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Juveniles

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Juveniles

Juvenile; adoption fees

Civil Code § 225q (repealed and new); §§ 225p, 226.5 (amended).
SB 64 (Campbell); 1989 STAT. Ch. 85

Under existing law, the State Department of Social Services (Department)¹ or a licensed county adoption service² must investigate all petitioning prospective adoptive parents, and report the Department findings and recommendations to the appropriate superior court.³ Where the children are being placed by a licensed county agency or the Department, existing law requires petitioners to pay a \$500 fee.⁴ This fee may be subject to waiver, reduction, or deferment.⁵ Chapter 85 imposes a \$500 fee upon prospective adoptive parents of children⁶ not being placed by a licensed adoption agency.⁷ The revenue gen-

1. See CAL. HEALTH & SAFETY CODE § 1502(b) (West Supp. 1989) (defining Department as the State Department of Social Services).

2. See CAL. WELF. & INST. CODE § 16100 (West Supp. 1989) (establishes requirements and duties for a licensed county adoption agency). See also *id.* § 16130 (West 1980) (stipulates circumstances under which the Department will provide adoption services in lieu of a licensed county adoption agency).

3. *Id.* § 16100 (West Supp. 1989). See CAL. CIV. CODE § 226.5 (West Supp. 1989) (establishing investigation and reporting procedures of prospective adoptive parents).

4. CAL. CIV. CODE § 225p (West Supp. 1989).

5. *Id.*

6. See *id.* § 221 (West 1982) (definition of children).

7. 1989 Cal. Stat. ch. 85, sec. 2, at ____ (enacting CAL. CIV. CODE § 225q(a)) (imposing fee prior to filing of favorable adoption report, and establishing circumstances under which the fee may be waived, reduced, or deferred by the Department or a licensed county adoption agency). The fee may be waived if the responsible government agency fails, without good cause, to conduct a pre-adoption investigation of petitioners and all persons from whom consent is required within the statutory time required. *Id.* sec. 3, at ____ (amending CAL. CIV. CODE § 226.5). See *id.* (defining good cause and establishing procedure for circumventing reporting process). See also CAL. CIV. CODE § 224 (West 1982) (establishes consent requirements for adoption). Consent of the natural father to adoption of an illegitimate child by a stepparent is not required when the natural mother retains custody and control of the child. Adoption of Rebecca B., 68 Cal. App. 3d 193, 196, 137 Cal. Rptr. 100, 103 (1977). The consent of a mother who has not contacted her legitimate children within a three year period is not required for the adoption of her children by the stepmother of the children. In re Adoption of Thevenin, 189 Cal. App. 2d 245, 250, 11 Cal. Rptr. 219, 224 (1961). The father's consent is all that is required. *Id.*

erated from these fees will be utilized to expedite the required investigation and reporting.⁸

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8. 1989 Cal. Stat. ch. 85, sec. 2, at _____ (enacting CAL. CIV. CODE § 225q). The revenues received by the Department and the licensed county adoption agencies must be used to fund the state and county programs for the adoption of children who have not been placed by either of these agencies, respectively. *Id.* The revenues must not be used to supplement current funding for adoption programs. *Id.* The intent of the Department is to utilize the revenues from these fees to increase the number of caseworkers and thereby expedite the independent adoption process. Telephone interview with Steve Bailey, Deputy Director for the Department (September 21, 1989) (on file at the Pacific Law Journal). *Compare* 1989 Cal. Stat. ch. 85, sec. 2, at _____ (enacting CAL. CIV. CODE § 225q) (establishing adoption reporting fees to fund programs for the adoption of children who have not been placed by the Department or a licensed county agency) *with* VA. CODE ANN. §§ 63.1-236.1 (1988) (established adoption fee to compensate for the cost of pre-adoption investigations) *and* NEV. REV. STAT. §§ 127.280, 422.283 (1987) (the Welfare Division may establish a reasonable fee for adoptive services and investigations of prospective adoptive parents of children being placed through the recommendation of a person other than a child-placing agency).

Juveniles; court procedures

Welfare and Institutions Code § 656.2 (repealed); §§ 656.2, 706.5 (new); § 202 (amended).

AB 1713 (Katz); 1989 STAT. Ch. 569
(Effective September 20, 1989)

Chapter 569 modifies the goals of juvenile court law to make a primary goal the reunification of the minor with the family.¹ When attempting to place a delinquent juvenile, the juvenile court should consider family preservation and family reunification as added goals.²

Under existing law, the court is required to consider the social study³ of a minor who is a ward of the court in determining disposition of the minor.⁴ Chapter 569 requires the court to consider

1. 1989 Cal. Stat. ch. 569, sec. 1, at _____ (amending CAL. WELF. & INST. CODE § 202(a)).

2. *Id.* (amending CAL. WELF. & INST. CODE § 202(b)).

3. CAL. WELF. & INST. CODE § 280 (West Supp. 1989) (contents of social study of minor).

4. *Id.* § 706 (West 1984).

factual material related to reunification of the child with the parents if the juvenile court is considering foster care placement of the minor.⁵

JMM

5. 1989 Cal. Stat. ch. 569, sec. 4, at _____ (enacting CAL. WELF. & INST. CODE § 706.5). A factual discussion should include, but is not limited to, whether child protective services have been considered and offered to the parents, and a plan to return the child to the parents. *Id.* See CAL. WELF. & INST. CODE § 358.1(a), (b) (West Supp. 1989). See generally Roche, *Juvenile Court Dispositional Alternatives: Imposing a Defense Duty*, 27 SANTA CLARA L. REV. 279 (1987) (suggests placing a legally enforceable ethical duty on defense counsel to present dispositional alternatives to juvenile court).

Juveniles; delinquency—prevention

Education Code §§ 48267, 48902, 49076 (amended); Penal Code § 13826.66 (new); Welfare and Institutions Code §§ 654 (repealed); 625.1, 654.2, 654.3, 654.4, 729.2, 729.3, 729.10 (new); 601.4, 653.5, 725, 777 (amended).
SB 1275 (Presley); 1989 STAT. CH. 1117

By enacting Chapter 1117 the legislature intends to provide a program for juvenile delinquents which focusses on rehabilitation, probation, parent involvement, and early detection of criminal activity.¹

Under existing law, a police officer is permitted to temporarily detain a youth.² Chapter 1117, stating that drug abuse is a precursor of serious criminality, permits a police officer to request that a youth voluntarily submit to a drug test.³ In addition, Chapter 1117 requires

1. 1989 Cal. Stat. ch. 1117, sec. 1, at _____. The program is designed to reach juveniles before they become habitual criminals. *Id.* sec. 1(b), at _____.

2. CAL. WELF. & INST. CODE § 625 (Deering 1989). The officer must have probable cause to believe that the youth is a ward of the court or has escaped from a detention facility. *Id.*

3. 1989 Cal. Stat. ch. 1117, sec. 1, at _____ (expressing the intent of legislature); *id.* sec. 6, at _____ (enacting CAL. WELF. & INST. CODE § 625.1). See *id.* sec. 7, at _____ (enacting CAL. WELF. & INST. CODE § 625.2(a)). Before administering the test the officer must give the following statement: "I am asking you to take a voluntary urine test to test for the presence of drugs or alcohol in your body. You have the right to refuse to take this test. If you do take the test, it cannot be used as the basis for filing any additional charges against you. It

youths convicted of specified crimes to complete an alcohol or drug education program.⁴

Under existing law the court may place a minor on probation instead of declaring the youth to be a ward of the court.⁵ Because the legislature declares that young offenders present the best potential for rehabilitation, Chapter 1117 establishes the following stricter guidelines and conditions for the probation period: (1) The youth must attend school without absence; (2) the youth's parents or guardian must participate in counseling or education programs;⁶ and (3) the youth must remain at home between 10:00 p.m. and 6:00 a.m. unless accompanied by a parent or guardian.⁷

Existing law gives the court and probation officers the option of entering youths into specific rehabilitation programs.⁸ In order to involve parents in the youth's rehabilitation, Chapter 1117 requires parents or guardians to participate in counseling or education programs.⁹

Under existing law a probation officer must report to a prosecuting attorney any youth that has committed certain violent crimes.¹⁰ To

can be used by a court for the purpose of sentencing. You have the right to telephone your parent or guardian before you decide whether or not to take this test." *Id.*

4. *Id.* sec. 17, at ____ (enacting CAL. WELF. & INST. CODE § 729.10(a)). The crimes include: (1) A violation of Chapter 2, Division 10 of the Health and Safety Code (possessing or selling a controlled substance); (2) a violation of Business and Professions Code section 25662 (unlawful possession of alcohol by a minor); or (3) a violation of penal code section 647 (disorderly conduct). *Id.* The program is to be paid for by the parents until the youth reaches the age of 18, at which time it will be the youth's responsibility. *Id.* The fee will be waived for indigents. *Id.* This requirement is limited to counties that already have drug or alcohol education programs. *Id.* sec. 18, at ____ (enacting CAL. WELF. & INST. CODE § 729.10(a)).

5. CAL. WELF. & INST. CODE § 725 (amended by 1989 Cal. Stat. ch. 1117, sec. 14, at ____). See *id.* §§ 601, 602 (Deering 1988) (guidelines for declaring a youth to be a ward of the court).

6. See 1989 Cal. Stat. ch. 1117, sec. 15, at ____ (enacting CAL. WELF. & INST. CODE § 729.2(b)) (minors declared dependent children of the court are excluded).

7. 1989 Cal. Stat. ch. 1117, sec. 1, at ____ (expressing the intent of the legislature); *id.* sec. 15, at ____ (enacting CAL. WELF. & INST. CODE § 729.2). The guidelines can be avoided if the court finds them to be inappropriate. *Id.* See *id.* sec. 16, at ____ (enacting CAL. WELF. & INST. CODE § 729.3). The court may require wards of the court, left in the custody of their parents or guardians, to submit to a urine test as a condition for probation. *Id.*

8. CAL. WELF. & INST. CODE § 654 (amended by 1989 Cal. Stat. ch. 1117, sec. 10, at ____). Probation officers may enter youths into the following types of programs: 1) Sheltered-care facilities; 2) crisis resolution homes; or 3) counseling and educational centers. *Id.*

9. 1989 Cal. Stat. ch. 1117, sec. 10, at ____ (amending CAL. WELF. & INST. CODE § 654). Parents or guardians must participate in programs designated by the probation officer. *Id.* sec. 11, at ____ (enacting CAL. WELF. & INST. CODE § 654.2).

10. CAL. WELF. & INST. CODE § 653.5 (Deering Supp. 1989) (amended by 1989 Cal. Stat. ch. 1117, sec. 8, at ____). Chapter 1117 specifies crimes included in Penal Code section 707(b) (murder, rape, armed robbery, forcible rape, sodomy by force, lewd acts, oral copulation by force, kidnapping, and assault) and Health and Safety Code Chapter 2, Division 10 (manu-

address juvenile delinquency at its inception, Chapter 1117 requires that the following activities also be reported: (1) Selling or possessing a controlled substance;¹¹ (2) selling or possessing narcotics on school grounds; (3) involvement in criminal gang activity;¹² (4) being previously placed on probation; or (5) committing an offense that involves more than \$1000 in restitution to the victim.¹³

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facturing or selling controlled substances). *Id.* A youth under the age of sixteen who commits a second felony must also be reported. *Id.* § 653.5 (amended by 1989 Cal. Stat. ch. 1117, sec. 8, at ____).

11. See CAL. HEALTH & SAFETY CODE §§ 11053-11055 (Deering 1988) (schedules of controlled substances).

12. See CAL. PENAL CODE § 186.22 (Deering Supp. 1989) (definition of criminal gang activity).

13. 1989 Cal. Stat. ch. 1117, sec. 1, at ____ (expressing the intent of the legislature); *id.* sec. 8, at ____ (amending CAL. WELF. & INST. CODE § 653.5).

Juveniles; detention

Welfare and Institutions Code §§ 631, 632 (amended).
SB 335 (Boatwright); 1989 STAT. Ch. 686

Under existing law, a minor who is taken into custody for the suspected commission of certain misdemeanors,¹ and who is not on probation or parole, must be released within forty-eight hours, or on the next judicial day, whichever is later.² Existing law also requires that a detention hearing be held within the same period, unless the minor is released sooner.³

Chapter 686 eliminates the requirement that a minor be released or a hearing held on the next judicial day, and instead requires that

1. The misdemeanor must not involve violence, threat of violence, or use of a weapon. 1989 Cal. Stat. ch. 686, sec. 1, at ____ (amending CAL. PENAL CODE § 631(b)).

2. CAL. WELF. & INST. CODE § 631(b) (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 686, sec. 1, at ____). Release of the minor is not required if a petition has been filed declaring the minor a ward of the court and an order detaining the minor in custody has been issued. *Id.* See *id.* §§ 635, 636 (West 1984) (procedure for obtaining an order detaining the minor in custody), 650, 656 (West Supp. 1989) (procedure for filing a petition declaring the minor a ward of the court).

3. *Id.* § 632 (amended by 1989 Cal. Stat. ch. 686, sec. 2, at ____).

the release or hearing occur within forty-eight hours.⁴ Chapter 686 also requires that a supervising probation officer give written approval for a minor to be detained for more than twenty-four hours.⁵

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4. 1989 Cal. Stat. ch. 686, sec. 2, at ____ (amending CAL. WELF. & INST. CODE § 632). The forty-eight hour limitation does not include non-judicial days. *Id.* But see *Youngblood v. Gates*, 200 Cal. App. 3d 1302, 246 Cal. Rptr. 775 (1988) (an arrested party's constitutional right to a speedy appearance before a magistrate was infringed by a Los Angeles Police Department policy permitting detention for forty-eight hours, rather than two calendar days).

5. 1989 Cal. Stat. ch. 686, sec. 1, at ____ (amending CAL. WELF. & INST. CODE § 631(b)).

Juveniles; harmful matter—video recordings

Penal Code §§ 313, 313.1, 313.4 (amended).
AB 1242 (Lempert); 1989 STAT. Ch. 1058

Under existing law, it is illegal for persons¹ to knowingly² distribute³ harmful matter⁴ to minors.⁵ With the enactment of Chapter 1058, the legislature declares that parents with minor⁶ children should carefully scrutinize the videos that their minor children view, and that video retailers should voluntarily assist parents by adopting various measures.⁷ Chapter 1058 makes it illegal for persons to knowingly distribute harmful video recordings to minors.⁸ Further,

1. See CAL. PENAL CODE § 313(c) (definition of person).

2. See *id.* § 313(e) (definition of knowingly).

3. See *id.* § 313(d) (definition of distribute).

4. See *id.* § 313(a) (definition of harmful matter); § 313(b) (amended by 1989 Cal. Stat. ch. 1058, sec. 2, at ____) (definition of matter). See also *Roth v. United States*, 354 U.S. 476, 487 (1956) (obscene material is matter which deals with sex in a way which appeals to prurient interests).

5. CAL. PENAL CODE § 313.1 (West Supp. 1989) (amended by 1989 Cal. Stat. ch. 1058, sec. 3, at ____). Punishment includes a \$2000 fine, one year imprisonment, or both. *Id.* § 313.4 (amended by 1989 Cal. Stat. ch. 1058, sec. 4, at ____). See *Ginsberg v. New York*, 390 U.S. 629, 638-39 (1968) (because the state has an interest in children's well being, and to aid parents in protecting their children, the state may more strictly regulate material affecting children than material affecting adults); *Erznoznik v. Jacksonville*, 422 U.S. 205, 212-13, (1975) (the state may put stricter standards on what minors may view, but only in narrow, well defined circumstances).

6. See CAL. PENAL CODE § 313(g) (definition of minor).

7. 1989 Cal. Stat. ch. 1058, sec. 1, at ____.

8. 1989 Cal. Stat. ch. 1058, sec. 3, at ____ (amending CAL. PENAL CODE § 313.1(a)).

Chapter 1058 requires persons who sell or rent video recordings of harmful matter to create a specific area labeled "adults only."⁹

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9. *Id.* sec. 3, at ____ (amending CAL. PENAL CODE § 313.1(e)). It is an infraction to fail to create an "adults only" area, punishable by a fine of up to \$100. *Id.* It is not an infraction to fail to place a video recording in this area, regardless of its content. *Id.* This section does not apply to libraries. *Id.* See CAL. EDUC. CODE § 18710(l) (West Supp. 1989) (definition of library). See generally Dibble, *Obscenity: A State Quarantine to Protect Children*, 39 S. CAL. L. REV. 345 (1966) (the need for regulatory laws to protect children from obscenity).

Juveniles; trying as adults

Welfare and Institutions Code § 707 (amended).
AB 1456 (Epple); 1989 STAT. Ch. 820

Chapter 820 requires youths sixteen and over to be tried as adults when they commit certain violent crimes while engaged in criminal gang activity.¹

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1. 1989 Cal. Stat. ch. 820, sec. 1, at ____ (amending CAL. WELF. & INST. CODE § 707). The violent crimes include: (1) Murder; (2) rape; (3) armed robbery; (4) forcible rape; (5) sodomy by force; (6) lewd acts; (7) oral copulation by force; (8) kidnapping; (9) assault; (10) manufacturing or selling controlled substances; or (11) any violent felony described in section 667.5 of the Penal Code. *Id.* See CAL. PENAL CODE § 186.22 (Deering 1989) (definition of criminal gang activity).

