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## Chapter 66: Making Small Steps towards Permanency for Dependent Children

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## **Chapter 66: Making Small Steps Towards Permanency for Dependent Children**

*Kendra Bertschy*

### *Code Section Affected*

Welfare and Institutions Code § 248 (amended).  
SB 179 (Runner); 2010 STAT. Ch. 6.

### I. INTRODUCTION

Roderick U. was born addicted to cocaine.<sup>1</sup> When his parents were unable to care for him due to their drug abuse and incarceration, he became a dependent of the court.<sup>2</sup> Since Roderick was six days old, he has remained in, and has become “very well adjusted” to, the care of his foster parents.<sup>3</sup> During the first eighteen months of his dependency, neither of his parents completed a drug treatment program or attempted to comply with the reunification plan, and they visited him infrequently.<sup>4</sup> As a result, a referee acting as a judge found that reunification was no longer in Roderick’s best interest and terminated the parental rights of his biological parents.<sup>5</sup> Luckily, Roderick had a loving foster family that wanted to adopt him.<sup>6</sup>

After receiving notification by mail of a referee’s order terminating parental rights, biological parents have sixty days to appeal a referee’s decision.<sup>7</sup> During this time, the child is a “legal orphan.”<sup>8</sup> If there are foster parents who wish to adopt the child, they remain in legal limbo, waiting to find out if the child’s biological parents will appeal the decision or if they will be able to complete the adoption process.<sup>9</sup>

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1. *See In re Roderick U.*, 14 Cal. App. 4th 1543, 1545, 18 Cal. Rptr. 2d 555, 556 (5th Dist. 1993) (“The minor was born January 1, 1990, with a positive toxicology screen for cocaine.”).

2. *Id.* at 1545-46.

3. *Id.*

4. *Id.* at 1547.

5. *Id.*

6. *See id.* (“The foster mother testified about her family’s willingness and desire to adopt Roderick.”).

7. CAL. RULES OF COURT, RULE 8.406(a)(3) (West 2010).

8. Telephone Interview with Christine Kouri, Principal Deputy Counsel, Office of the County Counsel of L.A. (June 11, 2010) [hereinafter Kouri Interview] (on file with the *McGeorge Law Review*).

9. *See id.* (identifying that one problem faced by dependent children after the rights of their parent’s have been terminated is that perspective parents can not adopt them until the appeals period has ended); Letter from Gary C. Ovitt, Chairman, Bd. of Supervisors, to George Runner, Sen. (Mar. 25, 2009) (on file with the *McGeorge Law Review*).

California dependency courts are in need of reform.<sup>10</sup> On June 11, 2010, Los Angeles County alone had 500 children who, like Roderick, were eligible for adoption.<sup>11</sup> The Legislature's goal of finding permanency for children in a timely manner is suffering.<sup>12</sup> In response, the California Legislature passed Chapter 66 to quicken the process of providing dependent children with permanency.<sup>13</sup>

## II. LEGAL BACKGROUND

### A. Dependency Court

Both federal and California courts recognize that a parent has a presumptive right to the care, custody, and control of his or her own child.<sup>14</sup> This fundamental right warrants state interference only in "extreme cases."<sup>15</sup> In 1982, California determined that child abuse and neglect constitute two of those "extreme cases" warranting state interference.<sup>16</sup> Subsequently, the California Legislature developed the juvenile dependency system<sup>17</sup> and enacted statutes that protect children from abuse and neglect by their parents.<sup>18</sup>

In 2007, Child Protective Services (CPS) received 3.2 million referrals of maltreatment involving 5.8 million children across the nation.<sup>19</sup> When the California Department of Children and Family Services receives an allegation of child abuse or neglect, a social worker screens calls to determine if an investigation into the allegations is necessary.<sup>20</sup> A social worker then assesses whether there is an immediate danger to the child and if removal from the home is necessary.<sup>21</sup> If the social worker is concerned, the court holds a hearing to

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10. Karen de Sá, *Part I: How Rushed Justice Fails Kids*, MERCURY NEWS, Feb. 8, 2008, available at [http://www.mercurynews.com/dependency/ci\\_8210271](http://www.mercurynews.com/dependency/ci_8210271) (on file with the *McGeorge Law Review*); see also GARY C. SEISER, CALIFORNIA JUVENILE COURTS PRACTICE AND PROCEDURE § 2.11[5] (1996) (suggesting that goals of the dependency court has been eroded over time).

11. Email from Charles Willis, L.A. County Dep't of Children and Family Servs., Pub. Affairs, to author (June 11, 2010, 15:12 PST) (on file with the *McGeorge Law Review*).

12. SEISER, *supra* note 10.

13. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 179, at 3 (Mar. 31, 2009).

14. *Prince v. Massachusetts*, 321 U.S. 158, 166 (1944); *Troxel v. Granville*, 530 U.S. 57, 66 (2000); *In re Keishia E.*, 6 Cal. 4th 68, 76, 859 P.2d 1290, 1294 (Cal. 1993).

15. *In re Angela P.*, 28 Cal. 3d 908, 916, 171 Cal. Rptr. 637 (623 P.2d 198, 202 (Cal. 1981).

16. CAL. WELF. & INST. CODE § 202(a) (West 2006); SEISER, *supra* note 10, at § 2.12[2].

17. SEISER, *supra* note 10, at § 2.12[2].

18. CAL. WELF. & INST. CODE § 300(a)-(i) (West 2006).

19. SAMUEL M. DAVIS, *Determination of the Incidence of Abuse, in RIGHTS OF JUVENILES: THE JUVENILE JUSTICE SYSTEM* § 6:6 (1974).

20. DIANE F. REED & KATE KARPILLOW, UNDERSTANDING THE CHILD WELFARE SYSTEM IN CALIFORNIA: A PRIMER FOR SERVICE PROVIDERS AND POLICYMAKERS 10 (2nd ed. 2009), available at [http://www.ccrwf.org/wp-content/uploads/2009/03/final\\_web\\_pdf.pdf](http://www.ccrwf.org/wp-content/uploads/2009/03/final_web_pdf.pdf) (on file with the *McGeorge Law Review*) ("Hotline social worker screens call using a Standardized Safety Assessment tool to determine if an investigation is warranted.").

21. SEISER, *supra* note 10, at § 2.37[1]-[2].

determine whether removal of the child is appropriate.<sup>22</sup> Regardless of the outcome of the hearing, the child and his or her parents are now a part of the dependency system.<sup>23</sup>

### B. *The Current Dependency Court System*

In Los Angeles County alone, there are currently over 32,000 children and parents in the dependency system.<sup>24</sup> In California, there are over 75,000 individuals.<sup>25</sup> The dependency process is lengthy and includes numerous reports compiled by social workers, a case plan listing steps the parent needs to complete to become a fit parent, and several hearings.<sup>26</sup> At the end of the process, the court eventually rules either for reunification or for the termination of parental rights (TPR).<sup>27</sup>

### C. *Existing Law*

After “extensive” reunification efforts fail, the court may terminate the parental rights of the mother and/or father.<sup>28</sup> A judge may appoint a referee to hear dependency cases including TPR hearings.<sup>29</sup> California law requires the court to mail the notification of termination orders and information regarding a parent’s right to appeal to all of the parties involved.<sup>30</sup> The appeal period of sixty days does not begin until the birth parents receive a copy of the TPR order by mail.<sup>31</sup> During the appeal period, adoptive parents face high levels of stress and uncertainty with regards to the possibility of losing the children they care for and plan to adopt.<sup>32</sup>

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22. *Id.* §2.40[1].

23. *Id.* §2.40[2]; see *California Courts, Dependency Court: Information for Parents*, <http://www.courtinfo.ca.gov/selfhelp/family/juv/depcourt.htm> (last visited June 12, 2010) [hereinafter *Information for Parents*] (on file with the *McGeorge Law Review*) (“If your child becomes a ‘dependent of the court,’ the court will make orders for you, your child, and the social worker.”).

24. Kouri Interview, *supra* note 8.

25. de Sá, *supra* note 10.

26. *Information for Parents*, *supra* note 23.

27. *Id.*

28. OFFICE OF ASSEMBLYMEMBER GEORGE RUNNER, SB 179 FACT SHEET (2010) [hereinafter SB 179 FACT SHEET].

29. CAL. WELF. & INST. CODE § 248 (West 2006).

30. *Id.*

31. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 179, at 3 (June 16, 2010).

32. SB 179 FACT SHEET, *supra* note 28.

### III. CHAPTER 66

Chapter 66 permits the court clerk to personally serve the minor, parent, or guardian who is present in court with the findings and order of the TPR.<sup>33</sup> For parties not present, Chapter 66 does not affect the mode of service and requires that the court serve the parties by mail.<sup>34</sup>

### IV. ANALYSIS

Chapter 66 amends the Welfare and Institutions Code to allow for personal service of a TPR.<sup>35</sup> Thus, the success of Chapter 66 depends on whether personal service is an effective and appropriate method of service.<sup>36</sup>

#### A. Service of Process

##### 1. Is Personal Service an Appropriate Method?

As Chapter 66 applies only to cases heard by a referee, and when all of the child's legal parents are in court on the day of the TPR order—it is very narrow in application.<sup>37</sup> The TPR is not the only dependency notice and order that can be personally served on a parent.<sup>38</sup> A probation officer or social worker may personally serve an order specifying that a child is to be taken away from his or her parents and placed as a dependent of the court.<sup>39</sup> In fact, the court can personally serve this order regardless of whether the parent was present at the initial petition hearing.<sup>40</sup>

Personal service is preferable to service by mail because it guarantees that parents will receive notice and their attorneys can confirm that the parents understand their right to appeal.<sup>41</sup> The courts also save money through personal service—if they can personally serve the parents, they do not have to pay the cost of postage.<sup>42</sup> The problem with service by mail is that the court often has to mail large documents several times to properly serve parents because the address

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33. CAL. WELF. & INST. CODE § 248(b)(1) (amended by Chapter 66); *see* SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 179, at 2 (June 22, 2010) (discussing that the findings and order include “a written explanation of the right of those persons to seek review of the order by the juvenile court”).

34. CAL. WELF. & INST. CODE § 248(b)(2) (amended by Chapter 66).

35. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 179, at 3 (June 16, 2010).

36. *Id.* at 3-4 (noting that the only impact this bill will have to existing law is to modify service of process and the anticipated difficulties of in-court personal services).

37. *Id.*

38. *See* CAL. WELF. & INST. CODE § 248.5 (West 2008) (discussing that in delinquency court, “[a]ll written findings and orders of the court shall be served by the clerk of the court personally”).

39. *Id.* § 290.1.

40. *Id.*

41. Kouri Interview, *supra* note 8 (indicating that personal service in court would allow the attorney to immediately speak with their clients to ensure that they understand the process).

42. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 179, at 4 (Mar. 31, 2009).

provided by the parents is not often their permanent address.<sup>43</sup> Therefore, Chapter 66 may benefit all parties involved in the dependency process.

## 2. *Will Personal Service be Effective in Promoting Dependency Goals?*

After the parental rights have been terminated, the goal of the dependency system is to provide “dependents with a safe, stable, permanent home in a timely fashion.”<sup>44</sup> A stated objective of the bill is to “initiat[e] the appeals process in a more timely way.”<sup>45</sup> The author indicates that Chapter 66 will advance this goal by reducing appellate delays and diminishing emotional stress on the prospective adoptive families.<sup>46</sup> However, there is question as to whether Chapter 66 will be able to promote this goal as enacted.<sup>47</sup>

As previously noted, Chapter 66 applies only to those cases heard by a referee when the dependent child’s parents are in court on the day of the TPR order.<sup>48</sup> Since referees hear the majority of cases, this factor does not narrow the application of Chapter 66.<sup>49</sup> Rather, the success of Chapter 66 in effectively promoting the goal of the dependency system may depend on how many children have both parents present in court at the time of the TPR order.<sup>50</sup> There is no data signaling this statistic.<sup>51</sup>

Senator George Runner, author of Senate Bill 179 (SB 179)—the bill that ultimately became Chapter 66—claims that parents are “frequently” in court, which would, in turn, translate to a significant number of children assisted by Chapter 66.<sup>52</sup> The sponsor of SB 179, however, believes that this will affect “few” children if any.<sup>53</sup> Further, the sponsor indicates that parents must stay in the courtroom after the hearing in order for a clerk to serve them.<sup>54</sup> The California State Association of Counties reported that out of a random sampling of 251 TPR

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43. *Id.*

44. SEISER, *supra* note 10, at §2.11[5].

45. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 179, at 2-3 (Mar. 31, 2009); ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 179, at 4 (June 16, 2010).

46. SENATE RULES COMMITTEE, COMMITTEE ANALYSIS OF SB 179, at 2 (June 22, 2010).

47. Kouri Interview, *supra* note 8.

48. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 179, at 2-3 (June 16, 2010).

49. *See de Sá, supra* note 10 (describing how most dependency cases have commissioners or referees presiding over the hearings).

50. Kouri Interview, *supra* note 8.

51. *Id.*

52. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 179, at 2 (June 16, 2010).

53. Kouri Interview, *supra* note 8.

54. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 179, at 2 (June 16, 2010).

To successfully serve the order in court, the clerk must have enough time to prepare the order, get the judge’s signature, and print the order out or copy it before the parent leaves the courtroom. The ability of the court to immediately serve a parent or guardian at the time the order is made should improve over time with the advancements in court technology.

*Id.*

orders within a two-month period, parents' only appealed thirty-four cases.<sup>55</sup> Out of those thirty-four cases, all but twelve cases were filed before thirty days.<sup>56</sup> Thus, it is unclear as to how many children Chapter 66 will affect.

Additionally, Chapter 66 indirectly streamlines permanency by jumpstarting the period for a parent to request a rehearing.<sup>57</sup> Existing law provides that parents have ten days to apply for a rehearing of a TPR order, which commences after service of the order and findings.<sup>58</sup> If the parents are in court for the TRP hearing, then Chapter 66 will initiate the rehearing period the day of the hearing instead of when the court serves both parents by mail.<sup>59</sup> Thus, personal service may inadvertently achieve permanency quicker if both parents are in court.<sup>60</sup>

### B. Shortening the Time to File an Appeal

No organization has gone on the record as opposing Chapter 66.<sup>61</sup> However, when Senator Runner initially introduced the bill, attorneys flooded his office with phone calls expressing their disdain, eventually forcing him to amend it.<sup>62</sup> The controversial provision was the amendment to shorten the period that a biological parent has to file an appeal of a TPR from sixty to thirty days.<sup>63</sup>

Supporters believed that by shortening the period for filing an appeal, children would be able to achieve permanency quicker.<sup>64</sup> This provision allowed courts to notify children thirty days sooner if there would be an appeal.<sup>65</sup> The Los Angeles County Board of Supervisors indicated that this provision was the

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55. *Health and Human Services*, CSAC LEGISLATIVE BULLETIN, Mar. 13, 2009, available at [http://www.imakenews.com/csac/e\\_article001375267.cfm?x=bfqJl1q,b6GrTnL4,w](http://www.imakenews.com/csac/e_article001375267.cfm?x=bfqJl1q,b6GrTnL4,w) (on file with the *McGeorge Law Review*).

56. *Id.*

57. See CAL. WELF. & INST. CODE § 251 (West 2008) (“[T]he presiding judge of the juvenile court may establish requirements that any or all orders of referees shall be expressly approved by a judge of the juvenile court before becoming effective.”); CAL. WELF. & INST. CODE § 252 (“At any time prior to the expiration of 10 days after service of a written copy of the order and findings of a referee, a minor or his or her parent . . . may apply to the juvenile court for a rehearing”); CAL. RULES OF COURT, RULE 5.540(c) (West 2006) (“An order of a referee becomes final 10 calendar days after service of a copy of the order and findings. . . .”).

58. CAL. WELF. & INST. CODE § 252; CAL. RULES OF COURT, RULE 5.540(c).

59. CAL. WELF. & INST. CODE § 248(b)(1) (amended by Chapter 66).

60. SB 179 originally included a provision that required a referee's to become final no later than 180 days after the order was made regardless of service. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 179, at 6-7 (Mar. 31, 2009). The author and sponsor of the bill indicated that some parents were not served with the TPR order, which allowed them to apply for a court to rehear their case without considering the timing of their request. *Id.* This provision was amended and is not part of Chapter 66. Letter from Gary C. Ovitt, *supra* note 9 (discussing that having the “TPR order automatically finalize after 180 days [would] avoid[ ] indefinite appeal timeframes”).

61. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 179, at 6 (Mar. 31, 2009); ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 179, at 4 (June 16, 2010).

62. Kouri Interview, *supra* note 8.

63. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 179, at 2-3 (Mar. 31, 2009); ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 179, at 3 (June 16, 2010).

64. Kouri Interview, *supra* note 8.

65. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 179, at 3 (Mar. 31, 2009).

inspiration for sponsoring Chapter 66.<sup>66</sup> Supporters believed that thirty days comprised an adequate period for parents to file an appeal without any adverse effect because the majority of parents who file an appeal do so within the first week after the TPR.<sup>67</sup>

Nonetheless, attorneys representing parents were adamantly opposed to the provision because of the constitutional due process concerns that it raised.<sup>68</sup> The provision would be “disastrous” for incarcerated parents.<sup>69</sup> Opponents to SB 179, as introduced, believed it would have violated parents’ due process rights, particularly those of incarcerated parents and parents in drug treatment programs, because of the extreme steps required to advise those clients of their rights and to initiate the appeals process.<sup>70</sup>

Opponents also believed that SB 179, as introduced, would have failed on its goal of cost-efficiency.<sup>71</sup> The provision amending the California Rules of Court would have forced attorneys to file preemptory appeals to ensure that a parent retained his or her right to appeal the TPR.<sup>72</sup> Filing a preemptory appeal would waste judicial resources and cost the court money.<sup>73</sup> Attorneys also believed that the provision was unconstitutional and that additional money and judicial resources may have been spent debating its constitutionality.<sup>74</sup> Due to this opposition, SB 179 was amended, and Chapter 66 was passed without the provision amending California Rule of Court, rule 8.4.<sup>75</sup>

## V. CONCLUSION

Senator Runner authored Chapter 66 with the intent of helping children in the dependency system.<sup>76</sup> As originally introduced, SB 179 restructured the deadlines

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66. Kouri Interview, *supra* note 8.

67. *See id.* (noting that the majority of filings happen on the same day or the day after, eighty percent happen within the first week, and very few happen at the end of the sixty days).

68. *See id.* (indicating that the attorneys representing parents opposed the bill because they believed it would violate their client’s due process rights).

69. Interview with Professor Jennifer Gibson, McGeorge Sch. of Law, Dir. of the Appellate Advocacy Clinic, in Sacramento, Cal. (June 25, 2010) (on file with the *McGeorge Law Review*).

70. *Id.*

71. *Id.*

72. *Id.*

73. *Id.*; *see* Superior Court of California, County of Sacramento, *Information Sheet on Waiver of Superior Court Fees and Costs* (July 1, 2009), available at <http://www.courts.ca.gov/fw001info.pdf> (on file with the *McGeorge Law Review*) (describing how an indigent parent can obtain a fee waiver); Superior Court of California County of Sacramento, *Statewide Civil Fee Schedule* (Jan. 1, 2010), available at <http://www.saccourt.ca.gov/fees/docs/fee-schedule-01012010.pdf> (on file with the *McGeorge Law Review*) (indicating that it costs \$20 for the certificate of the motion prior to filing the appeal, \$655 for the notice of appeal, and \$100 for the clerk’s transcript).

74. *Id.*

75. Kouri Interview, *supra* note 8.

76. Office of Senator George Runner, *Runner Legislation Will Help Adoption Process Run Smoother, Alleviate Stress*, Mar. 31, 2009, <http://cssrc.us/web/17/news.aspx?id=5633> (on file with the *McGeorge Law Review*).

that a birth parent would have had for filing a notice of appeal of a TPR order.<sup>77</sup> In response to opposition, the Legislature amended the bill so that Chapter 66 merely changes the method of service so that a court can personally serve parents with a court's findings and TPR order.<sup>78</sup> Despite this amendment, Chapter 66 still has the potential to shorten the time of the appeals process to allow children to achieve permanency quicker.<sup>79</sup>

It is unclear how many children Chapter 66 will ultimately affect.<sup>80</sup> Chapter 66 only applies if a referee is presiding over the termination of parental rights and if both of the child's legal parents are present in court.<sup>81</sup> As of the date of this article's publication, there is no data indicating how often this occurs.<sup>82</sup>

At a minimum, Chapter 66 clearly benefits courts.<sup>83</sup> The California court system saves money with Chapter 66 because personal service is more cost effective.<sup>84</sup> With the tight budget that California's government entities face today, this cost saving measure is a welcome change.<sup>85</sup>

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77. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 179, at 1 (Mar. 31, 2009).

78. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 179, at 1 (June 16, 2010).

79. See Kouri Interview, *supra* note 8.

80. *Id.* (indicating that there has been no statistics looking into how many children will be affected by Chapter 66).

81. ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 179, at 3 (June 16, 2010).

82. See Kouri Interview, *supra* note 8 (indicating that there has been no statistics looking into how many children will be affected by Chapter 66).

83. *Id.*; ASSEMBLY FLOOR, COMMITTEE ANALYSIS OF SB 179, at 3 (June 16, 2010) (stating that due to the amendments, the goals of SB 179 have been severely hindered except for ).

84. SENATE JUDICIARY COMMITTEE, COMMITTEE ANALYSIS OF SB 179, at 4 (Mar. 31, 2009).

85. *Id.*