel or guardian ad litem determines that, for the
9 purposes of the appeal, the child's best interests cannot be
10 protected without the appointment of separate counsel, and shall
11 set forth the reasons why the appointment is in the child's best
12 interests. The court of appeal shall consider that recommendation
13 when determining whether the child would benefit from the
14 appointment of counsel. The Judicial Council shall implement
15 this provision by adopting a rule of court on or before July 1,
16 2007, to set forth the procedures by which the trial counsel or
17 guardian ad litem may participate in an appeal, as well as the
18 factors to be considered by the trial counsel or guardian ad litem
19 in making a recommendation to the court of appeal, including,
20 but not limited to, the extent to which there exists a potential
21 conflict between the interests of the child and the interests of any
22 respondent.

23 (2) The Judicial Council shall report to the Legislature on or
24 before July 1, 2008, information regarding the status of appellate
25 representation of dependent children, the results of implementing
26 this subdivision, any recommendations regarding the
27 representation of dependent children in appellate proceedings
28 made by the California Judicial Council's Blue Ribbon
29 Commission on Children in Foster Care, any actions taken,
30 including rules of court proposed or adopted, in response to those
31 recommendations or taken in order to comply with the Child
32 Abuse Prevention and Treatment Act, as well as any
33 recommendations for legislative change that are deemed
34 necessary to protect the best interests of dependent children in
35 appellate proceedings or ensure compliance with the Child Abuse
36 Prevention and Treatment Act.

37 *SEC. 3. Section 1.5 of this bill incorporates amendments to*
38 *Section 317 of the Welfare and Institutions Code proposed by*
39 *this bill and SB 678. It shall only become operative if (1) both*
40 *bills are enacted and become effective on or before January 1,*

1 2007, (2) each bill amends Section 317 of the Welfare and
2 Institutions Code, and (3) this bill is enacted after SB 678, in
3 which case Section 317 of the Welfare and Institutions Code, as
4 amended by SB 678, shall remain operative only until the
5 operative date of this bill, at which time Section 1.5 of this bill
6 shall become operative, and Section 1 of this bill shall not
7 become operative.

O