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Juveniles

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Juveniles

Juveniles; adoption and reunification services after severe sexual abuse or physical harm

Civil Code § 222.71 (new); Welfare and Institutions Code § 361.5 (amended).
SB 1564 (Watson); 1992 STAT. Ch. 455

Under existing law, a petition to adopt a child¹ must be filed in the county in which the petitioner resides.² Under Chapter 455, a petition to adopt a minor who has previously been a dependent of the court³ but is now free for adoption, may be filed in the county in which the petitioner resides, or the county in which the child was freed for adoption.⁴

Existing law requires a probation officer to provide welfare services⁵ to a dependent of the court in order to facilitate reunification of the family within a maximum time period of twelve months.⁶ Existing law further provides that reunification services need not be provided when the court finds that the whereabouts of the parents is unknown or the parent is incapable of utilizing the child welfare services because of a mental disability.⁷ The requirement for

1. See CAL. CIV. CODE § 220.20(e) (West Supp. 1992) (defining child as a minor child); *id.* § 25 (West Supp. 1992) (defining a minor as a person under 18 years of age); CAL. WELF. & INST. CODE § 101(b) (West Supp. 1992) (defining a child or minor as a person under 18 years of age).

2. CAL. CIV. CODE § 222.70(a) (West Supp. 1992).

3. See CAL. WELF. & INST. CODE § 300(a)-(j) (West Supp. 1992) (describing circumstances under which a minor may be adjudged a dependent child of the court).

4. CAL. CIV. CODE § 222.71 (enacted by Chapter 455).

5. See CAL. WELF. & INST. CODE § 300(j) (West Supp. 1992) (declaring that it is the intent of the legislature to provide maximum protection for children who are currently being abused, neglected, or exploited, or are at risk of that harm, by providing a full array of social and health services to preserve the family whenever possible).

6. *Id.* § 361.5(a) (amended by Chapter 455). An extension of up to six months may be granted so long as reunification of the family can be achieved within this extended time period. *Id.*

7. *Id.* § 361.5(b)(1)-(2) (amended by Chapter 455). See generally Paul Bernstein, *Termination of Parental Rights on the Basis of Mental Disability: A Problem in Policy and Interpretation*, 22 PAC. L.J. 1155, 1158-72 (1991) (discussing the discrepancy between the legislative intent and judicial interpretation of § 232(a)(6) of the California Civil Code which sets forth the state's power to take children away from parents who have been identified as mentally ill). An individual must merely have a "mental disability," a term not specifically defined in law or the mental health profession, to fall under the provisions of § 232(a)(6). *Id.* at 1156 n.4. The standard of proof for court findings

reunification services is excused by existing law if the minor has been determined to have been a victim of repeated physical or sexual abuse, the parent of the minor has previously caused the death of another child through abuse or neglect, or the minor is under the age of five and has suffered severe physical abuse⁸ by a parent.⁹

Chapter 455 includes in the above exceptions to mandatory reunification services a judicial finding that a minor was adjudicated a dependent child as a result of severe sexual abuse¹⁰ or severe physical harm¹¹ by a parent, and that reunification services would not benefit the child.¹² Chapter 455 stipulates that relevant factors for determining whether reunification services would benefit the child shall include (1) the specific act or omission comprising the infliction of severe sexual abuse or severe physical harm, (2) the

under this section is clear and convincing evidence. CAL. WELF. & INST. CODE § 361.5(b) (amended by Chapter 455).

8. See CAL. WELF. & INST. § 300(e) (West Supp. 1992) (defining severe physical abuse as any of the following: (1) Any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; (2) any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or (3) more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness).

9. *Id.* § 361.5(b)(3)-(5) (amended by Chapter 455); see *id.* § 300(e) (West Supp. 1992) (granting a juvenile court the authority to adjudge as a dependent child of the court a minor under the age of five who has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the minor); *id.* § 300(a) (West Supp. 1992) (declaring that serious physical harm does not include reasonable and age-appropriate spanking to the buttocks without evidence of serious physical injury); see also *id.* § 361.5(b)(3) (amended by Chapter 455) (declaring that further reunification services are not necessary if welfare services have previously been administered due to prior physical or sexual abuse, but additional physical or sexual abuse subsequent to reunification have necessitated removal from the custody of the parent or guardian once again). Where previous reunification efforts have been unsuccessful for other children of a parent having an extensive history of psychiatric problems and numerous criminal arrests, reunification services are still required as part of the disposition of the court in a case involving a different child. *In re John B.*, 159 Cal. App. 3d 268, 273, 205 Cal. Rptr. 321, 323 (1984).

10. See CAL. WELF. & INST. CODE § 361.5(b)(6) (amended by Chapter 455) (setting forth the bases for a finding of severe sexual abuse).

11. See *id.* (setting forth the bases for a finding of severe physical harm).

12. *Id.*; see *In re Audrey D.*, 100 Cal. App. 3d 34, 39-40, 160 Cal. Rptr. 802, 805 (1979) (holding that a mother who contested the renewal of a disposition order granting custody of her minor daughter to the child's great-grandmother had the burden of proving that a return to parental custody would not be detrimental to the child). The mother was not required to further prove that a return to parental custody would be in the child's best interest to establish her right to custody of her child as against that of a nonparent. *Id.* at 44, 160 Cal. Rptr. at 808.

circumstances surrounding the incident, (3) the severity of resulting emotional trauma suffered by the child, (4) the history of abuse of other children, (5) the likelihood that reunification may safely take place within eighteen months, and (6) whether or not the child desires to be reunified with the parent.¹³ Chapter 455 also requires the court to document the basis for a finding of severe sexual abuse or severe physical harm, as well as the factual findings used to determine whether reunification services would benefit the child.¹⁴

DTF

Juveniles; parental liability

Welfare and Institution Code §§ 207.2, 903.25 (new); §§ 207.1, 209, 731.8, 731.9, 903.45 (amended).
SB 1274 (Presley and Thompson); 1992 STAT. Ch. 429
(Effective August 3, 1992)

Under existing law, the juvenile court may require a parent¹ to pay the reasonable costs² of support of a minor³ in the custody⁴ of

13. CAL. WELF. & INST. CODE § 361.5(h)(1)-(6) (amended by Chapter 455).

14. *Id.* § 361.5(i) (amended by Chapter 455); *see id.* § 361.5(f) (amended by Chapter 455) (requiring the court to order a hearing within 120 days of the dispositional hearing if reunification services are not ordered).

1. *See In re Jason V.*, 229 Cal. App. 3d 1168, 1172, 280 Cal. Rptr. 562, 564 (1991) (stating that the term "parent" as used in this section means mother and father, not legal guardians).

2. *See CAL. WELF. & INST. CODE* § 903(c) (West Supp. 1992) (stating that "reasonable costs" refers only to actual costs incurred through the provision of food, clothing, shelter, and medical expenses, but in any case not to exceed \$15 per day); *see also In re Jerald C.*, 36 Cal. 3d 1, 7, 678 P.2d 917, 920, 201 Cal. Rptr. 342, 345 (1984) (holding such expenses cannot include costs of treatment, supervision, or rehabilitation); *In re Nathaniel Z.*, 187 Cal. App. 3d 1132, 1135, 232 Cal. Rptr. 378, 380 (1987) (stating that reasonable costs do not include the costs of a supervision plan and probation); *In re Jerald C.*, 33 Cal. 3d 1, 14, 654 P.2d 745, 755-56, 187 Cal. Rptr. 562, 571-72, (1982) (Kaus, J., concurring and dissenting) (stating that \$33 per day of detention is excessive, while \$25 per month is reasonable), *vacated*, 36 Cal. 3d 1, 678 P.2d 917, 201 Cal. Rptr. 342 (1984).

3. CAL. CIV. CODE § 25 (West 1988) (defining minor); *see In re Jesse V.*, 214 Cal. App. 3d. 1619, 1623, 263 Cal. Rptr. 369, 372 (1989) (holding the term minor as used in this section means a person under the age of 18).

4. *See CAL. WELF. & INST. CODE* § 17.1 (West 1984) (defining custody).

or detained in a facility pursuant to a juvenile court order.⁵ Such liability is limited to the parents' ability to pay⁶ as determined by a county financial evaluation officer.⁷

Chapter 429 creates parental liability for the costs of transporting the juvenile to a juvenile facility and for the reasonable costs incurred for food, shelter, and care if the parent has actual notice⁸ of the minors' pending release, if it is reasonable for the parent to retrieve the minor, and if the parent fails to take custody of the minor.⁹ Under Chapter 429, such costs must not exceed \$100 per day and will be limited to the parents' ability to pay.¹⁰

DHT

5. *Id.* § 903(a) (West Supp. 1992); *see id.* § 903.1 (West 1984) (imposing liability on parents for the cost of a minor's legal services; *id.* § 903.2 (West 1984) (imposing liability on parents for costs of probation supervision); *id.* § 903.4 (West Supp. 1992) (imposing parental liability for expenses incurred in sealing traffic records); *see also* *City of Alameda v. Espinoza*, 243 Cal. App. 2d 534, 541-46, 52 Cal. Rptr. 480, 485-88 (1966) (holding that the right to seek reimbursement is based on the parents' preexisting support obligation). *See generally* Larrie R. Brainard, *Parental Responsibility for the Costs of Juvenile Detention*, 3 CAL. W. L. REV. 134, 134-49 (1967) (outlining the judicial application of parental liability statutes).

6. *See* CAL. WELF. & INST. CODE § 903(a) (West Supp. 1992) (providing that the County Financial Officer must take into consideration the parents' income, preexisting obligations, and the number of dependent family members when evaluating ability to pay).

7. *Id.* § 903.45(a) (amended by Chapter 429); *see* CAL. GOV'T CODE § 27750 (West 1988) (defining the duties of a County Financial Officer). In evaluating a person's ability to pay, the County Financial Officer is instructed to consider the family's income, the family's obligations, and the number of persons dependent on the family's income. CAL. WELF. & INST. CODE § 903.45(b) (amended by Chapter 429).

8. *See* CAL. WELF. & INST. CODE § 207.2(b)(1) (enacted by Chapter 429) (providing for actual notice by telephone or written communication from the appropriate law enforcement agency).

9. *Id.* § 207.2(b)(1)-(3) (enacted by Chapter 429); *cf.* COLO. REV. STAT. ANN. § 23-23-105 (West 1990) (providing a similar statute for reimbursement of transportation costs from parents upon juvenile court order).

10. CAL. WELF. & INST. CODE § 207.2(c)-(d) (enacted by Chapter 429).

Juveniles; representation in juvenile court

Welfare and Institutions Code §§ 318, 681.5 (new).
AB 3663 (Horcher); 1992 STAT. Ch. 1327

Under existing law, district attorneys are authorized to prosecute minors¹ as well as represent minors in dependency cases.² Chapter 1327 provides that a district attorney who has previously represented a minor in a dependency proceeding may not prosecute that minor for a crime.³ Further, Chapter 1327 requires that records kept concerning the dependency hearing be kept confidential, and may not be discussed nor inspected by other members of the office.⁴ In addition, Chapter 1327 precludes a district attorney that has prosecuted a minor from representing that minor in a dependency case.⁵

HAT

1. See CAL. PENAL CODE § 313(g) (West Supp. 1992) (defining minor as any natural person under 18 years of age).

2. CAL. WELF. & INST. CODE § 317 (West 1992); *id.* § 602 (West 1984); *see id.* § 300 (West Supp. 1992) (enumerating persons subject to the jurisdiction of the juvenile court). *See generally* Howard Davidson, *The Child's Right to be Heard and Represented in Judicial Proceedings*, 18 PEPP. L.R. 255 (1991) (discussing the current problems with juvenile representation in the court system); John E. Coons & Robert H. Mnookin, *Puzzling Over Children's Rights*, 1991 B.Y.U. L. REV. 307 (1991) (discussing legal reform for children's rights); Barry Feld, *The Right to Counsel in Juvenile Court: An Empirical Study of When Lawyers Appear and the Difference They Make*, 79 CRIM. L. & CRIMINOLOGY 1185 (1985) (discussing the lawyer's role in juvenile proceedings). *Cf.* MINN. STAT. ANN. § 260.255 (West 1992); VA. CODE ANN. § 16.1-266(A) (1988) (regulating children's right to representation in legal proceedings).

3. CAL. WELF. & INST. CODE § 318 (enacted by Chapter 1327); *cf. In re Albert B.*, 215 Cal. App. 3d 361, 382, 263 Cal. Rptr. 694, 705 (1989) (stating that when a district attorney was appointed as independent counsel to represent minors at dependency hearings, as well as to prosecute parents for criminal conduct arising out of circumstances that led to children being declared dependents, no conflict of interest existed).

4. CAL. WELF. & INST. CODE § 318 (enacted by Chapter 1327).

5. *Id.* § 618.5 (enacted by Chapter 1327). The apparent purpose of this bill is to prevent the direct conflict of interest which could occur if confidences divulged for use in dependency hearings were used in a later prosecution against the minor by the same office which previously represented that minor. ASSEMBLY COMMITTEE ON PUBLIC SAFETY, ANALYSIS OF AB 3663, at 1 (April 7, 1992).

Juveniles; treatment and residential shelter services

Civil Code § 25.9 (amended).

AB 3353 (Gotch and Vasconcellos); 1992 STAT. Ch. 252

Under existing law, a minor who is at least twelve years old may consent to outpatient mental health treatment or counseling¹ without the consent of a parent if the minor has been an alleged victim of incest or child abuse, or where lack of treatment would create a serious danger for the minor or others.² Chapter 252 allows these minors to consent to residential shelter services³ without requiring the consent of a parent.⁴ Under Chapter 252, the individual offering residential shelter services must attempt to notify the minor's parent

1. See CAL. CIV. CODE § 25.9(e) (amended by Chapter 252) (defining mental health treatment or counseling services). See generally Franklin E. Zimring, *Legal Perspectives on Family Violence*, 75 CAL. L. REV. 521, 521 (1987) (stating that family violence is a chronic aspect of American life, but that public concern about societal responses is growing, along with increased social awareness about child abuse and sexual exploitation of children); Elyce H. Zenoff & Alan B. Zients, M.D., *If Civil Commitment is the Answer for Children, What are the Questions?*, 51 GEO. WASH. L. REV. 171, 174 (1983) (examining the different efforts in the legal community to implement a residential treatment policy, and concluding that the legal community has failed to address the complex questions presented by the treatment of minors for mental illness).

2. CAL. CIV. CODE § 25.9(a) (amended by Chapter 252). The attending professional person must believe the minor is mature enough to participate intelligently in mental health counseling. *Id.*; see *id.* § 25.9(d) (defining professional person). Laws of other states also allow a minor to consent to outpatient mental health treatment. See, e.g., ALA. CODE § 22-8-3 (1990); COLO. REV. STAT. ANN. § 27-10-103(2) (West 1989); FLA. STAT. ANN. § 394.4784 (West Supp. 1992); ILL. ANN. STAT. ch. 91 1/2, para. 3-501 (Smith-Hurd 1987); KY. REV. STAT. ANN. § 214.185 (Baldwin 1991); MICH. COMP. LAWS ANN. § 330.1707 (West Supp. 1992); MONT. CODE ANN. § 53-21-112 (1991); N.Y. MEN. HYG. LAW § 33.21(e) (McKinney 1988); OHIO REV. CODE ANN. § 5122.04 (Baldwin 1989); VA. CODE ANN.(D)(4) § 54.1-2969 (Michie 1991); WASH. REV. CODE ANN. § 71.34.030 (West 1992).

3. See CAL. CIV. CODE § 29.9(e) (amended by Chapter 252) (defining residential shelter services as a facility which provides residential and support services on temporary or emergency basis to only minors operated by a government agency, someone with a contract from a governmental agency, an agency which receives community funding, or a licensed community care facility or crisis resolution center; or the provision of other support services on a temporary or emergency basis by any professional person); *id.* § 25.9(d) (defining professional person).

4. *Id.* § 25.9(a) (amended by Chapter 252). See generally Sonni Efron, *Abused Teens Shelter has Wolf at the Door*, L.A. TIMES, Aug. 9, 1990, at B1 (estimating that 80% of the children who pass through the Casa Youth Shelter in Orange County have been physically or sexually abused or have parents who abuse drugs or alcohol).

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of such services,⁵ yet the parents are not liable for payment unless they have consented to the residential shelter services.⁶

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5. CAL. CIV. CODE § 25.9(a) (amended by Chapter 252).

6. *Id.* § 25.9(b) (amended by Chapter 252).

