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Juveniles

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Juveniles

Juveniles; youth authority—restitution

Welfare and Institutions Code §§ 1752.82, 1766.1 (amended).
AB 567 (Zeltner); 1987 STAT. Ch. 511

Existing law allows a reasonable deduction¹ from the wages of California Youth Authority² wards³ to pay restitution fines.⁴ Existing law also authorizes the Parole Board⁵ to require, as a condition of parole, that a minor⁶ pay any restitution fine imposed pursuant to juvenile court proceedings.⁷ Under Chapter 511, the wages of a juvenile court ward⁸ are also subject to deduction for the payment of restitution fines.⁹ Chapter 511 requires that payment of restitution fines imposed upon conviction of a crime be made a condition of Youth Authority parole.¹⁰

BAA

1. CAL. WELF. & INST. CODE § 1752.82 (not to exceed twenty percent).

2. *Id.* § 1710 (the California Youth Authority is established under the aegis of the Youth and Adult Correctional Agency).

3. CAL. CIV. CODE § 602 (any person who violates a law of this state while under the age of 18 is within the jurisdiction of the juvenile court).

4. CAL. WELF. & INST. CODE § 1703. *See* CAL. GOV'T CODE § 13967 (the court may order the payment of restitution fines in addition to other penalties).

5. CAL. WELF. & INST. CODE §§ 1714, 1719 (the Youthful Offender Parole Board is appointed by the Governor and is responsible for the return of persons to court for redispotion, discharge, orders to parole and conditions thereof, revocation or suspension of parole, and recommendation for treatment programs).

6. CAL. CIV. CODE § 25 (definition of a minor).

7. CAL. WELF. & INST. CODE § 1766.1.

8. CAL. HEALTH & SAFETY CODE § 1567.2 (definition of wards of juvenile court).

9. CAL. WELF. & INST. CODE § 1752.82 (upon request of the victim, a restitution fine may be paid directly to that victim).

10. *Id.* § 1766.1.

Juveniles; abortion—parental consent

Civil Code § 34.5 (amended); Health and Safety Code § 25958 (new).
AB 2274 (Frazee); 1986 STAT. Ch. 1237

Under existing law, an unmarried minor¹ may give consent for hospital, medical, and surgical care related to the prevention or treatment of pregnancy.² Furthermore, existing case law permits minors to obtain therapeutic abortions³ without parental consent.⁴ Chapter 1237 prohibits an unemancipated⁵ minor from receiving an abortion unless the minor gives written consent and obtains written consent of a parent.⁶ Under Chapter 1237, if parental consent is refused or if the minor elects not to seek parental consent, a minor may judicially bypass the parental consent requirement by petitioning⁷ the juvenile court for an order authorizing the performance of an abortion.⁸ The minor may participate in the juvenile court proceedings on her own behalf, and the court may appoint a guardian ad litem for the minor.⁹ Furthermore, the court must advise the minor of her

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

2. *Id.* § 34.5. Chapter 1237 changes existing law by allowing an unemancipated minor to consent to the prevention or treatment of pregnancy. *Id.* Consent of the minor's parents is not required and the minor's consent will not be disaffirmed because of minority. *Id.*

3. A therapeutic abortion is defined as an abortion performed when there is a substantial risk that continuance of the pregnancy would gravely impair the physical or mental health of the mother or when the pregnancy resulted from rape or incest. CAL. HEALTH & SAFETY CODE § 25951(c). *See id.* § 25954 (definition of mental health).

4. *Ballard v. Anderson*, 4 Cal. 3d 873, 878, 484 P.2d 1345, 1348, 95 Cal. Rptr. 1, 4 (1971). A reasonable construction of California Civil Code section 34.5 permits a minor to obtain a therapeutic abortion without parental consent. *Id.* A mature minor may obtain a therapeutic abortion without parental consent. *See* 57 Op. Att'y Gen. 28 (1974).

5. CAL. CIV. CODE § 62 (definition of emancipated).

6. CAL. HEALTH & SAFETY CODE § 25958(a). Consent of the minor's legal guardian is sufficient. *Id.* Furthermore, parental consent is not required when a medical emergency exists. *Id.* California Civil Code section 34.5 authorizes an unemancipated minor to receive an abortion without parental consent only as provided by California Health and Safety Code section 25958. CAL. CIV. CODE § 34.5.

7. If a minor chooses to petition, the court must assist the minor or person designated by the minor in preparing the required petition and notices. CAL. HEALTH & SAFETY CODE § 25958(b). The petition must specify the minor's reasons for the request. *Id.*

8. *Id.* The court must ensure that the minor's identity is kept confidential. *Id.* No fees or costs incurred in connection with the procedures required by Chapter 1237 will be chargeable to the minor, the minor's parents, or the minor's legal guardian. *Id.* § 25958(e). Confidentiality may be accomplished by filing the petition using only the minor's initials or a pseudonym. *Id.* § 25958(b).

9. *Id.* § 25958(b).

right to request court-appointed counsel.¹⁰ In addition, the hearing must be set within three days from the filing of the petition.¹¹

Under Chapter 1237, the court must authorize the performance of the abortion if the court finds the minor is sufficiently mature and informed to make the decision and has consented to the abortion on that basis.¹² The court must also grant the petition without requiring parental consent or notification if the court finds the minor is not sufficiently mature and informed but the abortion would be in the best interest of the minor.¹³ If the court determines the abortion is not in the best interest of the minor, the petition must be denied.¹⁴ If the petition is denied, however, Chapter 1237 permits the minor to appeal the judgment by filing a written notice of appeal at any time after the judgment is entered.¹⁵ The appellate hearing must be set within five days from the filing of a notice of appeal.¹⁶ Finally, any person who knowingly performs an abortion on an unmarried or unemancipated minor without complying with the requirements of Chapter 1237 is subject to a fine not exceeding one thousand dollars, confinement in the county jail for a period not exceeding thirty days, or both.¹⁷

COMMENT

Under existing law, the fundamental right to privacy constitutionally protects a woman's right to terminate her pregnancy.¹⁸ The right to privacy, however, is not absolute, and therefore must be weighed

10. *Id.*

11. *Id.*

12. *Id.* § 25958(c)(1). *See generally* Planned Parenthood Ass'n v. Ashcroft, 462 U.S. 476, 490-93 (1983) (Missouri abortion statute required a court to receive evidence on the minor's emotional development, maturity, intellect, and understanding for purposes of showing good cause for granting or denying her petition).

13. CAL. HEALTH & SAFETY CODE § 25958(c)(2). Chapter 1237 does not contain any guidelines to assist the courts in determining whether the performance of an abortion would be in the minor's best interest. *See id.* § 25958.

14. *Id.* § 25958(c)(2).

15. *Id.* § 25958(d). Judgment must be entered within one court day from the petition hearing. *Id.* § 25958(c). The specific rules regulating the practice and procedure of appeals and the time and manner in which any appellate record must be prepared and filed will be prescribed by the Judicial Council at a later time. *Id.* § 25958(d).

16. *Id.* § 25958(d).

17. *Id.* § 25958(f).

18. *See* Roe v. Wade, 410 U.S. 113, 153-55 (1973); U.S. Const. amend. XIV, § 1 (the United States Constitution does not expressly provide a right to privacy, but the right has long been recognized based on the fourteenth amendment's concept of personal liberty). The

against important state interests in regulating the performance of abortions.¹⁹ Due to their immaturity, a minor's decision to have an abortion may be subject to greater state imposed regulations than that of an adult.²⁰ Chapter 1237, was enacted in apparent response to a legislative finding that the medical, emotional, and psychological consequences of an abortion on an immature minor are serious and can be long-lasting.²¹ Chapter 1237 is designed to prevent minors, who lack the capacity to make fully informed decisions, from choosing to have an abortion without appropriate counsel from their parents.²²

The United States Supreme Court decisions of *Planned Parenthood of Central Missouri v. Danforth*²³ and *Bellotti v. Baird*²⁴ suggest guidelines for states to follow in constructing abortion statutes requiring parental consent in order to pass constitutional scrutiny.²⁵ In

California Constitution contains an express inalienable right to privacy. CAL. CONST. art I, § 1. See *Comm. to Defend Reproductive Rights v. Myers*, 29 Cal. 3d 252, 289, 625 P.2d 779, 798, 172 Cal. Rptr. 866, 885 (1981) (an explicit protection exists for an individual's right to privacy). See also *Planned Parenthood v. Danforth*, 428 U.S. 52, 74 (1976) (acknowledging a minor's right to privacy).

19. *Roe v. Wade*, 410 U.S. at 154-63. The protection of maternal health, prenatal life, and medical standards are important state interests that must be weighed against an individual's right to privacy. *Id.* at 155. The right to privacy is a fundamental right, and when fundamental rights are involved, regulations limiting these rights may be justified only by a compelling state interest. *Id.* With respect to abortions, the compelling point begins at the end of the first trimester of pregnancy. See *id.* at 154-63.

20. See *Bellotti v. Baird*, 443 U.S. 622, 635-40 (1979). A state may validly limit a minor's right to make decisions with potentially serious consequences because minors often lack the experience, perspective, and judgment to make informed decisions that take into account immediate and long-range consequences. *Id.* Parents play a special role in the upbringing of their children, and as a result, the state has a special interest in encouraging an unmarried minor to seek parental advice in determining whether or not to terminate her pregnancy. *Id.* at 635-40. See also *Planned Parenthood v. Danforth*, 428 U.S. at 74; *Planned Parenthood Ass'n v. Ashcroft*, 462 U.S. 476, 491, 505 (1983) (a state cannot validly authorize an absolute parental veto over the minor's decision to have an abortion). See generally *Prince v. Massachusetts*, 321 U.S. 158, 166-70 (1944) (the state's power to control a minor's conduct, even where a protected freedom is being invaded, reaches beyond the scope of the state's authority over an adult).

21. See 1987 Cal. Stat. ch. 1237, sec. 1, at ____.

22. See *id.* Parental consultation is important because parents possess information about their children that is essential to the exercise of the physician's best medical judgment. *Id.* In addition, parents who are aware that their daughter has had an abortion may better ensure that she receives adequate medical attention after her abortion. *Id.*

23. 428 U.S. 52 (1976).

24. 443 U.S. 622 (1979). See *Hodgson v. Minnesota*, 827 F.2d 1191, 1200 (8th Cir. 1987) (striking down a Minnesota statute requiring 2 parent notice 48 hours in advance of the abortion, even with a judicial bypass procedure).

25. See *Planned Parenthood v. Danforth*, 428 U.S. 52 (1976); *Bellotti v. Baird*, 443 U.S. 622 (1979).

Danforth, the Supreme Court held that a state may not impose a blanket provision requiring parental consent as a condition for an unmarried minor to obtain an abortion during the first trimester of pregnancy.²⁶ In *Bellotti*, the Supreme Court held that if a state requires a pregnant minor's parent to consent to an abortion, the state must provide the minor with an alternative procedure to obtain authorization for an abortion.²⁷ This alternative procedure must provide for quick resolution of any petition to bypass the parental consent requirement and any subsequent appeals filed, while also protecting the anonymity of the minor.²⁸ Chapter 1237 appears to meet these requirements by providing the minor with a judicial alternative to the parental consent requirement,²⁹ expeditious petition³⁰ and appellate review procedures,³¹ and assuring the confidentiality of the minor's identity.³² Furthermore, Chapter 1237 contains procedural safeguards that were lacking in unconstitutional abortion statutes of other states.³³ Two such safeguards contained in Chapter 1237 are a provision for appointment of counsel to assist the minor in preparing the petition,³⁴ and the absence of a provision requiring a waiting

26. *Planned Parenthood v. Danforth*, 428 U.S. 52, 74 (1976). See *H.L. v. Matheson*, 450 U.S. 398, 407-13 (1981) (the Supreme Court upheld the constitutionality of a Utah statute requiring parental notification where an unemancipated minor sought to have an abortion while she was dependent on her parents and she made no showing of her maturity).

27. See *Bellotti v. Baird*, 443 U.S. at 643-44 (minor may petition the court to obtain authorization for an abortion without parental consent).

28. See *id.* at 644.

29. See CAL. HEALTH & SAFETY CODE § 25958(b).

30. See *id.* §§ 25958(b), 25958(c)(2).

31. See *id.* § 25958(d).

32. See *id.* § 25958(b). The minor may file the petition using only her initials or a pseudonym. *Id.* See *Planned Parenthood Ass'n v. Ashcroft*, 462 U.S. 476, 491 n.16 (1983) (confidentiality assured by statutory requirement allowing minor to use her initials on petition).

33. Compare *City of Akron v. Akron Center for Reproductive Health*, 462 U.S. 416, 490-93 (1983) (statute held unconstitutional where the minor's petition could still be denied after the court found the minor was mature enough to make the decision on her own and the statute impermissibly required a 24-hour waiting period after minor's consent before abortion could be performed) and *Planned Parenthood v. Pearson*, 716 F.2d 1127, 1134-39 (7th Cir. 1983) (Indiana statute found unconstitutional based on failure to provide for expeditious appellate review of adverse decisions, appointed counsel, and for confidentiality of the minor) with *Planned Parenthood Ass'n v. Ashcroft*, 462 U.S. at 490-93 (Missouri abortion statute which provided that the court could not deny a minor's petition if the minor shows she is mature enough to make the decision on her own and provided minor with expeditious appellate review was found constitutional) and CAL. HEALTH & SAFETY CODE § 25958 (allowing the minor to receive the abortion if a determination is made that the minor is mature and sufficiently informed; also providing an appeals process).

34. CAL. HEALTH & SAFETY CODE § 25958(b). See *Planned Parenthood v. Pearson*, 716 F.2d at 1137-39 (Indiana abortion statute which failed to provide for court-appointed counsel found unconstitutional). See also *Planned Parenthood Ass'n v. Ashcroft*, 462 U.S. at 479-80 n.4 (Missouri abortion statute which contained a provision for court-appointed counsel found constitutional).

period after parental or judicial consent is obtained.³⁵ If Chapter 1237 passes constitutional scrutiny, Chapter 1237 will most likely be enjoined pending the adoption and review of rules governing appellate procedure.³⁶

PLJ*

35. See *City of Akron v. Akron Center for Reproductive Health*, 462 U.S. at 449-51 (a statute prohibiting performance of an abortion until 24 hours after a woman's consent to an abortion is unconstitutional). See also *Eubanks v. Brown*, 604 F. Supp. 141, 145-46 (W.D. Ky. 1984) (requiring a two-hour waiting period for an abortion was held unconstitutional).

36. The alternative judicial procedure must be an established and practical route and cannot solely rely on generally stated principles of availability, confidentiality, and form in order to pass constitutional muster. *American College of Obstetricians v. Thornburgh*, 737 F.2d 283, 297 (1984), *aff'd on other grounds*, 476 U.S. 746 (1986). The Court enjoined the operation of the abortion statute requiring parental consent until adoption and review of regulations governing minor's confidentiality, prompt waiver of parental consent, and appellate procedure. *Id.* Pennsylvania subsequently adopted those rules and regulations, however, the district court found those rules inadequate and refused to lift the injunction. *American College of Obstetricians v. Thornburgh*, 656 F. Supp. 879, 890 (1987). Specifically, the court found that failure of a rule to provide for an expedited appeal in instances where the trial court failed to act required a continuation of the injunction. *Id.* at 888-89.

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Juveniles; custody and control

Civil Code § 232 (amended); Welfare and Institutions Code §§ 304.5, 355.2, 355.3, 355.4, 355.5, 355.6, 355.7 (repealed); §§ 300, 300.1, 303, 304, 305, 306, 315, 316, 317, 318, 342, 358, 366.21, 366.22, 366.23, 366.26, 366.3 (new); §§ 206, 280, 308, 309, 319, 328, 332, 335, 336, 340, 345, 350, 353, 355, 355.1, 361, 361.5, 364, 366.1, 366.2, 366.25, 390 (amended); § 301 (amended and renumbered).

SB 243 (Presley); 1987 STAT. Ch. 1485
(Effective January 1, 1988)*

Chapter 1485 declares the legislature's intent to protect children

* Some sections of the California Welfare and Institutions Code amended or enacted by Chapter 1485 become effective at later dates. These effective dates are indicated in the first citation to the various sections.

who are abused,¹ exploited, or at risk of such harm.² The protection consists of social and health services designed to help children and families and to prevent abuse.³ The primary goal is to preserve the family whenever possible.⁴ To implement this legislative intent, Chapter 1485 effects changes in all phases of a dependency proceeding, from initial detention through release of a minor for adoption.⁵

I. DEPENDENCY ADJUDICATION

Prior law delineated the circumstances under which a minor⁶ could be adjudged a dependent child of the juvenile court.⁷ Chapter 1485 specifies that an adjudication of dependency⁸ is appropriate under the following circumstances: (1) When a parent⁹ has intentionally inflicted serious physical harm¹⁰ on a minor;¹¹ (2) when a minor suffers¹² serious physical harm or illness because a parent either fails

1. CAL. WELF. & INST. CODE § 300 (includes physical, sexual, or emotional abuse) (repealed and added as of January 1, 1989, and operative until January 1, 1990, when replaced by substantially the same provisions).

2. *Id.* § 300(j).

3. *Id.* § 300.

4. *Id.* § 300(j). The Legislature declares that nothing in California Welfare and Institutions Code section 300 is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting. *Id.* Furthermore, California Welfare and Institutions Code section 300 is not intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the Code's provisions. *Id.*

5. 1987 Cal. Stat. ch. 1485, secs. 1-58, at ____ (amending and enacting CAL. CIV. CODE § 232 and CAL. WELF. & INST. CODE §§ 206, 280, 300, 300.1, 301, 303-306, 308, 309, 315-319, 328, 332, 335, 336, 340, 342, 345, 350, 353, 355, 355.1, 358, 361, 361.5, 364, 366.1, 366.2, 366.21-366.23, 366.25, 366.26, 366.3, 390).

6. See CAL. CIV. CODE § 25 (minors are all persons under 18 years of age).

7. 1976 Cal. Stat. ch. 1068, sec. 6, at 4759 (enacting CAL. WELF. & INST. CODE § 300). See CAL. CIV. CODE §§ 245-265 (jurisdiction and procedures of juvenile court).

8. CAL. WELF. & INST. CODE § 300 (a minor within the jurisdiction of the juvenile court may be adjudged a dependent child of the court). Chapter 1485 requires the petitioner to file a subsequent petition when a minor has been adjudged a juvenile court dependent and new circumstances arise indicating that the minor is again subject to dependency. See *id.* § 342. All procedures and hearings required for an original petition are applicable to a subsequent petition. *Id.*

9. CAL. WELF. & INST. CODE § 300 (parent includes parents and legal guardian or guardians).

10. *Id.* § 300(a) (Chapter 1485 also applies when there is a substantial risk that the minor will suffer serious physical harm). A court may find a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the minor or the minor's siblings, or a combination of these and other actions by the parent. *Id.* Serious physical harm does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury. *Id.*

11. Compare *id.* with 1985 Cal. Stat. ch. 1548, sec. 1, at ____ (amending CAL. WELF. & INST. CODE § 300(a)) (dependency was available when the minor lacked proper and effective parental control).

12. CAL. WELF. & INST. CODE § 300(b) (Chapter 1485 also applies when there is a substantial risk that the minor will suffer serious physical harm or illness).

to provide the minor with the necessities of life¹³ or is unable to care for the minor due to mental illness, developmental disability, or substance abuse;¹⁴ (3) when a minor is suffering serious emotional damage¹⁵ as a result of a parent's conduct;¹⁶ (4) when a parent or a member of the household has sexually abused¹⁷ a minor or has been cruel¹⁸ to the minor;¹⁹ (5) when a sibling of the minor has been abused or neglected and the minor is at risk of being abused or neglected;²⁰ (6) when a minor under five years of age suffers severe physical abuse;²¹ (7) when a minor's parent is convicted of causing

13. *Id.* (includes adequate food, clothing, shelter, or medical treatment).

14. *Id.* § 300(b). A minor is not to be adjudged dependent solely because no emergency shelter exists for the family. *Id.* If the parents have withheld or provided their own medical treatment based on religious beliefs, the court must give deference to those beliefs or provide a less intrusive judicial intervention than dependency, if the minor is not at risk of suffering severe physical harm as a result. *Id.* In making this determination, the court must consider: (1) The nature of the treatment proposed by the parent, (2) the risks to the minor of the course of treatment or nontreatment proposed by the parent, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent and agency. *Id.* See *In re Eric B.*, 189 Cal. App. 3d 996, 1006-07, 235 Cal. Rptr. 22, 28-29 (1987) (holding that the trial court properly continued dependency of a minor with eye cancer when his parents preferred to treat the minor solely by spiritual means rather than continuing medical treatment). Compare WELF. & INST. CODE § 300(b) with 1986 Cal. Stat. ch. 1122, sec. 2, at ____ (amending CAL. WELF. & INST. CODE § 300(b)) (dependency was available when the minor was destitute and not provided with the necessities of life).

15. CAL. WELF. & INST. CODE § 300(c) (evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior directed at self or others).

16. *Id.* (or if the minor has no parent or guardian capable of providing appropriate care). Compare *id.* with 1976 Cal. Stat. ch. 1068, sec. 6, at 4759 (enacting CAL. WELF. & INST. CODE § 300(c)) (dependency was appropriate when the minor was physically dangerous to the public because of a mental or physical illness).

17. CAL. WELF. & INST. CODE § 300(d) (including when there is a substantial risk that the minor will be sexually abused). Chapter 1485 also applies when the parent or guardian fails to protect the minor from sexual abuse when the parent knows or reasonably should know that the minor is in danger of the abuse. *Id.*

18. *Id.* § 300(i). Chapter 1485 also applies when the parent fails to adequately protect the minor from an act or acts of cruelty when the parent knows or reasonably should know that the minor is in danger of being subjected to the harm. *Id.*

19. *Id.* § 300(d), (i). Compare *id.* § 300(d), (i) with 1985 Cal. Stat. ch. 1548, sec. 1, at ____ (amending CAL. WELF. & INST. CODE § 300(d)) (dependency was authorized when the minor's home was unfit because of neglect, cruelty, depravity, or physical abuse).

20. CAL. WELF. & INST. CODE § 300(j). The court must consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the minor. *Id.*

21. *Id.* § 300(e). Severe physical abuse includes: (1) Any single act of abuse that 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. *Id.* Chapter 1485 prohibits a

the death by abuse or neglect of another child;²² (8) when a minor's parent cannot arrange for the minor's care because of incarceration or institutionalization;²³ or (9) when the whereabouts of a parent is unknown, efforts to find the parent are unsuccessful, and the relative or other custodian who has temporary custody of the minor is unwilling or unable to care for the minor.²⁴

Existing law delineates the circumstances under which a peace officer or social worker may take temporary custody of a minor.²⁵ Under Chapter 1485, the authority of a peace officer or social worker to take custody of a minor is extended to situations when a minor is in need of immediate medical care, in immediate danger of physical or sexual abuse, or when the physical environment threatens the minor's immediate health or safety.²⁶ Before taking a minor into custody, however, Chapter 1485 requires a social worker to provide to the family any available, reasonable services that would eliminate the need to remove the minor.²⁷ When a probation officer²⁸ takes custody of a minor, existing law requires the probation officer to investigate the circumstances surrounding the need for the custody.²⁹ The probation officer must then release the minor unless specified conditions exist.³⁰ Chapter 1485 also requires the probation officer

court from entering a finding that the minor has suffered severe physical abuse unless a probation officer has alleged severe physical abuse. *Id. Compare id. with* 1986 Cal. Stat. ch. 1122, sec. 2, at ____ (amending CAL. WELF. & INST. CODE § 300) (dependency was indicated when the minor was under age three and the home was unfit due to severe physical abuse or when the minor was freed for adoption).

22. CAL. WELF. & INST. CODE § 300(f).

23. *Id.* § 300(g).

24. *Id.*

25. *Id.* §§ 305 (authority of a peace officer), 306 (authority of a social worker) (effective January 1, 1989). No warrant is required for either a peace officer or a social worker to take temporary custody. *Id.* § 305.

26. *Id.* §§ 305 (authority of a peace officer), 306 (authority of a social worker). The minor's physical environment may be threatened when the minor is in a hospital and release to parent poses an immediate danger to the minor's health and safety. *Id.* § 305.

27. *Id.* § 306(b) (the social worker must also consider whether the need to take temporary custody of the minor would be relieved by a referral to public assistance services). The parent must be notified of the minor's location, unless the court orders otherwise because of danger to the minor or danger that the parent will flee with the minor. *Id.* § 308(a). A peace officer or social worker may refuse to disclose a minor's whereabouts without a court order when reasonable grounds exist to believe the minor or the minor's custody is in danger if disclosure is made. *Id.* The Welfare Department must ensure regular telephone contact between the parent and the minor when the parent is not notified of the minor's location, unless to do so would be detrimental to the minor. *Id.*

28. *See id.* §§ 215 (definition of probation officer), 270-286 (powers and duties of probation officer), 272 (delegation to Welfare Department of Probation Officer's duties regarding dependent children).

29. *Id.* § 309(a).

30. *Id.* The probation officer must release the minor unless (1) the minor has no parent,

to provide services to attempt to maintain the minor with the minor's family unless there are no reasonable means of protecting the minor in the minor's home.³¹ Under existing law, the court must determine whether services exist that would eliminate the need for further detention of the minor.³² Chapter 1485 further requires the court to determine whether reasonable efforts were made to prevent or eliminate the need for removing the minor from the parental home.³³

II. REUNIFICATION/PERMANENCY PLANNING

Under existing law, the court must order that child welfare services³⁴ be provided to the parent and the minor to attempt to reunite the family.³⁵ Existing law requires the court to order a hearing to plan for the permanent placement of a minor when reunification attempts have failed or are unnecessary.³⁶ When a court orders that a permanent planning hearing be held, Chapter 1485 requires the court to direct the agency supervising the minor and the licensed county adoption agency³⁷ to prepare reports for the court.³⁸ Under existing law, before all dependency status review hearings,³⁹ the probation of of-

guardian, or responsible relative, or none willing to provide care for the minor; (2) continued detention is immediately and urgently necessary to protect the minor and no alternative exists for protecting the minor in the minor's home or the home of a responsible relative; (3) the minor or the minor's parent is likely to flee the jurisdiction of the court; or (4) the minor has violated an order of the juvenile court. *Id.*

31. *Id.*

32. *Id.* § 319. In determining whether further detention is necessary, the court must consider the following services: Counseling; emergency shelter care; emergency in-home caretakers; out-of-home respite care; teaching and demonstrating homemakers; parenting training; transportation; and any other services authorized by the State Department of Social Services, including a referral to public assistance services. *Id.* See *In re David B.*, 91 Cal. App. 3d 184, 198-99, 154 Cal. Rptr. 63, 72-73 (1979) (holding that a court should consider the least detrimental alternative that will protect the child and keep the family intact).

33. CAL. WELF. & INST. CODE § 319.

34. See *id.* § 16501 (definition of child welfare services).

35. *Id.* § 361.5(a). See *id.* § 361.5(b) (outlining the circumstances when reunification services need not be provided). See generally *Review of Selected 1982 California Legislation*, 14 PAC. L.J. 357, 667 (1983) (discussing reunification policies for all phases of dependency proceedings).

36. CAL. WELF. & INST. CODE § 361.5(f).

37. *Id.* § 361.5(g) (or the State Department of Social Services when this Department is acting as an adoption agency).

38. *Id.* The report must detail (1) the search efforts for an absent parent; (2) the amount and nature of contact between the parent and the minor; (3) the minor's medical, developmental, scholastic, mental, and emotional status; (4) the eligibility of any identified prospective adoptive parent; and (5) the likelihood of adoption if parental rights are terminated. *Id.* In any case involving a minor 10 years of age or older, the report also must indicate the minor's attitude toward placement and termination of parental rights. *Id.*

ficer must file a supplemental report detailing the prognosis for return of the minor to parental custody.⁴⁰ Chapter 1485 requires the report to include the services offered to enable the parent to reassume custody of the minor.⁴¹

Under existing law, at the twelve-month review hearing the court must return the child to the parent's custody unless the court finds⁴² that the physical or emotional well-being of the minor would be at substantial risk of harm.⁴³ If the court returns the minor to the parent's custody or finds that reasonable services have not been offered to the parents, existing law requires the court to set a review hearing within six months.⁴⁴ Chapter 1485 requires the court to inform the parents that a permanent plan will be developed if the minor cannot be returned home at the next review hearing.⁴⁵ Chapter 1485 further requires the court, at the eighteen-month review hearing, to return the child to parental custody or order the termination of reunification services.⁴⁶ Under Chapter 1485, the court must set a hearing to determine whether the most appropriate plan for the minor is adoption, guardianship, or long-term foster care or order placement of the minor in long-term foster care.⁴⁷

Existing law delineates the procedures for conducting a permanency planning hearing.⁴⁸ Chapter 1485 authorizes the court to permanently sever parental rights if the court first determines by clear and convincing evidence that the minor will likely be adopted.⁴⁹ Pursuant

39. *Id.* § 366(a) (if a minor is removed from the physical custody of the minor's parent, the court must review the minor's placement at least once every six months until the minor is placed in a permanent home).

40. *Id.* §§ 366.2(c), (f) (regarding minors adjudged dependent prior to January 1, 1989), 366.21(c), (j) (regarding minors adjudged dependent on or after January 1, 1989).

41. *Id.* §§ 366.2(c), 366.21(c).

42. *Id.* §§ 366.2(e), 366.21(f) (the finding must be by a preponderance of the evidence).

43. *Id.*

44. *Id.* § 366.21(g)(1).

45. *Id.*

46. *Id.* § 366.22(a) (effective January 1, 1989). See *In re Venita L.*, 191 Cal. App. 3d 1229, 1239, 236 Cal. Rptr. 859, 865 (1987) (holding that when the juvenile court terminated reunification services and ordered county counsel to file a petition to terminate parental rights, the findings were insufficient in that they failed to state whether returning the minor to her parents' custody would create a substantial risk to her physical or emotional well-being).

47. CAL. WELF. & INST. CODE § 366.22(a) (long-term foster care may be exercised only if the court finds by clear and convincing evidence that the minor is not adoptable and has no one willing to accept legal guardianship).

48. *Id.* § 366.25 (existing procedure applies only to minors adjudged dependent prior to July 1, 1989). Chapter 1485 establishes new procedures for conducting the permanency planning hearing for minors adjudged dependent on or after July 1, 1988. *Id.* § 366.26 (effective January 1, 1989).

49. *Id.* § 366.26(b)(1).

to Chapter 1485, the court may not terminate parental rights if the court finds that termination would be detrimental to the minor.⁵⁰ If the court finds that termination of parental rights or adoption is not in the minor's best interest, the court must order that the present caretaker will become the minor's legal guardian.⁵¹ If legal guardianship is not possible, the court must order that the minor remain in long-term foster care.⁵² Chapter 1485 prohibits removing the minor from the home of a relative caretaker or foster parent who is willing and capable of providing a stable home but who is incapable of becoming a legal guardian, if removal would negatively affect the well-being of the minor.⁵³ When the court considers permanent placement, Chapter 1485 requires that preference⁵⁴ be given to the relative caretaker or foster parent who has cared for a minor when the minor has formed substantial emotional ties to the relative or foster parent and removal would be seriously detrimental to the well-being of the minor.⁵⁵

Under existing law, a minor may be freed from parental custody

50. *Id.* § 366.26(c)(1)(A)-(D). Termination is detrimental to the minor when: (1) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing the relationship; (2) a minor 10 years of age or older objects to termination of parental rights; (3) the child is placed in a residential treatment facility, adoption is unlikely or undesirable, and continuation of parental rights will not prevent finding the child a permanent family placement if the parents cannot resume custody when residential care is no longer needed; or (4) the minor is living with a relative or foster parent who is unable or unwilling to adopt the minor because of exceptional circumstances (which do not include an unwillingness to accept legal responsibility for the minor) but who is willing and capable of providing the minor with a stable and permanent environment, and the removal of the minor from the physical custody of the relative or foster parent would be detrimental to the emotional well-being of the minor. *Id.*

51. *Id.* § 366.26(c)(2). *See id.* §§ 366.26(d) (requiring proceedings for appointment of guardian for a juvenile court dependent to be in the juvenile court, requiring the juvenile court to receive into evidence a report and recommendation concerning the proposed guardianship, and detailing the required contents of the report), 366.25(e) (containing the same provisions regarding minors adjudged dependent prior to July 1, 1989). *See also id.* §§ 366.26(g) (requiring the court to consider the minor's wishes and to act in the minor's best interests, and detailing the conditions under which a minor's testimony may be taken in chambers outside the presence of the parents), 365.26(h) (court order terminating parental rights is binding but appealable), 366.26(i) (prohibiting hearing of adoption petitions until the parent's appellate rights are exhausted).

52. *Id.* § 366.26(c)(2).

53. *Id.* When those alternatives are unavailable, Chapter 1485 permits the court to order control of the minor to be transferred to a licensed homefinding agency, which will place the minor in a suitable licensed or exclusive-use home. *Id.* § 366.26(c)(3). The court must consider the written recommendation of the county Welfare Director or Chief Probation Officer regarding the suitability of the transfer. *Id.*

54. *Id.* §§ 366.25(g), 366.26(j) (preference means the application must be processed and, if satisfactory, the family study must be completed before the processing of the application of any other person for the adoptive placement of the child).

55. *Id.* §§ 366.25(g), 366.26(j).

and control under specified conditions.⁵⁶ Chapter 1485 declares that no minor adjudged a dependent of the juvenile court is subject to the existing provisions for freeing a minor from parental custody.⁵⁷ Under prior law, a superior court was empowered to hear custody proceedings regarding a minor adjudged a juvenile court dependent.⁵⁸ Prior law also authorized a superior court judge to examine and consider the juvenile court record in determining custody.⁵⁹ Chapter 1485 prohibits a superior court from hearing custody proceedings and reviewing the juvenile court record involving a juvenile court dependent.⁶⁰

III. APPOINTMENT OF COUNSEL

Existing law provides for the appointment of counsel for any indigent minor or parent who wants to be represented by counsel.⁶¹ Under Chapter 1485, the court must appoint counsel for a parent of a minor who is placed in out-of-home care.⁶² If, however, a conflict

56. CAL. CIV. CODE § 232(a). A minor may be freed from parental custody and control under the following conditions: (1) The minor has been left without identification, or left in the care of another for six months by the sole parent or both parents, or left with one parent by the other for one year, with no or only token efforts to support or communicate with the minor and with the intent to abandon the minor, (2) the minor who is a dependent child of the court for at least a year was neglected or treated cruelly by either or both parents, (3) the minor's parent is disabled due to habitual alcohol or drug use, or the parent is morally depraved and the minor has been a juvenile court dependent for one year, (4) the minor's parent has been convicted of a felony the nature of which proves the parent's unfitness to have custody of the minor, (5) the minor's parent has been declared mentally ill or developmentally disabled and incapable of properly supporting or controlling the minor, (6) the parent is mentally disabled and likely to remain so in the foreseeable future, or (7) the minor has been in out-of-home placement for one year and the court finds that returning the minor to the parent's custody would be detrimental to the minor and the parent has failed to maintain a proper parental relationship with the minor during that time. *Id.* See *In re Robert J.*, 129 Cal. App. 3d 894, 904-06, 181 Cal. Rptr. 188, 193-94 (1982) (holding that the State's preference for providing a stable home for a minor, including terminating parental rights to allow for adoption, is constitutional). See also CAL. CIV. CODE § 4600 (stating the State's preference for parental custody except when detrimental to the child).

57. CAL. CIV. CODE § 232(e) (applies to minors adjudged dependent on or after January 1, 1990). See CAL. WELF. & INST. CODE § 366.26 and CAL. CIV. CODE § 7017 (provisions for terminating the rights of parents of minors adjudged dependent prior to January 1, 1990).

58. 1982 Cal. Stat. ch. 978, sec. 4, at ____ (enacting CAL. WELF. & INST. CODE § 304.5).

59. *Id.* See CAL. CIV. CODE § 4600 (provisions concerning proceedings to award custody).

60. CAL. WELF. & INST. CODE § 304.

61. *Id.* § 317(a). See *In re Melissa S.*, 179 Cal. App. 3d 1046, 1059, 225 Cal. Rptr. 195, 203 (1986) (holding the juvenile court improperly adjudicated minors as dependent without appointing counsel to represent them on a petition alleging their mother failed to protect them from molestation by their step-father).

62. CAL. WELF. & INST. CODE § 317(b) (including when the petitioner is recommending out-of-home care). The court may appoint counsel for the minor if circumstances appear that the minor would benefit from representation by counsel. *Id.* § 317(c). Counsel for the minor may be a county counsel, district attorney, public defender, or other member of the bar. *Id.* See *id.* § 318(a) (additional provisions for appointment of counsel for minor).

of interest between the petitioner and the minor exists,⁶³ Chapter 1485 requires the court to appoint separate counsel for the minor.⁶⁴ At the beginning of a permanency planning hearing, Chapter 1485 requires the court to appoint counsel for a minor or parent who is not represented by counsel if to do so would be in their best interest.⁶⁵

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63. *Id.* §§ 317(c), 318(a) (the fact that the district attorney represents the minor in a dependency proceeding and conducts a criminal investigation arising out of the same facts does not alone present a conflict of interest).

64. *Id.* § 317(c). *See In re Patricia E.*, 174 Cal. App. 3d 1, 6, 219 Cal. Rptr. 783, 785 (1985) (holding that independent counsel must be appointed for a minor in a dependency proceeding absent a showing that the minor's interests are adequately represented by counsel for another party, such as the Welfare Department).

65. CAL. WELF. & INST. CODE § 366.26(f). *See id.* §§ 366.26(g) (provides for continuance to allow counsel to be appointed and to become acquainted with the case), 317(d), 318(b), (c) (appointed counsel must represent the minor in all proceedings unless relieved by the court), 317(e), 318(d) (counsel appointed for a minor must investigate and report to the court on the interests of the minor in any administrative or judicial proceedings), 318(d) (when a minor is four years of age or older, counsel for the minor must ascertain the minor's wishes and well-being).