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Juveniles

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Juveniles

Juveniles; reunification policies and dependent minors

Civil Code §§232, 232.9 (amended); Welfare & Institution Code §§206, 320, 355.8, 366, 16501.1, 16504, 16505, 16506, 16506.1, 16511, 16511.5, 16512, 18250, 18251, 18252, 18253, 18254 (repealed); 202.5, 206, 304.5, 366, 366.2, 366.25, 10200, 10201, 10202, 10203, 16501.1, 16501.2, 16501.3, 16503, 16504, 16504.1, 16506, 16506.1, 16507, 16507.1, 16507.2, 16507.3, 16507.4, 16507.5, 16507.6, 16508, 16508.1, 16509.1, 16509.2 (new); 307, 308, 309, 311, 319, 321, 330, 341, 346, 352, 356, 360, 361, 362, 364, 365, 727, 12054, 12251, 12301.1, 12304, 16500, 16501, 16502, 16504 (amended); 16505, 16506, 16507, 16508, 16509, 16510 (amended and renumbered as 16504.1, 16511, 16512, 16509, 16513, 16514 respectively).

SB 14 (Presley); STATS. 1982, Ch 978

(Effective September 12, 1982)

Support: County Welfare Directors Association; Department of Finance; Department of Social Services; Family Service Council of California; United Way

Opposition: County of Los Angeles

Since 1976, a trend has been developing in California to seek alternatives and objective standards¹ in providing foster care² with an emphasis on temporary rather than permanent placement.³ In addition, the federal Adoption Assistance and Child Welfare Act of 1980⁴ provides that the primary goal of foster care is the reunification of the minor with the parents or alternatively, placement of the minor in a permanent living situation.⁵ Chapter 978 enforces some of the declared policies of the state⁶ and mirrors the goals of the Federal Child Welfare and Adoption Assistance Act of 1980.⁷

1. *See generally* CAL. STATS. 1981, c. 104, §§1-25, (amending CAL. STATS. 1976, c. 977, §§1-33, at 2281-2305).

2. CAL. WELF. & INST. CODE §11400(c) (definition of foster care).

3. *See id.* §396. *See generally* Musewicz, *Foster Care Reform*, 54 S. CAL. L. REV. 633 (1981) (discussing current problems and possible solutions of the foster care system).

4. *See generally* 42 U.S.C. §§671-675 (Supp. IV 1980) (selected codification of the Adoption Assistance and Child Welfare Act of 1980).

5. *See id.*

6. *See* CAL. WELF. & INST. CODE §396.

7. *Compare* 42 U.S.C. §§671-675 *with* CAL. WELF. & INST. CODE §16501.

Reunification Policies During Temporary Custody

Prior to Chapter 978, a probation officer could detain⁸ a minor⁹ rather than release the minor to the custody of the parent, parents, responsible relative, or guardian (hereinafter referred to as parents) if the officer found the minor was either destitute¹⁰ or in an unfit home.¹¹ Existing law specifies several conditions that must exist before a probation officer may detain a minor.¹² Chapter 978 adds the provision that a probation officer may detain a minor if the parents are likely to flee the jurisdiction if the minor is returned to them.¹³

If the minor is detained in temporary custody,¹⁴ existing law requires that the minor's parents be immediately notified of the minor's whereabouts.¹⁵ Chapter 978, however, prohibits notification of the parents if a juvenile court finds that notification would endanger the child, or that the parents are likely to flee the jurisdiction with the child.¹⁶

Once a minor is taken into temporary custody and detained,¹⁷ existing law requires that the probation officer conduct an investigation of the circumstances that required custody, and the possibility of return to the parents.¹⁸ Chapter 978 requires the probation officer to make attempts to keep the minor with the minor's family by providing child welfare services¹⁹ designed to maintain the family.²⁰

Additionally, in determining what disposition²¹ is in the best interests of the minor and the community, existing law requires the officer to choose the alternative that least restricts the minor's freedom.²² Chapter 978 further requires that the probation officer give first preference to

8. CAL. CT. RULES 1302(a)(3) (defining detention as any removal of a minor from persons entitled to the minor's physical custody).

9. CAL. CIV. CODE §25 (definition of minor).

10. *See* CAL. STATS. 1976, c. 1068, §7, at 4761 (enacting CAL. WELF. & INST. CODE §309).

11. *See id.*

12. *See* CAL. WELF. & INST. CODE §309 (providing that a minor must be released to the custody of the parents unless (1) the minor lacks proper and effective parental control, (2) the minor's detention is urgent and necessary for the minor's protection, (3) the minor is physically dangerous to the public due to a physical or mental illness, (4) the minor is likely to flee the jurisdiction, or (5) the minor has violated an order of the juvenile court).

13. *Id.* §309(a)(4).

14. *See generally id.* §307 (alternatives the probation officer may select as to the disposition of the minor).

15. *See id.* §308(a).

16. *Compare id.* §308(a) with CAL. STATS. 1980, c. 1092, §1 at 3505 (amending CAL. WELF. & INST. CODE §308).

17. *See generally* CAL. CT. RULES 1307(c)(1-10) (listing factors the probation officer should consider in determining whether detention is necessary for the protection of the minor).

18. *See* CAL. WELF. & INST. CODE §309(a).

19. *See id.* §16501 (defining child welfare services).

20. *See id.* §309(a).

21. *See id.* §307(a), (b), (c) (alternative dispositions a probation officer can make of a detained minor).

22. *See id.* §307(c).

the disposition that least interferes with parental custody if this is compatible with the minor's safety.²³

Under existing law, when a petition is filed to declare a minor a dependent of the court,²⁴ a detention hearing is held²⁵ for the purpose of determining if continued temporary detention is warranted.²⁶ At the hearing, Chapter 978 requires the probation officer to report the reasons why the minor was originally taken into custody and detained,²⁷ the possible need for further detention,²⁸ and the child welfare services used to facilitate reunification of the family.²⁹

Under existing law, if a minor has violated a juvenile court order or escaped a court commitment,³⁰ or if detention is necessary for the protection of the minor or the community,³¹ the juvenile court may order continued detention.³² Additionally, Chapter 978 allows the court to continue the minor's detention if detention is the only protection available against aggravation of the minor's existing physical or mental illness³³ or if the minor's parents are likely to flee the jurisdiction of the court.³⁴

Under existing law, the probation officer, with parental consent, may, in lieu of filing a petition to declare the minor a dependent of the court, or if the petition has been dismissed,³⁵ undertake a program of informal supervision for a period of six months.³⁶ Chapter 978 allows an extension of the informal supervision program for an additional six months if it can be shown that the objectives of the child welfare service plan³⁷ can be met.³⁸

If an informal supervision program is initiated, Chapter 978 requires the probation officer to attempt to ameliorate the family situation by providing the family with child welfare services.³⁹ If the family refuses

23. *See id.*; *see also* Stanley v. Illinois, 405 U.S. 645, 651 (1972) (holding that the right of a parent to raise his or her own child is fundamental).

24. CAL. WELF. & INST. CODE §325.

25. *See generally id.* §315 (requiring the detention hearing to be within one judicial day after a petition has been filed).

26. *See generally id.* §309.

27. *See id.* §319.

28. *See id.*

29. *See id.* §§319, 16506, 16506.1.

30. *Id.* §319(b).

31. *See id.* §319(c).

32. *See id.* §319.

33. *See id.* §319(a).

34. *See id.* §319(c).

35. *See id.* §§333, 356.

36. *See id.* §330. *See generally* CAL. CT. RULES 1307(e) (factors to be considered before initiating informal supervision).

37. *See generally* CAL. WELF. & INST. CODE §16501.

38. *Id.* §330 (commencing October 1, 1983).

39. *See id.* §§330, 16501.1, 16506.

to cooperate with the offered services, Chapter 978 permits the probation officer to commence proceedings to declare the minor a dependent of the court.⁴⁰

Reunification Policies During Dependency Hearings

Under existing law, a continuance of a dependency hearing may be granted beyond the required time limits⁴¹ if the continuance is not contrary to the interests of the minor.⁴² Chapter 978 establishes that in determining the interests of the minor, the court must give substantial weight to (1) the minor's need for prompt resolution of the custody status, (2) the minor's need to be placed in a stable environment, and (3) the damage done to the minor due to prolonged temporary placement.⁴³

After hearing the evidence, the court may under existing law, adjudge the minor a dependent of the court⁴⁴ under certain conditions.⁴⁵ In lieu of making this finding, Chapter 978 allows the court to leave the minor in the physical custody of the parents and order that the family be provided family maintenance services⁴⁶ and placed under the informal supervision of a probation officer for up to 12 months.⁴⁷

Existing law provides that when the minor is adjudged to be a dependent of the court, the court has broad powers to limit the control that the parents may exercise over the minor.⁴⁸ Chapter 978 specifies that the limitations set by the court must not exceed those necessary to protect the minor.⁴⁹ Under prior law, before a minor could be ordered removed from the physical custody of the parents, the court was required to find evidence that the parents were incapable of providing for the minor or that continued parental custody was detrimental to the welfare of the minor.⁵⁰ With the enactment of Chapter 978, the court can remove a dependent minor from parental custody only if the court finds by clear and convincing evidence that (1) there is a physical dan-

40. *See id.* §330.

41. *See id.* §334.

42. *See id.* §352(a).

43. *Id.*

44. *See id.* §360(b); CAL. CT. RULES 1377(a)(1), (2).

45. *See generally* CAL. WELF. & INST. CODE §300 (listing conditions under which a minor can be adjudged a dependent of the court).

46. *See id.* §§16506, 16506.1, 16507, 16507.1.

47. *See* CAL. WELF & INST. CODE §360(a). *See generally In re David*, 91 Cal. App. 3d, 184, 154 Cal. Rptr. 63 (1979) (holding that a court should consider the least severe alternative that will help keep the family intact).

48. *See* CAL. WELF. & INST. CODE §361(a).

49. *Id.*

50. *See* CAL. STATS. 1976, c. 1068, §10, at 4773 (enacting CAL. WELF. & INST. CODE §§360-369).

ger to the minor if left in the custody of the parents,⁵¹ (2) the parents are unwilling to take physical custody of the minor and they have been notified of the possible consequences,⁵² (3) the minor requires protection due to severe mental illness,⁵³ or (4) the minor has been sexually abused or does not wish to go back to the parents and removal from parental custody is the only way to afford the minor protection from further sexual abuse.⁵⁴ Chapter 978 further requires the court to inform the parents that their rights to the child may be permanently terminated⁵⁵ if they do not resume physical custody within 12 months.⁵⁶

When a minor is removed from the physical custody of the parents,⁵⁷ Chapter 978 provides that, to facilitate reunification of the family, the minor may be placed with relatives,⁵⁸ or if that is not possible, in a foster care setting located in the county where the parents reside.⁵⁹ If there is no appropriate placement in that county, Chapter 978 requires that preference be given to placements in adjacent counties.⁶⁰ Chapter 978 emphasizes, however, that the requirement of placing the minor as close to the parents as possible does not take precedence over a stable home; thus ensuring that the minor will not endure multiple placements in order for the probation officer to meet the placement requirement.⁶¹

If the probation officer must change any placement of the minor to a location outside of the parent's county, the probation officer is required by Chapter 978 to notify the parents in writing of the proposed change and the reasons for it.⁶² The notification must be served on the parents at least 14 days before the proposed change in placement is to occur.⁶³ The parents then have seven days after receipt of the notice to object to the change in placement.⁶⁴ If they make a timely objection, Chapter 978 requires the juvenile court to hold a hearing within five days.⁶⁵ If

51. See CAL. WELF & INST. CODE §361(b)(1).

52. See *id.* §§361(b)(2), 366. See generally CAL. CIV. CODE §232 (providing grounds for declaring a minor permanently free from parental custody).

53. See CAL. WELF. & INST. CODE §361(b)(3).

54. See *id.* §361(b)(4).

55. See CAL. CIV. CODE §232.

56. See CAL. WELF & INST. CODE §§361(b), 366.

57. See generally *id.* §361(b).

58. See *id.* §361(c); see also *id.* §281.5 (requiring a probation officer recommending removal of the minor from parental custody to give primary consideration to recommending placement with a relative if it is in the best interests of the minor).

59. *Id.* §361(c).

60. See *id.*

61. See *id.*

62. See *id.* §361(d).

63. See *id.* (excepting that notice is not required if the minor's health or well being is endangered by delaying the action or endangered if prior notice is given).

64. *Id.*

65. *Id.*

the court finds that the needs of the minor require placement outside of the county, the court may so order.⁶⁶

Chapter 978 requires the court in dependency hearings to order the probation officer to provide child welfare services⁶⁷ to the minor and the parents for the purpose of reuniting the family.⁶⁸ These services may be offered for up to 18 months if the objectives of the child welfare service plan⁶⁹ can be met in that time.⁷⁰ Chapter 978 further stipulates that physical custody of the minor by the parents during that 18 month period does not interrupt the running of the period during which services may be offered.⁷¹

Chapter 978 provides that after a disposition hearing that places the minor under the supervision of the juvenile court but allows the minor to stay with the parents, the hearing must be continued within six months of the original disposition hearing.⁷² Chapter 978 requires that 16 days before the hearing, the probation officer must file a supplemental report with the court describing the services offered the family and any progress made by the family in resolving their problems.⁷³ The report must include the probation officer's recommendations concerning the necessity of continued supervision, and a copy of the report must be furnished to all the parties at least 14 days prior to the hearing.⁷⁴

If the probation officer recommends continued supervision, Chapter 978 requires the probation officer to establish at the continued hearing, by a preponderance of the evidence, that the conditions which necessitated the officer's original intervention still exist.⁷⁵ If the officer meets this burden of proof, the court can retain jurisdiction⁷⁶ over the minor and order continued supervision of the family for an additional six months.⁷⁷

Under prior law, when a minor was adjudged a dependent of the court and removed from the physical custody of the parents, the dependency hearing had to be continued to a specified date within one year

66. *Id.*

67. *See id.* §16501.

68. *See id.* §361(e).

69. *See id.* §16501.

70. *See id.* §361(e).

71. *Id.*

72. *See id.* §364(a).

73. *See id.* §364(b).

74. *Id.*

75. *See id.* §364(c).

76. *See id.*; *In re B.G.*, 11 Cal. 3d 679, 691-92, 523 P.2d 244, 252, 114 Cal. Rptr. 444, 452 (1974) (holding that once a court has established jurisdiction over the minor, the court may continue the jurisdiction as long as it is in the interests of the minor).

77. *See* CAL. WELF. & INST. CODE §364(d).

to provide for a review of the minor's placement.⁷⁸ The Federal Child Welfare and Adoption Assistance Act of 1980 requires states seeking federal funds to review dependency cases every six months.⁷⁹ Chapter 978, conforming to federal law, requires that the status of all dependent children be reviewed at least every six months to determine at the review hearing whether continued foster care is necessary.⁸⁰ Furthermore, Chapter 978 provides that all interested parties must be notified of the hearing date not earlier than 30 days nor later than 15 days preceding the continued hearing date.⁸¹ Additionally, Chapter 978 requires the probation officer to file a supplemental progress report with the court at least 16 days prior to the hearing.⁸² A copy of the report is to be sent to the parents at least 14 days before the hearing.⁸³

Chapter 978 requires that the probation officer prove that the return of the minor to the physical custody of the parents would create a substantial risk of detriment to the minor.⁸⁴ The failure of the parents to participate in court-ordered treatment programs may be offered as prima facie evidence that return of the minor to parental custody would be detrimental.⁸⁵ The court is required under Chapter 978 to inform the parents that if the minor cannot be returned to their custody by the next review hearing,⁸⁶ their parental rights can be permanently severed.⁸⁷

Policies to Provide a Permanent Home

Chapter 978 creates the procedure of a permanency planning hearing⁸⁸ when a minor cannot be returned to the parent's custody.⁸⁹ Furthermore, Chapter 978 requires that the court order this hearing no later than 12 months after the original foster care placement.⁹⁰ The purpose of the permanency planning hearing is to provide a stable and permanent home for the minor.⁹¹ While the minor remains in foster care awaiting a permanent home, a periodic review of the appropriate-

78. See CAL. STATS. 1976, c. 1068, §10, at 4773 (enacting CAL. WELF. & INST. CODE §§360-369); CAL. R. CT. 1377(f).

79. See 42 U.S.C. §§671(a)(16), 675(5)(B) (Supp. IV 1980).

80. See CAL. WELF. & INST. CODE §§366(a), (b), 16503.

81. See *id.* §366.2(a).

82. See *id.* §366.2(c).

83. *Id.*

84. See *id.* §366.2(d).

85. See *id.*

86. *Id.*

87. *Id.*; see CAL. CIV. CODE §232.

88. See CAL. WELF. & INST. CODE §366.25.

89. See *id.* §366.2.

90. *Id.* §§366.25(a), 16503.

91. See *id.* §366.25(a).

ness of the placement must occur at least once every six months.⁹² All parties must be notified of these review proceedings,⁹³ which are to be conducted by an administrative review board unless judicial review is requested by the parents or required by the juvenile court.⁹⁴

Chapter 978 provides that if the court determines at the permanency planning hearing that there is not a substantial probability that the minor will be returned to the parents within six months of continued foster care, the court must develop a plan to obtain a permanent home for the minor.⁹⁵ The court is required to determine if adoption is available.⁹⁶ If it is, Chapter 978 requires the court to commence proceedings to permanently sever the parents' rights unless (1) the parents have maintained contact with the minor through regular visitation and the minor will benefit from continuing this relationship,⁹⁷ (2) the minor is 12 years of age or older and objects to the termination of parental rights,⁹⁸ or (3) the foster parents are unable to adopt the minor but are willing and capable of providing a permanent home and removal of the minor would be detrimental.⁹⁹

If the minor is found to be unadoptable under one of these conditions,¹⁰⁰ and there is an adult available to become a legal guardian, Chapter 978 requires the court to order the appropriate county department to initiate guardianship proceedings.¹⁰¹ If no adults are available for legal guardianship, the court may place the minor in an environment that is reasonably expected to provide the minor with a stable home.¹⁰² If the minor is in a foster home and the foster parents are willing to provide a permanent home, Chapter 978 requires that the minor not be removed.¹⁰³

92. *See id.* §§366(a), 366.25(g), (j).

93. *See id.* §366.25(b).

94. *Id.* §366.25(j).

95. *See id.* §§366.25(c), (d).

96. *See id.* §§366.25(d)(1), 366.25(f) (if adoption occurs, the court's jurisdiction over the minor is terminated).

97. *Id.* §366.25(d)(1)(A). *But see id.* §366.25(h) (stating that physical custody for insubstantial periods of time does not interrupt the 12 month period allowed before the termination of parental rights).

98. *Id.* §366.25(d)(1)(B).

99. *Id.* §366.25(d)(1)(C).

100. *See generally id.* §366.25(d)(1).

101. *See id.* §§366.25(d)(2), 366.25(e) (guardianship proceedings for dependent minors of the court must be held in the juvenile court).

102. *Id.* §366.25(d)(3).

103. *See id.*; *In re B.G.* 11 Cal. 3d 679, 692-93, 523 P.2d 244, 253-54, 114 Cal. Rptr. 444, 453 (1974) (establishing foster parent rights in dependency proceedings).

Conclusion

Chapter 978 brings the standards used in the placement of minors in foster care and the procedures used to terminate parental rights in California into conformance with federal law.¹⁰⁴ The focus of Chapter 978 is on the reunification of families or alternatively, the placement of the minor in a permanent living situation.¹⁰⁵ The desired result of the enactment of Chapter 978 is to create less emphasis on the use of foster care as a permanent rather than temporary placement for minors from troubled families.¹⁰⁶

104. See generally Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 96-272, 1981 U.S. CODE CONG. & AD. NEWS (3 Stat.) 1448.

105. See CAL. WELF. & INST. CODE §396. See generally *Musewicz, Foster Care Reform*, 54 S. CAL. L. REV. 633 (1981).

106. See CAL. WELF. & INST. CODE §396. See generally *Musewicz, Foster Care Reform*, 54 S. CAL. L. REV. 633 (1981).

Juveniles; interlocutory adoption decrees for hard-to-place children

Civil Code §§224n, 226 (amended); Health & Safety Code §10430 (amended); Welfare & Institution Code §§11404, 11461, 16117, 16120, 16120.1, 16120.5, 16121, 16121.1, 16122 (repealed); §§300.1, 11402.5, 11404.1, 11409, 11460, 11461, 11462, 11462.5, 11463, 15200.5, 16120, 16121, 16122, 16123 (new); §§300, 358, 11209, 11210, 11214, 11404, 11404.2, 11450, 15200, 16115, 16115.5, 16116, 16118 (amended).

AB 2695 (Moore); STATS. 1982, Ch 977
(Effective September 12, 1982)

Support: County Welfare Directors Association; Department of Finance; Department of Social Services

In an effort to reduce the prolonged use of foster care,¹ Chapter 977 conforms California law to the Federal Adoption Assistance and Child Welfare Act of 1980.² Chapter 977 incorporates some of the provisions of the former Aid for the Adoption Children Program under the title of the Adoption Assistance Program.³ In addition, Chapter 977 allows

1. See CAL. WELF. & INST. CODE §16155.5. See generally *Musewicz, Foster Care Reform*, 54 S. CAL. L. REV. 633 (1981) (discussing the problems and possible solutions in the foster care system).

2. See generally Adoption Assistance and Child Welfare Act of 1980, Pub. L. No. 92-272, 1981 U.S. CODE CONG. & AD. NEWS (3 Stat.) 1448.

3. See CAL. WELF. & INST. CODE §16115.

benefits to be paid to prospective and adopting parents in order to encourage adoption⁴ of hard-to-place children.⁵ Furthermore, Chapter 977 conforms California eligibility standards and benefit payment procedures to federal law to enable California to receive federal aid.⁶

Conforming to federal law,⁷ Chapter 977 allows Adoption Assistance payments to be paid on behalf of hard-to-place children if the following conditions are met: (1) the adoptive parents sign an adoption agreement stipulating the need for, and the amount of, benefits;⁸ (2) the child is either under 18 years of age or is under 21 years of age and has a handicap warranting continued assistance;⁹ (3) the adoptive family is legally responsible for the child's care and support according to the terms of the adoption agreement and the interlocutory adoption decree or the final adoption decree;¹⁰ and (4) the child has been freed for adoption by relinquishment¹¹ to a California adoption agency or through the judicial termination of parental rights.¹²

Chapter 977 requires the adoption assistance agreement¹³ to stipulate the need for Adoption Assistance Program benefits by specifying (1) the duration of the needed assistance, (2) the responsibility of the adoptive family to report changes in circumstances, and (3) provisions for periodic review for recertification to receive benefits.¹⁴ The benefits paid are based on the child's needs and cannot exceed the amount that would be paid for foster care if the adoption placement had not occurred.¹⁵

Under existing law, a child freed for adoption is in the custody and control of the adoption agency even when the child is placed in foster care with the prospective adoptive family.¹⁶ Under prior law, the agency's custody of the child could only be terminated upon issuance of a final decree of adoption.¹⁷ Regarding children eligible for the

4. See *id.* §16121(a); 42 U.S.C. §§627, 673 (Supp. IV 1980).

5. See CAL. WELF. & INST. CODE §16116 (definition of hard-to-place children); see also 42 U.S.C. §673(c) (Supp. IV 1980) (definition of children with special needs).

6. Compare CAL. WELF. & INST. CODE §§11210, 11214, 11404, 11404.1, 11409, 11450, 11460, 11461, 11463 with 42 U.S.C. §§671, 672, 673 (Supp. IV 1980).

7. See 42 U.S.C. §673 (Supp. IV 1980).

8. CAL. WELF. & INST. CODE §16120(a).

9. *Id.* §16120(b); see also 42 U.S.C. §673(a)(3) (Supp. IV 1980).

10. Cal. Welf. & Inst. Code §16120(c). See also 42 U.S.C. §673(a)(3), (4) (Supp. IV 1980).

11. See CAL. CIV. CODE §224n (conditions and procedures required for voluntary relinquishment of a child by the parents).

12. See CAL. WELF. & INST. CODE §16120(d); CAL. CIV. CODE §232 (conditions necessary to declare a child free from parental control and custody).

13. See 42 U.S.C. §675(3) (Supp. IV 1980) (definition of adoption assistance agreement).

14. See CAL. WELF. & INST. CODE §16120(a); see also 42 U.S.C. §673(2) (Supp. IV 1980).

15. CAL. WELF. & INST. CODE §16121(a); see also 42 U.S.C. §673(3) (Supp. IV 1980).

16. See CAL. CIV. CODE §224n.

17. See CAL. STATS. 1976, c. 404, §1, at 1054 (amending CAL. CIV. CODE §224n).

Adoption Assistance Program, Chapter 977 establishes a procedure allowing the petitioner (the family seeking the adoption) and the licensed adoption agency or the Department of Social Services to jointly petition the court for an interlocutory decree of adoption.¹⁸ This decree gives the petitioner legal custody of the child and enables the petitioner to be eligible for adoption assistance benefits.¹⁹ The interlocutory decree automatically becomes a final decree of adoption after 12 months unless a motion to extend, shorten, or set aside the interlocutory decree is filed by an interested party and granted by the court.²⁰ The twelve month period, however, cannot be shortened or extended by more than six months.²¹ Furthermore, Chapter 977 allows any interested party to file a motion to rescind the interlocutory decree if the motion is supported by an affidavit stating the grounds for rescission.²² Chapter 977 requires that timely notice of the proceedings to consider rescission be given to all interested parties.²³

If a child is freed for adoption either by relinquishment or termination of parental rights, and no interlocutory or adoption petitions have been filed within 12 months, then the child falls under the jurisdiction of the juvenile court and becomes a dependent of the court.²⁴ The court is required to conduct a permanency planning hearing to determine the child's future status within 12 months of placement in foster care, and to hold reviews at least once every 18 months.²⁵

18. See CAL. CIV. CODE §224n(b).

19. See *id.*

20. See *id.*

21. See *id.*

22. See *id.*

23. See *id.*

24. See CAL. WELF. & INST. CODE §300(e).

25. See *id.* §§358(b), 366.25(a); see also 14 PAC. L. J., REVIEW OF SELECTED 1982 CALIFORNIA LEGISLATION — (1983).

Juveniles; adult criminal court—disposition of a minor

Welfare and Institutions Code §707.2 (amended).

AB 3190 (Wright); STATS. 1982, Ch 1105

Support: Attorney General; California Youth Authority

Existing law provides that a minor who is found to be unfit for juvenile court treatment¹ may be tried in an adult criminal court.² In addi-

1. CAL. WELF. & INST. CODE §707. See generally 5 CAL. CRIM. DEF. PRAC. (MB) §123.05[5] (discussion of fitness determination process).

tion, if the defendant is found guilty, the court must remand the minor³ to the Youth Authority for evaluation and report before imposing a state prison sentence.⁴ The purpose of this evaluation and report is to determine the minor's amenability to Youth Authority treatment,⁵ however, an exception to this requirement exists when the minor is ineligible for Youth Authority commitment and the report would serve no purpose.⁶

Under prior law, a further prerequisite to the imposition of a state prison sentence for a minor was that the court determine that the minor was unsuitable for Youth Authority commitment.⁷ Although the statute did not direct the court to follow the recommendation of suitability by the Youth Authority,⁸ subsequent judicial interpretation held that there must be substantial evidence to support a finding of unsuitability and that failure to accord proper weight to the recommendation constituted an abuse of judicial discretion.⁹ In apparent response to this judicial interpretation, Chapter 1105 eliminates the finding requirement.¹⁰ Furthermore, in an apparent attempt to limit the impact of the Youth Authority report, Chapter 1105 provides that the *primary* considerations in the determination of the appropriate disposition for the minor are as follows: (1) the need to protect society, (2) the nature and seriousness of the offense, (3) the interests of justice, (4) suitability to Youth Authority treatment, and (5) the needs of the minor.¹¹

2. CAL. WELF. & INST. CODE §707.1 (this section gives the local prosecuting attorney the authority to file an accusatory pleading).

3. The term "minor," as used in section 707.2 of the California Welfare and Institutions Code, has been construed to include any person within the age of those subject to training by the Youth Authority. *People v. Black*, 32 Cal. 3d 1, 11, 184 Cal. Rptr. 454, 459, 648 P.2d 104, 109 (1982).

4. CAL. WELF. & INST. CODE §707.2.

5. *Id.*

6. *See id.* §1731.5; *see also* *People v. Garcia*, 115 Cal. App. 3d 85, 108, 171 Cal. Rptr. 169, 183 (1981).

7. CAL. STATS. 1976, c. 1069, §1, at 4808 (amending CAL. WELF. & INST. CODE §707.2).

8. *Id.*

9. *People v. Carl B.*, 24 Cal. 3d 212, 220, 155 Cal. Rptr. 189, 193, 594 P.2d 14, 18 (1979).

10. *Compare* CAL. WELF. & INST. CODE §707.2 with CAL. STATS. 1976, c. 1069, §1, at 4808.

11. CAL. WELF. & INST. CODE §707.2.