

CHILDREN'S LAW CENTER

SUMMARY OF NEW DEPENDENCY-RELATED LAWS EFFECTIVE JANUARY 2007

By Cameryn Schmidt, Martha Matthews, and Jenny Cheung
January 23, 2007

Adoption – Relinquishment of Child to Department of Licensed Adoption Agency

Fam. Code § 8700 – amended – requires that a relinquishment by either birth parent of a child to the department or adoption agency become final 10 business days after the relinquishment is filed with the department, unless the department sends written acknowledgment of receipt of the relinquishment prior to the expiration of that 10-day period, at which time the relinquishment shall be final. (SB 1325)

Adoption – Waiving Personal Appearance of Prospective Adoptive Parents

Fam. Code § 8613.5 – new – expands existing law allowing courts to waive the personal appearance of prospective adoptive parents who are serving in the military, etc., to apply to prospective adoptive parents who are unable to appear in court for other reasons. Prospective adoptive parents whose appearance has been waived may appear through counsel, and may be examined by deposition. (SB 1325)

Appeal – Minor's Counsel

Welf. & Inst Code § 395 – amended to add a new subsection (b) providing that when the child is an appellant, the court of appeal must appoint separate counsel for the child, and that in all other appeals, the court of appeal shall appoint separate counsel if the court determines, after considering the recommendation of the child's trial attorney or guardian *ad litem*, that having counsel would benefit the child. Trial counsel and guardians *ad litem* are required to make such a recommendation and explain the reasons for it when "the child's best interests cannot be protected without the appointment of separate counsel." (AB 2480)

Child Abuse/Neglect Reports

Penal Code §§ 11165.9, 11167, 11167.5, and 11170 -- amended to make the same procedures and requirements applicable to reports of "serious emotional damage" as to other types of child abuse and neglect reports, including: telephonic reporting processes; contents of reports; notice to the alleged perpetrator; confidentiality and disclosure; and notice to the reporter of the results of the investigation. (Mandated reporters are

authorized, but not required, to make reports concerning “serious emotional damage” to a child, under Penal Code § 11166.02.) (AB 525).

Child Welfare System Oversight

Welf. & Inst. Code §§ 16540 - 16543 – added to establish the California Child Welfare Council, an advisory body charged with improving collaboration between the juvenile courts, county child welfare agencies, and other agencies serving dependent children. The Council will report and make recommendations to the legislature about policy, coordination of services, funding and resources, information sharing, implementation of existing laws, strengthening the foster care ombudsman program, etc. Also, § 16544 requires the state DSS to post outcome data on its website, and § 16545 requires the Judicial Council to adopt performance measures to track the juvenile courts’ progress in improving child safety, permanence, and well-being. (AB 2216)

Credit Checks -- Foster Youth

Welf. & Inst. Code § 10618.6 – new - requires the county welfare department to request a consumer credit disclosure when a youth in a foster care placement reaches his or her 16th birthday and to refer the foster youth to a credit counseling organization if there is any indication of negative credit history or identity theft. (AB 2985)

Criminal Background Checks – Parents and Relatives

Welf. & Inst Code §§ 361.4 and 16504.5 – amended to give county child welfare agencies 10 days, instead of 5 days, to initiate a fingerprint check after doing the CLETS check on a prospective caregiver, and to require fingerprint checks only for placement assessments, not for dependency investigation and parent locating purposes. Also, § 16504.5(b) was amended to require criminal justice personnel to cooperate with criminal history requests and provide the information “in a timely manner.” (AB 1774).

Welf. & Inst Code §§ 366.21(e), & (f), 366.22, and 16504.5(f) – amended to allow child welfare agencies to obtain and report, and the court to consider, information about any new criminal arrests or convictions of the parent(s) after the removal of the child, if the parent has agreed to fingerprinting as part of the case plan. (AB 1774)

Emergency Placement of Foster Children

Welf. & Inst. Code § 361.45 – new – allows emergency placement of children with relatives or non-relative extended family members when a foster parent suddenly becomes unavailable. The emergency placement may be made prior to receipt of criminal history information, under the same procedures as for placement with a relative when a child is initially detained. (AB 2195)

Fee Waivers for Criminal Background Checks

Health & Saf. Code § 1522.06 – new – states that volunteers who mentor foster children are subject to the requirement for a criminal background check, but are not required to pay fees for the check. (AB 1979)

Parentage – Assisted Reproduction

Fam. Code §§ 7606, 7620, 7630 – new – defines “assisted reproduction” to mean conception by any means other than sexual intercourse; requires any person who causes conception of a child in California through assisted reproduction with the intent to become a parent to submit to the California courts’ jurisdiction in any case involving the child; and allows any party to an assisted reproduction agreement to bring an action to determine the parentage of the child. (SB 1325)

Placement

Welf. & Inst. Code § 361.2(j) – added to require that when the agency places a child with a relative or in a foster or group home, the agency must ensure placement in a home that “to the fullest extent possible, best meets the day-to-day needs of the child,” and that satisfies the following criteria: (1) the caregiver is able to meet the health, safety, and well-being needs of the child; (2) the caregiver is allowed to maintain the least restrictive, most family-like environment that serves the needs of the child; (3) the child is allowed to engage in age-appropriate activities that promote a family-like environment; and (4) the caregiver uses a reasonable and prudent parent standard to determine what activities are age-appropriate and meet the needs of the child. (SB 1641)

Health & Safety Code § 1536.2 – amended existing requirement that Foster Family Agencies must ensure placement in a “home that best meets the needs of the child, ” to specify that the home must satisfy the same criteria listed in Welf. & Inst. Code § 361.2(j). (SB 1641)

Health & Safety Code § 1530.3 – added to require DSS to report to the legislature on the progress of the Residential Regulations Review Workgroup, a group formed to revise foster and group home regulations to eliminate restrictions that prevent foster children from engaging in normal childhood activities and experiences. (SB 1641)

Privilege – Doctor/Patient, Therapist/Patient, Clergy/Penitent

Welf. & Inst. Code § 317(f) -- amended to create a rebuttable presumption that a child over 12 years of age is mature enough to decide whether to invoke or waive the doctor/patient, therapist/patient, and clergy/penitent privileges. (AB 2480).

Termination of Parental Rights – Felony Conviction

Fam. Code § 7633 – expands existing law allowing the court to terminate parental rights when a parent is convicted of a felony and the facts of the crime are such as to prove the unfitness of the parent, to allow the court also to consider a parent’s criminal record prior

to the felony conviction, to the extent that it shows a pattern of behavior relevant to the welfare of the child or the parent's ability to exercise custody and control. (SB 1325).