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Evidence

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Evidence

Evidence; hearsay evidence

Evidence Code § 1293 (new).
SB 273 (Lockyer); 1989 STAT. Ch. 322

Under existing law, hearsay evidence is inadmissible unless the proffered evidence falls within an exception to the hearsay rule.¹ Chapter 322 makes an exception to the hearsay rule where the evidence is former testimony of a minor² child given at a prior preliminary examination.³ For the minor's former testimony to be admissible, Chapter 322 requires that a party offer the testimony at a dependency proceeding.⁴

The defendant in the preliminary examination must have had the right and opportunity to cross-examine the minor with the same interest and motivation at the preliminary examination that the parent or guardian who is opposing the proffered testimony at the dependency proceeding has.⁵ The proffered former testimony is subject to the same restrictions and objections that would apply if the child was testifying at the dependency proceeding.⁶ If the parent⁷ objecting to the proffered former testimony at the dependency proceeding

1. See CAL. EVID. CODE § 1200 (West 1966) (defines hearsay evidence and states hearsay evidence rule). See, e.g., *id.* § 1228 (West Supp. 1989) (certain statements made by a minor under age 12, outside of court, regarding sexually oriented crimes against the minor are not inadmissible pursuant to the hearsay rule under certain conditions). See generally *id.* §§ 1220-1340 (West 1966 & Supp. 1989) (exceptions to the hearsay rule).

2. See CAL. CIV. CODE § 25 (West 1982) (defines minor as a person under age 18).

3. 1989 Cal. Stat. ch. 322, sec. 1, at ____ (enacting CAL. EVID. CODE § 1293(a)). The minor must be the complaining witness in the prior preliminary examination. *Id.* The complaining witness is the purported victim of the crime covered by the preliminary examination. *Id.* (enacting CAL. EVID. CODE § 1293(d)).

4. *Id.* (enacting CAL. EVID. CODE § 1293(a)(1)). See CAL. WELF. & INST. CODE § 300 (West Supp. 1989) (describes persons who may be declared dependents of the court).

5. 1989 Cal. Stat. ch. 322, sec. 1, at ____ (enacting CAL. EVID. CODE § 1293(a)(2)). Compare *id.* with CAL. EVID. CODE §§ 1291, 1292 (West 1966) (admissibility of former testimony).

6. 1989 Cal. Stat. ch. 322, sec. 1, at ____ (enacting CAL. EVID. CODE § 1293(b)). See generally CAL. EVID. CODE §§ 350-356 (West 1966 & Supp. 1989) (admitting and excluding evidence).

7. See 1989 Cal. Stat. ch. 322, sec. 1, at ____ (enacting CAL. EVID. CODE § 1293(c)). A guardian, or attorney for the parent or guardian may also object. *Id.*

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shows that the dependency proceeding involves new issues that are substantially different from the issues involved in the preliminary examination, the parent may move to challenge the admissibility of the former testimony.⁸

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8. *Id.* The provisions of Chapter 322 apply only to testimony given at a preliminary examination on or after January 1, 1990. *Id.* (enacting CAL. EVID. CODE § 1293(e)).