

## Memorandum 92-55

Subject: Study F-1130 - Juvenile Court Law (Relocation of Juvenile Dependency Statute)

The Juvenile Court Law deals with two distinct categories of cases--juvenile delinquency and juvenile dependency. The juvenile delinquency provisions are quasi-criminal in nature, designed to deal with youthful offenders. The juvenile dependency provisions, on the other hand, are designed to protect abused and neglected children from abusive parents, or even to terminate parental rights in extreme cases. The Juvenile Court Law is currently located in the Welfare and Institutions Code.

The legislative resolution that directed the Law Revision Commission to prepare the Family Code specifically removed from the Commission's jurisdiction "proceedings initiated under Section 602 of the Welfare and Institutions Code" (minors violating laws defining crime). The Attorney General's task force that was behind the legislative resolution and that originally suggested creation of a Family Code gave as a primary reason the possibility that statutes affecting children, such as juvenile dependency, could be brought together and ultimately harmonized.

When the Commission began work on the Family Code it circulated a questionnaire to 4,000 persons involved in various aspects of family law, requesting opinions on whether various matters, including juvenile dependency, should be covered by the new code. Sixty-five percent of the respondents favored moving the juvenile dependency statutes to the new code, including 80% of the judges who responded.

However, the juvenile dependency statute was not included in the original Family Code bill. It proved to be a very complex task to pull the statute out of the Juvenile Court Law in which it is embedded. In order to produce the Family Code for enactment at the 1992 session, it was necessary to defer dealing with the juvenile dependency statute.

We have now had a chance to do a first draft relocating the statute from the Welfare and Institutions Code to the Family Code. A copy of the draft is attached to this memorandum. A substantial amount of additional work will be necessary before the draft is ready for enactment. The work includes clarifying terminology, fine tuning organization, searching for conforming changes, etc.

The issue is whether the Commission wishes to proceed with the task of relocating the juvenile dependency statute.

From a technical perspective, it is somewhat awkward to split the Juvenile Court Law between two codes. Some basic organizational and procedural material will continue to reside in the Welfare and Institutions Code, and must be incorporated by reference in the Family Code.

The feature of existing law that struck the staff most forcibly in trying to relocate the statutes is the nightmare of intertwined and overlapping procedures in the juvenile dependency law. The statute needs major work. We have some sense that simply to renumber without pruning the procedures into a more manageable thicket might be of dubious value. And any disturbance of the existing procedures would almost certainly stir up a hornet's nest in this highly charged area.

On the other hand, the existing organization of the statute is terrible, and the mere relocation and renumbering process can improve the law substantially. For example, a section that runs on for five pages can be broken down into chapters and articles, with a logical organization that makes the law more accessible.

We have circulated the staff draft to about 25 persons active and knowledgeable in the juvenile dependency area--key players in the legislative process--and asked their perspectives on the issue of relocation of the juvenile dependency statute to the Family Code. Most persons with whom we spoke were instinctively negative to the concept of relocating the juvenile dependency statute. Their concerns basically are that renumbering without improving serves no useful purpose, and relocation simply generates the possibility of building in unintended errors. However, we asked them to take a look at the staff draft and give us a more considered response, which they all agreed to do.

Among the few persons with whom we have spoken in depth about this matter, the following opinions have been expressed:

Mikki Sorenson, Assembly Judiciary Committee Consultant. It is important to separate out and remove the juvenile dependency statutes from proximity with the juvenile delinquency statutes. Dependency is overcriminalized because of its location and confuses courts and persons dealing with the law.

Frieda Daugherty, Women Lawyers of Los Angeles. Juvenile dependency does not belong in the Family Code. Dependency proceedings and family law proceedings involve different personnel, different times, different standards of proof, different purposes, and a different practicing bar.

Judge Leonard Edwards, Santa Clara County Superior Court. This is a good project and the structure of the law would be greatly improved by it. The project should be expanded to include other related portions of the Welfare and Institutions Code concerning services for the care of children. Judge Edwards mentioned some specific language changes that could be made to improve the law as we relocate it, and offered his assistance on the project.

We will supplement this memorandum with additional material if any is received before the meeting.

Respectfully submitted,

Nathaniel Sterling  
Executive Secretary

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DIVISION 14. DEPENDENT CHILDREN OF THE COURT

PART 1. DEFINITIONS AND RULES OF CONSTRUCTION

§ 10000. Application of part

10000. Unless the provision or context otherwise requires, the definitions in this part govern the construction of this division.

Comment. Section 10000 is new and is comparable to Section 50.

§ 10002. Guardian defined

10002. As used in this part, "guardian" means the legal guardian of the child.

Comment. Section 10002 continues the last paragraph of former Welfare and Institutions Code Section 300 and extends it to the entire division.

Staff Note. *It is not clear whether this definition may properly be generalized for the entire division. At present it is limited to the description of minors within the jurisdiction of the juvenile court.*

§ 10004. Juvenile court

10004. "Juvenile court" means the superior court exercising the jurisdiction conferred by this division while sitting in the exercise of that jurisdiction.

Comment. Section 10004 is consistent with Welfare and Institutions Code Section 245.

§ 10018. Probation department

10018. "Probation department" means the department of juvenile probation or the department wherein the services of juvenile and adult probation are both performed.

Comment. Section 10018 is drawn from the last part of Welfare and Institutions Code Section 215.

§ 10020. Probation officer

10020. "Probation officer" means the juvenile probation officer or the person who is both the juvenile probation officer and the adult probation officer, and includes a social worker in a county welfare

department when supervising dependent children of the juvenile court pursuant to Section 10118 by order of the court under this division.

Comment. Section 10020 is drawn from the first part of Welfare and Institutions Code Section 215.

#### § 10025. Residence

10025. Unless otherwise provided in this division, to the extent not in conflict with federal law, the residence of a minor person shall be determined by the following rules:

(a) The residence of the parent with whom a child maintains the child's place of abode or the residence of an individual who has been appointed legal guardian or the individual who has been given the care or custody by a court of competent jurisdiction, determines the residence of the child.

(b) As used in this section, "custody" means the legal right to custody of the child unless that right is held jointly by two or more persons, in which case it means the physical custody of the child by one of the persons sharing the right to custody.

(c) The residence of a foundling is deemed to be that of the county in which the child is found.

(d) If the residence of the child is not determined under subdivision (a), (b), (c), or (e), the county in which the child is living is deemed the county of residence, if and when the child has had a physical presence in the county for one year.

(e) If the child has been declared permanently free from the custody and control of its parents, the child's residence is the county in which the court issuing the order is situated.

Comment. Section 10025 is drawn from Welfare and Institutions Code Section 17.1.

## PART 2. GENERAL PROVISIONS

### CHAPTER 1. MISCELLANEOUS PROVISIONS

#### § 10100. Dependent children of the court

10100. (a) This division provides the procedure for adjudging a person to be a dependent child of the court.

(b) The Arnold-Kennick Juvenile Court Law, Chapter 2 (commencing with Section 200) of Part 1 of Division 2 of the Welfare and Institutions Code is applicable to a proceeding under this division except to the extent this division is inconsistent with that chapter or that chapter is limited expressly or by context to a proceeding involving a ward of the court.

Comment. Section 10100 makes clear that the general provisions of the juvenile court law apply in dependent child proceedings, including such matters as commissions and committees (Welf. & Inst. Code § 225 et seq.); probation commission (Welf. & Inst. Code § 240 et seq.); juvenile court (Welf. & Inst. Code § 245 et seq.); probation officers (Welf. & Inst. Code § 270 et seq.); records (Welf. & Inst. Code § 825 et seq.); and support (Welf. & Inst. Code § 900 et seq.).

§ 10101. Statement of purpose

10101. (a) The purpose of this division is to provide for the protection and safety of each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible, removing the minor from the custody of the minor's parents only when necessary for the minor's welfare. When removal of a minor is determined by the juvenile court to be necessary, reunification of the minor with the minor's family is a primary objective. When the minor is removed from the minor's own family, it is the purpose of this chapter to secure for the minor custody, care, and discipline as nearly as possible equivalent to that which should have been given by the minor's parents. This division shall be liberally construed to carry out these purposes.

(b) Minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment and guidance consistent with their best interest.

(c) Juvenile courts and other public agencies charged with enforcing, interpreting, and administering this division shall consider the best interests of the minor in all deliberations pursuant to this division.

Comment. Section 10101 is drawn from Welfare and Institutions Code Section 202.

§ 10102. Further statement of purpose

10102. It is the purpose of this division, in establishing programs and services that are designed to provide protection, support, or care of children, to provide protective services to the fullest extent deemed necessary by the juvenile court, probation department, or other public agencies designated by the board of supervisors to perform the duties prescribed by this division to ensure that the rights or physical, mental, or moral welfare of children are not violated or threatened by their present circumstances or environment. Such essential services may be provided irrespective of whether the child or the family of the child is otherwise known to the responsible local agency.

Comment. Section 10102 is drawn from Welfare and Institutions Code Section 19.

§ 10103. Duties of probation officer

10103. The duties of the probation officer, as described in this division with respect to minors alleged or adjudged to be described by Part 3 (commencing with Section 10200), whether or not delegated pursuant to Section 10118, shall be deemed to be social service as defined by Section 10051 of the Welfare and Institutions Code, and subject to the administration, supervision and regulations of the State Department of Social Services.

Comment. Section 10103 continues former Welfare and Institutions Code Section 202.5 without substantive change.

§ 10104. Retention of jurisdiction

10104. The court may retain jurisdiction over a person who is found to be a dependent child of the juvenile court until the dependent child attains the age of 21 years.

Comment. Section 10104 continues former Welfare and Institutions Code Section 303 without substantive change and Welfare and Institution Code Section 607(a) to the extent it related to dependent children.

§ 10105. Religious belief

10105. All commitments to institutions or for placement in family homes under this division shall be, so far as practicable, either to institutions or for placement in family homes of the same religious

belief as that of the person so committed or of the person's parents or to institutions affording opportunity for instruction in such religious belief.

Comment. Section 10105 is drawn from Welfare and Institutions Code Section 205.

§ 10106. Contempt

10106. Willful disobedience or interference with a lawful order of the juvenile court or of a judge or referee of the juvenile court is a contempt of court.

Comment. Section 10106 is drawn from Welfare and Institutions Code Section 213.

§ 10107. Promise to appear

10107. In each instance in which a provision of this division authorizes the execution by any person of a written promise to appear or to have any other person appear before the probation officer or before the juvenile court, any willful failure of the promisor to perform as promised constitutes a misdemeanor and is punishable as such if at the time of execution of the written promise the promisor is given a copy of the written promise on which it is clearly written that failure to appear or to have any other person appear as promised is punishable as a misdemeanor.

Comment. Section 10107 is drawn from Welfare and Institutions Code Section 214.

§ 10108. Fees

10108. There shall be no fee for filing a petition under this division nor shall any fees be charged by any public officer for services in filing or serving papers or for the performance of any duty enjoined upon the public officer by this division, except where the sheriff transports a person to a state institution. If the judge of the juvenile court orders that a dependent child go to a state institution without being accompanied by an officer or that a dependent child be taken to an institution by the probation officer of the county or parole officer of the institution or by some other suitable person,

all expenses necessarily incurred therefor shall be allowed and paid in the same manner and from the same funds as such expenses would be allowed and paid were such transportation effected by the sheriff.

Comment. Section 10108 continues Welfare and Institutions Code Section 212 to the extent it related to fees for a dependent child.

§ 10109. Minor as dependent child or ward of court

10109. Section 241.1 of the Welfare and Institutions Code is applicable to a minor that appears to come within the description of both this division and Section 601 or 602 of the Welfare and Institutions Code.

Comment. Section 10109 is included for cross-referencing purposes.

§ 10110. Service of findings and orders

10110. All written findings and orders of the court shall, within three judicial days of their issuance, be served by the clerk of the court personally or by first-class mail on the petitioner, the minor or the minor's counsel, the parent or the parent's counsel, and the guardian or the guardian's counsel.

Comment. Section 10110 is drawn from Welfare and Institutions Code Section 248.5.

§ 10112. Pendente lite orders

10112. (a) During the pendency of any proceeding to declare a minor child a dependent child of the juvenile court, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian, or member of the minor child's household from molesting, attacking, striking, sexually assaulting, or battering the minor child or any other minor child in the household; (2) excluding any parent, guardian, or member of the minor child's household from the dwelling of the person who has care, custody, and control of the child upon the same showing as is necessary under the provisions of this chapter relating to dependent children to remove a minor from the custody and control of his or her parents or guardians; and (3) enjoining a parent, guardian, or member of the minor child's household from specified behavior including contacting, threatening, or disturbing the peace of the minor, which the court determines is necessary to effectuate orders



under paragraph (1) or (2). In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. Any hearing pursuant to this statute may be held simultaneously with the regularly scheduled hearings held in proceedings to declare a minor a dependent child of the juvenile court pursuant to this division.

(b) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivision (a). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed one year, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(c) The juvenile court may issue an order made pursuant to subdivision (a) or (b) excluding a person from a residence or dwelling only when the evidence affirmatively shows facts sufficient for the court to ascertain that the person seeking the order has a right under color of law to possession of the premises.

In the case of the issuance of an ex parte order, the affidavit in support of the application for the order shall affirmatively show facts sufficient for the court to ascertain that the person seeking the order has a right under color of law to possession of the premises.

(d) Any order issued pursuant to subdivision (a) or (b) shall state on its face the date of expiration of the order.

(e) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a) or (b), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or the person's attorney having

jurisdiction over the residence of the person who has care, custody, and control of the minor child and such other locations where the court determines that acts of domestic violence or abuse against the minor child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a) or (b) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(f) Any willful and knowing violation of any order granted pursuant to subdivision (a) or (b) shall be a misdemeanor punishable under Section 273.6 of the Penal Code.

Comment. Section 10112 continues former Welfare and Institutions Code Section 213.5 without substantive change.

Staff Note. This section should be relocated to the provisions on protective orders and made a separate article.

#### § 10114. Compensation of counsel

10114. In any case in which, pursuant to this division, the court appoints counsel to represent a person who desires but is unable to employ counsel, counsel shall receive a reasonable sum for compensation and for necessary expenses, the amount of which shall be determined by the court, to be paid out of the general fund of the county.

Comment. Section 10114 is drawn from Welfare and Institutions Code Section 218.

Staff Note. This section should be coordinated with other provisions relating to representation of the parties.

#### § 10116. Orders to parent or guardian

10116. In addition to all other powers granted by law, the juvenile court may direct all orders to the parent, parents, or guardian of a minor who is subject to any proceedings under this division that the court deems necessary and proper for the best interests of [or the rehabilitation of] the minor. These orders may concern the care, supervision, custody, conduct, maintenance, and support of the minor, including education and medical treatment.

Comment. Section 10116 is drawn from Welfare and Institutions Code Section 245.5.

§ 10118. Delegation of duties to county welfare department

10118. (a) The board of supervisors may delegate to the county welfare department all or part of the duties of the probation officer concerning dependent children described in Part 3 (commencing with Section 10200).

(b) The board of supervisors may also delegate to those persons within the county welfare department performing child welfare services the probation officer's right of access to state summary criminal history information to Section 11105 of the Penal Code as is necessary to carry out its duties concerning children reasonably believed to be described by Part 3 (commencing with Section 10200). The information shall include any current incarceration, the location of any current probation or parole, any current requirement that the individual register pursuant to Section 290 or 457.1 of the Penal Code, or pursuant to Section 11140 or 11590 of the Health and Safety Code, and any history of offenses involving abuse or neglect of, or violence against, a child, or convictions of any offenses involving violence, sexual offenses, the abuse or illegal possession, manufacture, or sale of alcohol or controlled substances, and any arrest for which the person is released on bail on the person's own recognizance.

(c) Notwithstanding subdivision (a), a social worker in a county welfare department may perform the duties specified by Section 10260.

Comment. Section 10118 continues former Welfare and Institutions Code Section 272 without substantive change.

§ 10120. Duties of probation officer in court

10120. (a) Except where waived by the probation officer, judge, or referee and the minor, the probation officer shall be present in court to represent the interests of each person who is the subject of a petition to declare that person to be a dependent child upon all hearings or rehearings of the person's case, and shall furnish to the court such information and assistance as the court may require. If so ordered, the probation officer shall take charge of that person before and after any hearing or rehearing.

(b) It shall be the duty of the probation officer to prepare for every hearing on the disposition of a case as provided by Section 10632, 10642, 10643, 10743, 10770, 10761, 10777, or 10782 as is appropriate for the specific hearing, a social study of the minor, containing the matters that may be relevant to a proper disposition of the case. The social study shall include a recommendation for the disposition of the case.

Comment. Section 10120 continues Welfare and Institutions Code Section 280 to the extent it related to dependent children.

§ 10122. Probation officer investigation

10122. The probation officer shall upon order of any court in any matter involving the custody, status, or welfare of a minor or minors, make an investigation of appropriate facts and circumstances and prepare and file with the court written reports and written recommendations in reference to those matters. The court is authorized to receive and consider the reports and recommendations of the probation officer in determining those matters.

Comment. Section 10122 is drawn from Welfare and Institutions Code Section 281.

§ 10124. Placement with relative

10124. If a probation officer determines to recommend to the court that a minor alleged or adjudged to come within Part 3 (commencing with Section 10200) should be removed from the physical custody of the minor's parent or guardian, the probation officer shall give primary consideration to recommending to the court that the minor be placed with a relative of the minor, if such placement is in the best interests of the minor and will be conducive to reunification of the family.

Comment. Section 10124 continues Welfare and Institutions Code Section 281.5 to the extent it related to dependent children.

§ 10126. Treatment by spiritual means

10126. In any case in which a minor is alleged to come within the provisions of Part 3 (commencing with Section 10200) on the basis that the minor is in need of medical care, the court, in making such finding, shall give consideration to any treatment being provided to

the minor by spiritual means through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof.

Comment. Section 10126 continues former Welfare and Institutions Code Section 300.5 without substantive change.

§ 10128. Representation of minor

10128. Where the petition in a juvenile court proceeding alleges that a minor is a person described in Section 10201, 10202, or 10204, and either of the parents, or the guardian, or other person having care or custody of the minor, or who resides in the home of the minor, is charged in a pending criminal prosecution based upon unlawful acts committed against the minor, the prosecuting attorney shall, with the consent or at the request of the juvenile court judge, represent the minor in the interest of the state at the juvenile court proceeding. The terms and conditions of such representation shall be with the consent or approval of the judge of the juvenile court.

Comment. Section 10128 continues the last part of Welfare and Institutions Code Section 681(b) without substantive change.

Staff Note. See Section 351.

*This section should be integrated with the general provisions on representation.*

§ 10130. Notice to parents

10130. (a) Unless their parental rights have been terminated, both parents shall be notified of all proceedings involving the child.

(b) In any case where the probation officer is required to provide a parent or guardian with notice of a proceeding at which the probation officer intends to present a report, the probation officer shall also provide both parents, whether custodial or noncustodial, or any guardian, or the counsel for the parent or guardian a copy of the report prior to the hearing, either personally or by first-class mail. The probation officer shall not charge any fee for providing a copy of a report required by this subdivision.

Comment. Section 10130 continues former Welfare and Institutions Code Section 302(b) without substantive change.

Staff Note. *This section should be integrated with the general provisions on notice.*

## CHAPTER 2. PROGRAM OF SUPERVISION

### § 10140. Minor within jurisdiction of court

10140. (a) In any case in which a probation officer after investigation of an application for petition or other investigation the probation officer is authorized to make, determines that a minor is within the jurisdiction of the juvenile court or will probably soon be within that jurisdiction, the probation officer may, in lieu of filing a petition or subsequent to dismissal of a petition already filed, and with consent of the minor's parent or guardian, undertake a program of supervision of the minor.

(b) If a program of supervision is undertaken, the probation officer shall attempt to ameliorate the situation which brings the minor within, or creates the probability that the minor will be within, the jurisdiction of Part 3 (commencing with Section 10200) by providing or arranging to contract for all appropriate child welfare services pursuant to Sections 16506 and 16507.3 of the Welfare and Institutions Code, within the time periods specified in those sections. No further child welfare services shall be provided subsequent to these time limits. If the family has refused to cooperate with the services being provided, the probation officer may file a petition with the juvenile court pursuant to Section 10530.

(c) Nothing in this section shall be construed to prevent the probation officer from filing a petition pursuant to Section 10530 when otherwise authorized by law.

Comment. Section 10140 continues former Welfare and Institutions Code Section 301(a) without substantive change.

### § 10141. Controlled substances

10141. The program of supervision of the minor undertaken pursuant to this section may call for the minor to obtain care and treatment for the misuse of or addiction to controlled substances from a county mental health service or other appropriate community agency.

Comment. Section 10141 continues former Welfare and Institutions Code Section 301(b) without substantive change.

§ 10142. In-home care programs

10142. Probation departments in counties designated by the department as pilot projects for in-home care programs, pursuant to Section 18964 of the Welfare and Institutions Code, may place, and shall designate, a projected number of children to be referred each year in these projects.

Comment. Section 10142 continues former Welfare and Institutions Code Section 301(c) without substantive change.

CHAPTER 3. DEPENDENCY MEDIATION PROGRAM

§ 10150. Mediation program encouraged

10150. Each juvenile court in Contra Costa, Los Angeles, Orange, Sacramento, San Diego, Santa Clara, and Tulare Counties is encouraged to develop a dependency mediation program to provide a problem-solving forum for all interested persons to develop a plan in the best interests of the child, emphasizing family preservation and strengthening. The Legislature finds that mediation of these matters assists the court in resolving conflict, and helps the court to intervene in a constructive manner in those cases where court intervention is necessary.

Comment. Section 10150 continues the first and second sentences of the first paragraph of former Welfare and Institutions Code Section 350(a)(2) without substantive change.

§ 10151. Reporting suspected child abuse not affected by mediation

10151. Notwithstanding any other provision of law, no person, except the mediator, who is required to report suspected child abuse pursuant to the Child Abuse and Neglect Reporting Act (Article 2.5 (commencing with Section 11164) of Chapter 2 of Title 1 of Part 4 of the Penal Code), shall be exempted from those requirements under Section 1152.5 of the Evidence Code because the person agreed to participate in a dependency mediation program established in a juvenile court under this chapter.

Comment. Section 10151 continues the third sentence of the first paragraph of former Welfare and Institutions Code Section 350(a)(2) without substantive change.

§ 10152. Court-ordered mediation

10152. If a dependency mediation program has been established in a juvenile court under this chapter, and if mediation is requested by any person who the judge or referee deems to have a direct and legitimate interest in the particular case, or on the court's own motion, the matter may be set for confidential mediation to develop a plan in the best interests of the child, utilizing resources within the family first and within the community if required.

Comment. Section 10152 continues the second paragraph of former Welfare and Institutions Code Section 350(a)(2) without substantive change.

CHAPTER 4. MEDICAL, SURGICAL, DENTAL, OR OTHER REMEDIAL CARE

§ 10160. Remedial care for person in temporary custody

10160. (a) Whenever any person is taken into temporary custody under Part 4 (commencing with Section 10250) and is in need of medical, surgical, dental, or other remedial care, the probation officer may, upon the recommendation of the attending physician and surgeon or, if the person needs dental care and there is an attending dentist, the attending dentist, authorize the performance of the medical, surgical, dental, or other remedial care.

(b) The probation officer shall notify the parent, guardian, or person standing in loco parentis of the person, if any, of the care found to be needed before that care is provided, and if the parent, guardian, or person standing in loco parentis objects, the care shall be given only upon order of the court in the exercise of its discretion.

Comment. Section 10160 continues former Welfare and Institutions Code Section 369(a) without substantive change.

§ 10161. Remedial care for person subject of petition

10161. Whenever it appears to the juvenile court that any person concerning whom a petition has been filed with the court is in need of medical, surgical, dental, or other remedial care, and that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize the remedial care or treatment for that person, the court, upon the written recommendation of a licensed physician and surgeon or, if the person needs dental care, a licensed



dentist, and after due notice to the parent, guardian, or person standing in loco parentis, if any, may make an order authorizing the performance of the necessary medical, surgical, dental, or other remedial care for that person.

Comment. Section 10161 continues former Welfare and Institutions Code Section 369(b) without substantive change.

§ 10162. Remedial care for dependent child under supervision of probation officer

10162. Whenever a dependent child of the juvenile court is placed by order of the court within the care and custody or under the supervision of the probation officer of the county in which the dependent child resides and it appears to the court that there is no parent, guardian, or person standing in loco parentis capable of authorizing or willing to authorize medical, surgical, dental, or other remedial care or treatment for the dependent child, the court may, after due notice to the parent, guardian, or person standing in loco parentis, if any, order that the probation officer may authorize the medical, surgical, dental, or other remedial care for the dependent child, by licensed practitioners, as may from time to time appear necessary.

Comment. Section 10162 continues former Welfare and Institutions Code Section 369(c) without substantive change.

§ 10163. Emergency care for minor

10163. (a) Whenever it appears that a minor otherwise within this chapter requires immediate emergency medical, surgical, or other remedial care in an emergency situation, that care may be provided by a licensed physician and surgeon or, if the minor needs dental care in an emergency situation, by a licensed dentist, without a court order and upon authorization of a probation officer.

(b) The probation officer shall make reasonable efforts to obtain the consent of, or to notify, the parent, guardian, or person standing in loco parentis prior to authorizing emergency medical, surgical, dental, or other remedial care.

(c) "Emergency situation," for the purposes of this section, means a minor requires immediate treatment for the alleviation of severe pain or an immediate diagnosis and treatment of an unforeseeable medical,

surgical, dental, or other remedial condition or contagious disease which if not immediately diagnosed and treated, would lead to serious disability or death.

Comment. Section 10163 continues former Welfare and Institutions Code Section 369(d) without substantive change.

§ 10164. Release of information concerning remedial care

10164. In any case in which the court orders the performance of any medical, surgical, dental, or other remedial care pursuant to this section, the court may also make an order authorizing the release of information concerning that care to probation officers, parole officers, or any other qualified individuals or agencies caring for or acting in the interest and welfare of the minor under order, commitment, or approval of the court.

Comment. Section 10164 continues former Welfare and Institutions Code Section 369(e) without substantive change.

§ 10165. Right of parent, guardian, or person in loco parentis

10165. (a) Nothing in this chapter shall be construed as limiting the right of a parent, guardian, or person standing in loco parentis, who has not been deprived of the custody or control of the minor by order of the court, in providing any medical, surgical, dental, or other remedial treatment recognized or permitted under the laws of this state.

(b) The parent of any person described in this chapter may authorize the performance of medical, surgical, dental, or other remedial care provided for in this chapter notwithstanding his or her age or marital status. In nonemergency situations the parent authorizing the care shall notify the other parent before the administration of the care.

Comment. Section 10165 continues former Welfare and Institutions Code Section 369(f)-(g) without substantive change.

Staff Note. Does "his or her" in subdivision (b) refer to the parent or the child?

## CHAPTER 5. CUSTODY ISSUES

### § 10170. Jurisdiction regardless of custody

10170. A juvenile court may assume jurisdiction over a child described in Part 3 (commencing with Section 10200) regardless of whether the child was in the physical custody of both parents or was in the sole legal or physical custody of only one parent at the time that the events or conditions occurred that brought the child within the jurisdiction of the court.

Comment. Section 10170 continues former Welfare and Institutions Code Section 302(a) without substantive change.

### § 10171. Exclusive jurisdiction of juvenile court

10171. When a minor is adjudged a dependent of the juvenile court, any issues regarding custodial rights between the minor's parents shall be determined solely by the juvenile court, as specified in Section 10172 and Chapters 2 (commencing with Section 10710) and 3 (commencing with Section 10750) of Part 7, so long as the minor remains a dependent of the juvenile court.

Comment. Section 10171 continues former Welfare and Institutions Code Section 302(c) without substantive change.

### § 10172. Jurisdiction over custody matters

10172. (a) When a minor has been adjudged a dependent child of the juvenile court pursuant to subdivision (c) of Section 10700, no other division of any superior court may hear proceedings pursuant to Part 2 (commencing with Section 3020) of Division 8 regarding the custody of the minor. While the minor is a dependent child of the court all issues regarding the minor's custody shall be heard by the juvenile court.

(b) In deciding issues between the parents or between a parent and a guardian regarding custody of a minor who has been adjudicated a dependent of the juvenile court, the juvenile court may review any records that would be available to the domestic relations division of a superior court hearing such a matter.

Comment. Subdivision (a) of Section 10172 continues the first two sentences of former Welfare and Institutions Code Section 304 without substantive change. Subdivision (b) continues the third sentence of

former Welfare and Institutions Code Section 304 without substantive change.

§ 10173. Restraining orders

10173. The juvenile court, on its own motion, may issue an order directed to either of the parents enjoining any action specified in subdivision (b), (c), or (d) of Section 2035. The Judicial Council shall adopt forms for these restraining orders. These form orders shall not be confidential and shall be enforceable in the same manner as any other order issued pursuant to Section 2035.

Comment. Section 10173 continues the fourth, fifth, and sixth sentence of former Welfare and Institutions Code Section 304 without substantive change.

§ 10174. Jurisdiction after termination of dependent status

10174. This chapter shall not be construed to divest the domestic relations division of a superior court from hearing any issues regarding the custody of a minor when that minor is no longer a dependent of the juvenile court.

Comment. Section 10174 continues the last paragraph of former Welfare and Institutions Code Section 304 without substantive change.

PART 3. JURISDICTION

§ 10200. Purpose of part

10200. (a) It is the intent of the Legislature in enacting this part to provide maximum protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to protect children who are at risk of that harm. This protection includes provision of a full array of social and health services to help the child and family and to prevent reabuse of children. That protection shall focus on the preservation of the family whenever possible.

(b) The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this part shall center upon whether a parent's disability prevents the parent from exercising care and control.

(b) Nothing in this part 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.

(c) Nothing in this part is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this part.

(d) To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment Chapter 1485 of the Statutes of 1987, those savings shall be used to promote services which support family maintenance and family reunification plans such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills.

Comment. Section 10200 continues the penultimate paragraph of former Welfare and Institutions Code Section 300 without substantive change.

#### § 10201. Nonaccidental harm

10201. (a) A minor is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court if the minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian.

(b) For the purposes of this section, a court may find there is 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 or guardian which indicate the child is at risk of serious physical harm.

(c) For purposes of this section, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

Comment. Section 10201 continues former Welfare and Institutions Code Section 300(a) without substantive change.

§ 10202. Inadequate supervision, protection, or provision

10202. (a) A minor is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court if the minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm or illness, as a result of the failure of the minor's parent or guardian to adequately supervise or protect the minor, or the willful or negligent failure of the minor's parent or guardian to adequately supervise or protect the minor from the conduct of the custodian with whom the minor has been left, or by the willful or negligent failure of the parent or guardian to provide the minor with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the minor due to the parent's or guardian's mental illness, developmental disability, or substance abuse.

(b) No minor shall be found to be a person described by this section solely due to the lack of an emergency shelter for the family.

(c) Whenever it is alleged that a minor comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination by an accredited practitioner thereof and shall not assume jurisdiction unless necessary to protect the minor from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment or nontreatment proposed by the parent or guardian (2) the risks to the minor posed by the course of treatment or nontreatment proposed by the parent or guardian (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 or guardian and agency.

(d) The minor shall continue to be a dependent child pursuant to this section only so long as is necessary to protect the minor from risk of suffering serious physical harm or illness.

Comment. Section 10202 continues former Welfare and Institutions Code Section 300(b) without substantive change.

§ 10203. Serious emotional damage

10203. (a) A minor is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court if the minor is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, or withdrawal, untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian.

(b) No minor shall be found to be a person described by this section if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

Comment. Section 10203 continues former Welfare and Institutions Code Section 300(c) without substantive change.

§ 10204. Sexual abuse

10204. A minor is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court if the minor has been sexually abused, or there is a substantial risk that the minor will be sexually abused, as defined in Section 11165.1 of the Penal Code, by the minor's parent or guardian or a member of the minor's household, or the parent or guardian has failed to adequately protect the minor from sexual abuse when the parent or guardian knew or reasonably should have known that the minor was in danger of sexual abuse.

Comment. Section 10204 continues former Welfare and Institutions Code Section 300(d) without substantive change.

§ 10205. Severe physical abuse

10205. (a) A minor is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court if the minor is under the age of five and 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.

(b) For the purposes of this subdivision, "severe physical abuse" means 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.

(3) More than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness.

(4) The willful, prolonged failure to provide adequate food.

(c) A minor may not be removed from the physical custody of the minor's parent or guardian on the basis of a finding of severe physical abuse unless the probation officer has made an allegation of severe physical abuse pursuant to Section 10530.

Comment. Section 10205 continues former Welfare and Institutions Code Section 300(e) without substantive change.

#### § 10206. Death of another child

10206. A minor is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court if the minor's parent or guardian has been convicted of causing the death of another child through abuse or neglect.

Comment. Section 10206 continues former Welfare and Institutions Code Section 300(f) without substantive change.

#### § 10207. Nonsupport

10207. A minor is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court if the minor has been left without any provision for support; the minor's parent has been incarcerated or institutionalized and cannot arrange for the care of the minor; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent is unknown, and reasonable efforts to locate the parent have been unsuccessful.

Comment. Section 10207 continues former Welfare and Institutions Code Section 300(g) without substantive change.



§ 10208. Adoption

10208. (a) A minor is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court if the minor has been freed for adoption from one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(b) Notwithstanding Section 10710 of this code and Section 16507 of the Welfare and Institutions Code, family reunification services shall not be provided to a minor adjudged a dependent pursuant to this section.

Comment. Subdivision (a) of Section 10208 continues former Welfare and Institutions Code Section 300(h) without substantive change. Subdivision (b) continues former Welfare and Institutions Code Section 300.1 without substantive change.

§ 10209. Acts of cruelty

10209. A minor is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court if the minor has been subjected to an act or acts of cruelty by the parent or guardian or a member of the minor's household, or the parent or guardian has failed to adequately protect the minor from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the minor was in danger of being subjected to an act or acts of cruelty.

Comment. Section 10209 continues former Welfare and Institutions Code Section 300(i) without substantive change.

§ 10210. Abuse or neglect of sibling

10210. (a) A minor is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court if the minor's sibling has been abused or neglected, as defined in Section 10210, 10202, 10204, 10205, or 10209, and there is a substantial risk that the minor will be abused or neglected, as defined in those sections.

(b) The court shall 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.

Comment. Section 10210 continues former Welfare and Institutions Code Section 300(j) without substantive change.

#### PART 4. TEMPORARY CUSTODY AND DETENTION

##### CHAPTER 1. GROUNDS FOR TEMPORARY CUSTODY AND DETENTION

###### Article 1. Temporary Custody by Peace Officer

###### § 10250. Immediate need, danger, or threat

10250. (a) Any peace officer may, without a warrant, take into temporary custody a minor when the officer has reasonable cause for believing that the minor is a person described in Part 3 (commencing with Section 10200) and, in addition, that the minor has an immediate need for medical care, or the minor is in immediate danger of physical or sexual abuse, or the physical environment or the fact that the child is left unattended poses an immediate threat to the child's health or safety.

(b) In cases in which the child is left unattended, the peace officer shall first attempt to contact the child's parent or guardian to determine if the parent or guardian is able to assume custody of the child. If the parent or guardian cannot be contacted, the peace officer shall notify a social worker in the county welfare department to assume custody of the child.

Comment. Section 10250 continues former Welfare and Institutions Code Section 305(a) without substantive change.

###### § 10251. Immediate danger to health or safety

10251. Any peace officer may, without a warrant, take into temporary custody a minor who is in a hospital and release of the minor to a parent poses an immediate danger to the child's health or safety.

Comment. Section 10251 continues former Welfare and Institutions Code Section 305(b) without substantive change.

§ 10252. Dependent child

10252. Any peace officer may, without a warrant, take into temporary custody a minor who is a dependent child of the juvenile court, or concerning whom an order has been made under Section 10322, when the officer has reasonable cause for believing that the minor has violated an order of the juvenile court or has left any placement ordered by the juvenile court.

Comment. Section 10252 continues former Welfare and Institutions Code Section 305(c) without substantive change.

§ 10253. Sickness or injury

10253. Any peace officer may, without a warrant, take into temporary custody a minor who is found in any street or public place suffering from any sickness or injury which requires care, medical treatment, hospitalization, or other remedial care.

Comment. Section 10253 continues former Welfare and Institutions Code Section 305(d) without substantive change.

Article 2. Temporary Custody by Social Worker

§ 10260. Grounds for custody

10260. Any social worker in a county welfare department, while acting within the scope of the social worker's regular duties under the direction of the juvenile court and pursuant to subdivision (b) of Section 10118, may do all of the following:

(a) Receive and maintain, pending investigation, temporary custody of a minor who is described in Part 3 (commencing with Section 10200), and who has been delivered by a peace officer.

(b) Take into and maintain temporary custody of, without a warrant, a minor who has been declared a dependent child of the juvenile court under this division or who the social worker has reasonable cause to believe is a person described in Section 110202 or 10207, and the social worker has reasonable cause to believe that the minor has an immediate need for medical care or is in immediate danger of physical or sexual abuse or the physical environment poses an immediate threat to the child's health or safety.

Comment. Section 10260 continues subdivisions (a) and (b) of former Welfare and Institutions Code Section 306 without substantive change.

§ 10261. Alternatives to custody

10261. (a) Before taking a minor into custody a social worker shall consider all of the following:

(1) Whether there are any reasonable services available to the worker which, if provided to the minor's parent, guardian, caretaker, or to the minor, would eliminate the need to remove the minor from the custody of the minor's parent, guardian, or caretaker.

(2) Whether a referral to public assistance pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 of the Welfare and Institutions Code would eliminate the need to take temporary custody of the minor.

(b) If the services described in this section are available they shall be utilized.

Comment. Section 10261 continues the last paragraph of former Welfare and Institutions Code Section 306 without substantive change.

CHAPTER 2. PROCEDURE AFTER TEMPORARY CUSTODY OR DETENTION

Article 1. Disposition of minor

§ 10270. Determination by officer

10270. (a) A peace officer who takes a minor into temporary custody pursuant to Chapter 1 (commencing with Section 10250) shall thereafter determine the disposition of the minor in the manner provided in this article.

(b) In determining which disposition of the minor shall be made, the officer shall give preference to the alternative which least interferes with the parents' or guardians' custody of the minor if this alternative is compatible with the safety of the minor. The officer shall also consider the needs of the minor for the least restrictive environment and the protective needs of the community.

Comment. Subdivision (a) of Section 10270 continues the introductory portion of former Welfare and Institutions Code Section 307 without substantive change. The reference to the probation officer is deleted as unnecessary. See Welf. & Inst. Code § 283 (probation officer has powers and authority of peace officer).

Subdivision (b) continues the last paragraph of former Welfare and Institutions Code Section 307 without substantive change.

§ 10271. Release

10271. The officer may release the minor.

Comment. Section 10271 continues former Welfare and Institutions Code Section 307(a) without substantive change.

§ 10272. Release on promise to appear

10272. (a) The officer may prepare in duplicate a written notice for the parent or parents of the minor to appear with the minor before the probation officer of the county in which the minor was taken into custody at a time and place specified in the notice. The notice shall also contain a concise statement of the reasons the minor was taken into custody.

(b) The officer shall deliver one copy of the notice to the minor and a parent, guardian, or responsible relative of the minor and may require the minor and the parent, guardian, or relative to sign a written promise that he or she shall appear at the time and place designated in the notice. Upon the execution of the promise to appear, the officer shall immediately release the minor.

(c) The officer shall, as soon as practicable, file one copy of the notice with the probation officer.

Comment. Section 10272 continues former Welfare and Institutions Code Section 307(b) without substantive change.

§ 10273. Custody of probation officer

10273. The officer may take the minor without unnecessary delay before the probation officer of the county in which the minor was taken into custody, or in which the minor resides, or in which the acts take place or the circumstances exist which are alleged to bring the minor within the provisions of Part 3 (commencing with Section 10200) and deliver the minor into the custody of the probation officer.

Comment. Section 10273 continues former Welfare and Institutions Code Section 307(c) without substantive change.

§ 10274. Release to community service program

10274. (a) Notwithstanding any other provision of this article, an officer who takes a minor suspected of being a person described in Part 3 (commencing with Section 10200) into temporary custody pursuant to Section 10250 (immediate need, danger, or threat) may, in a case where the officer deems that it is in the best interest of the minor and the public, take the minor to a community service program for abused or neglected children.

(b) Organizations or programs receiving referrals pursuant to this section shall have a contract or an agreement with the county to provide shelter care or counseling. Employees of a program receiving referrals pursuant to this section are "child care custodians" for the purpose of the requirements of Section 11165.7 of the Penal Code.

(c) The receiving organization shall take immediate steps to notify the minor's parent, guardian, or a responsible relative of the place to which the minor was taken.

Comment. Section 10274 continues former Welfare and Institutions Code Section 307.5 without substantive change.

§ 10275. Transfer to requesting county

10275. (a) As used in this section, "requesting county" means the county in which the minor is alleged to be within or to come within the jurisdiction of the juvenile court.

(b) Whenever a minor is taken into temporary custody under the provisions of this part in a county other than the requesting county, the officer who has taken the minor into temporary custody may notify the law enforcement agency in the requesting county of the fact that the minor is in custody.

(c) When a law enforcement officer of the requesting county files a petition pursuant to Section 10530 with the clerk of the juvenile court of the requesting county and secures a warrant from the court, the officer shall forward the warrant, or a telegraphic copy of the warrant, to the officer who has the minor in temporary custody as soon as possible within 48 hours, excluding Sundays and nonjudicial days, from the time the minor was taken into temporary custody.

(d) Within five days after forwarding the warrant or copy, an officer from the requesting county shall take custody of the minor in the county in which the minor is in temporary custody, and shall take the minor before the juvenile court judge who issued the warrant, or before some other juvenile court of the same county without unnecessary delay. If the minor is not brought before a judge of the juvenile court within the period prescribed by this subdivision, the minor shall be released from custody.

Comment. Section 10275 continues former Welfare and Institutions Code Section 324 without substantive change.

## Article 2. Notice

### § 10280. Right of minor to make telephone calls

10280. (a) Immediately after being taken to a place of confinement pursuant to this part and, except where physically impossible, no later than one hour after the minor has been taken into custody, a minor 10 years of age or older shall be advised that of the right to make at least two telephone calls from the place where the minor is being held, one call completed to the minor's parent, guardian, or a responsible relative, and another call completed to an attorney.

(b) The calls shall be at public expense, if the calls are completed to telephone numbers within the local calling area, and in the presence of a public officer or employee.

(c) Any public officer or employee who willfully deprives a minor taken into custody of the minor's right to make these telephone calls is guilty of a misdemeanor.

Comment. Section 10280 continues former Welfare and Institutions Code Section 308(b) without substantive change.

### § 10281. Notification of whereabouts of minor

10281. (a) Except as provided in subdivision (b), a peace officer or social worker that takes a minor into custody pursuant to this part shall take immediate steps to notify the minor's parent, guardian, or a responsible relative that the minor is in custody and the place where the minor is being held.

(b) Upon order of the juvenile court, the parent or guardian shall not be notified of the exact whereabouts of the minor. The court shall issue such an order only upon a showing that notifying the parent or guardian of the exact whereabouts would endanger the child or that the parent or guardian is likely to flee with the child. However, if it is impossible or impracticable to obtain a court order authorizing nondisclosure prior to the detention hearing, and if the peace officer or social worker has a reasonable belief that the minor or the minor's foster family would be endangered by the disclosure of the minor's exact whereabouts, or that the disclosure would cause the custody of the minor to be disturbed, the peace officer or social worker may refuse to disclose the place where the minor is being held. The county welfare department shall make a diligent and reasonable effort to ensure regular telephone contact between the parent and a child of any age, prior to the detention hearing, unless that contact would be detrimental to the child. The initial telephone contact shall take place as soon as practicable, but no later than five hours after the child is taken into custody. The court shall review any such decision not to disclose the place where the minor is being held at the detention hearing, and shall conduct that review within 24 hours upon the application of a parent, guardian, or a responsible relative.

Comment. Section 10281 continues former Welfare and Institutions Code Section 308(a) without substantive change.

§ 10282. Notice of rights

10282. (a) Any peace officer, probation officer, or social worker who takes into temporary custody pursuant to this part a minor who comes within the description of Part 3 (commencing with Section 10200) shall immediately inform, through the most efficient means available, the parent, guardian, or responsible relative, that the minor has been taken into protective custody and that a written statement is available which explains the parent's or guardian's procedural rights and the preliminary stages of the dependency investigation and hearing.

Comment. Section 10282 continues the first sentence of former Section 307.4(a) without substantive change.



§ 10283. Form and contents of information statement

10283. (a) The Judicial Council shall, in consultation with the County Welfare Directors Association of California, adopt a form for the written statement, which shall be in simple language and shall be printed and distributed by the county. The written statement shall be made available for distribution through all public schools, probation offices, and appropriate welfare offices.

(b) The written statement shall include, but is not limited to, the following information:

(1) The conditions under which the minor will be released, hearings which may be required, and the means whereby further specific information about the minor's case and conditions of confinement may be obtained.

(2) The rights to counsel, privileges against self-incrimination, and rights to appeal possessed by the minor, and the minor's parents, guardians, or responsible relative.

Comment. Section 10283 continues subdivision (a) (other than the first sentence) of former Welfare and Institutions Code Section 307.4.

§ 10284. Failure to notify of written information

10284. If a good faith attempt was made at notification, the failure on the part of the peace officer, probation officer, or social worker to notify the parent or guardian that the written information required by this article is available shall be considered to be due to circumstances beyond the control of the peace officer, probation officer, or social worker, and shall not be construed to permit a new defense to any juvenile or judicial proceeding or to interfere with any rights, procedures, or investigations accorded under any other law.

Comment. Section 10284 continues former Welfare and Institutions Code Section 307.4(b) without substantive change.

Article 3. Action By Probation Officer

§ 10290. Investigation of circumstances

10290. (a) Upon delivery to the probation officer of a minor who has been taken into temporary custody under this part, the probation officer shall immediately investigate the circumstances of the minor

and the facts surrounding the minor's being taken into custody and attempt to maintain the minor with the minor's family through the provision of services.

(b) In any case in which there is reasonable cause for believing that a minor who is under the care of a physician or surgeon or a hospital, clinic, or other medical facility and cannot be immediately moved is a person described in Part 3 (commencing with Section 10200), the minor shall be deemed to have been taken into temporary custody and delivered to the probation officer for the purposes of this division while the minor is at the office of the physician or surgeon or the medical facility.

Comment. Subdivision (a) of Section 10290 continues the first sentence of former Welfare and Institutions Code Section 309(a) without substantive change. Subdivision (b) continues former Welfare and Institutions Code Section 309(b) without substantive change.

§ 10291. Release of minor

10291. (a) The probation officer shall immediately release the minor to the custody of the minor's parent, guardian, or responsible relative unless one or more of the following conditions exist:

(1) The minor has no parent, guardian, or responsible relative; or the minor's parent, guardian, or responsible relative is not willing to provide care for the minor.

(2) Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor and there are no reasonable means by which the minor can be protected in the minor's home or the home of a responsible relative.

(3) There is substantial evidence that a parent, guardian, or custodian of the minor is likely to flee the jurisdiction of the court.

(4) The minor has left a placement in which the minor was placed by the juvenile court.

(b) As a condition for the release of the minor, the probation officer may require the minor or the minor's parent, guardian, or relative, or both, to sign a written promise that either or both of them will appear before the probation officer at a suitable place designated by the probation officer at a specified time.

(c) If the minor is not released to the minor's parent or guardian, the minor shall be deemed detained for purposes of this chapter.

Comment. Subdivision (a) of Section 10291 continues subdivision (a) with the exception of the first sentence of former Welfare and Institutions Code Section 309 without substantive change. Subdivision (b) continues former Welfare and Institutions Code Section 310 without substantive change. Subdivision (c) continues former Welfare and Institutions Code Section 309(c) without substantive change.

§ 10292. Detention of minor and petition

19292. (a) If the probation officer determines that the minor shall be retained in custody, the officer shall immediately file a petition pursuant to Section 10530 with the clerk of the juvenile court who shall set the matter for hearing on the detention hearing calendar.

(b) In the hearing the minor, parents, or guardians have a privilege against self-incrimination and have a right to confrontation by, and cross-examination of, any person examined by the court as provided in Section 10321.

Comment. Subdivision (a) of Section 10292 continues the first sentence of former Welfare and Institutions Code Section 311(a) without substantive change. Subdivision (b) continues former Welfare and Institutions Code Section 311(b) without substantive change.

Staff Note. *Some of these provisions and the next should be relocated to the hearing provisions.*

§ 10293. Notice of hearing

10293. (a) A probation officer that files a petition pursuant to Section 10530 shall thereupon notify each parent or each guardian of the minor of the time and place of the hearing if the whereabouts of each parent or guardian can be ascertained by due diligence, and the probation officer shall serve those persons entitled to notice of the hearing under the provisions of Section 10540 with a copy of the petition and notify these persons of the time and place of the detention hearing. This notice may be given orally and shall be given in this manner if it appears that the parent does not read.

(b) Upon reasonable notification by counsel representing the minor or the minor's parents or guardian, the clerk of the court shall notify counsel of the hearings in the manner provided for notice to the parent or guardian of the minor under this division.

Comment. Subdivision (a) of Section 10293 continues the second and third sentences of former Welfare and Institutions Code Section 311 without substantive change. Subdivision (b) continues former Welfare and Institutions Code Section 312 without substantive change.

§ 10294. Release within 48 hours

10294. (a) Except as provided in subdivision (b), whenever a minor is taken into custody by a peace officer or probation officer, the minor shall be released within 48 hours after having been taken into custody, excluding nonjudicial days, unless within said period of time a petition to declare the minor a dependent child has been filed pursuant to this division.

(b) When a minor willfully misrepresents the minor's age to be 18 or more years when taken into custody by a peace officer or probation officer, and this misrepresentation effects a material delay in investigation which prevents the filing of a petition pursuant to this division, the petition or complaint shall be filed within 48 hours from the time the minor's true age is determined, excluding nonjudicial days. If, in such cases, the petition is not filed within the time prescribed by this section, the minor shall be immediately released from custody.

Comment. Subdivision (a) of Section 10294 continues former Welfare and Institutions Code Section 313(a) without substantive change. Subdivision (b) continues former Welfare and Institutions Code Section 314 without substantive change.

§ 10295. Written explanation for custody of released minor

10295. Whenever a minor who has been held in custody for more than six hours by the probation officer is subsequently released and no petition is filed, the probation officer shall prepare a written explanation of why the minor was held in custody for more than six hours. The written explanation shall be prepared within 72 hours after the minor is released from custody and filed in the record of the case. A copy of the written explanation shall be sent to the parents, guardian, or other person having care or custody of the minor.

Comment. Section 10295 continues former Welfare and Institutions Code Section 313(b) without substantive change.

## CHAPTER 3. DETENTION HEARING

### Article 1. General Provisions

#### § 10300. When hearing required

10300. (a) If a minor has been taken into custody under this part and not released to a parent or guardian, the juvenile court shall hold a hearing (which shall be referred to as a "detention hearing") to determine whether the minor shall be further detained.

(b) The hearing shall be held as soon as possible, but in any event before the expiration of the next judicial day after a petition to declare the minor a dependent child has been filed. If the hearing is not held within the period prescribed by this section, the minor shall be released from custody.

Comment. Section 10300 continues former Welfare and Institutions Code Section 315 without substantive change.

#### § 10301. Continuance

10301. Upon motion of the minor or a parent or guardian of the minor, the court shall continue any hearing or rehearing held under the provisions of this chapter for one day, excluding Sundays and nonjudicial days.

Comment. Section 10301 continues former Welfare and Institutions Code Section 322 without substantive change.

#### § 10302. Information to parties

10302. Upon appearing before the court at the detention hearing, each parent or guardian and the minor, if present, shall first be informed of the reasons why the minor was taken into custody, the nature of the juvenile court proceedings, and the right of each parent or guardian and any minor to be represented at every stage of the proceedings by counsel.

Comment. Section 10302 continues former Welfare and Institutions Code Section 316 without substantive change.

§ 10303. Order to appear

10303. Upon any hearing or rehearing under the provisions of this chapter, the court may order the minor or any parent or guardian of the minor who is present in court to again appear before the court, the probation officer or the county financial evaluation officer at a time and place specified in the order.

Comment. Section 10303 continues former Welfare and Institutions Code Section 323 without substantive change.

§ 10304. Services of clinical experts

10304. The juvenile court may, in any case before it in which a petition has been filed as provided in this part, order that the probation officer obtain the services of psychiatrists, psychologists, or other clinical experts that may be required to assist in determining the appropriate treatment of the minor and that may be required in the conduct or implementation of treatment. Payment for the services shall be a charge against the county.

Comment. Section 10304 continues former Welfare and Institutions Code Section 370 without substantive change.

Article 2. Appointment of Counsel

§ 10310. Appointment of counsel for parent or guardian

10310. (a) When it appears to the court that a parent or guardian of the minor desires counsel but is unable to afford and cannot for that reason employ counsel, the court may appoint counsel.

(b) When it appears to the court that a parent or guardian of the minor is unable to afford and cannot for that reason employ counsel, and the minor has been placed in out-of-home care, or the petitioning agency is recommending that the minor be placed in out-of-home care, the court shall appoint counsel, unless the court finds that the parent or guardian has made a knowing and intelligent waiver of counsel.

Comment. Section 10310 continues subdivisions (a) and (b) of former Welfare and Institutions Code Section 317 without substantive change.

§ 10311. Appointment of counsel for minor

10311. (a) In any case in which it appears to the court that the minor would benefit from the appointment of counsel the court shall appoint counsel for the minor.

(b) Counsel for the minor may be a county counsel, district attorney, public defender, or other member of the bar, provided that the counsel does not represent another party or county agency whose interests conflict with the minor's. The fact that the district attorney represents the minor in a proceeding pursuant to this division as well as conducts a criminal investigation or files a criminal complaint or information arising from the same or reasonably related set of facts as the proceeding pursuant to this division is not in and of itself a conflict of interest. The court shall determine if representation of both the petitioning agency and the minor constitutes a conflict of interest. If the court finds there is a conflict of interest, separate counsel shall be appointed for the minor.

(c) The court may fix the compensation to be paid by the county for the services of appointed counsel, if counsel is not a county counsel, district attorney, or public defender.

Comment. Section 10311 continues former Welfare and Institutions Code Section 317(c) without substantive change.

#### § 10312. Representation by counsel

10312. The counsel appointed by the court shall represent the parent, guardian, or minor at the detention hearing and at all subsequent proceedings before the juvenile court. Counsel shall continue to represent the parent or minor unless relieved by the court upon the substitution of other counsel or for cause. The representation shall include representing the parent or the minor in termination proceedings and in those proceedings relating to the institution or setting aside of a legal guardianship.

Comment. Section 10312 continues former Welfare and Institutions Code Section 317(d) without substantive change.

#### § 10313. Responsibilities of counsel for minor

10313. (a) The counsel for the minor shall be charged in general with the representation of the minor's interests.

(b) In representing the minor's interests, counsel shall make such further investigations as counsel deems necessary to ascertain the facts, including the interviewing of witnesses, and counsel shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings. Counsel may introduce and examine counsel's

own witnesses, make recommendations to the court concerning the minor's welfare, and participate further in the proceedings to the degree necessary to adequately represent the minor.

(c) In any case in which the minor is four years of age or older, counsel shall interview the minor to determine the minor's wishes and to assess the minor's well-being. In addition, counsel shall investigate the interests of the minor beyond the scope of the juvenile proceeding and report to the court other interests of the minor that may need to be protected by the institution of other administrative or judicial proceedings.

(d) The court shall take whatever appropriate action is necessary to fully protect the interests of the minor.

Comment. Section 10313 continues former Welfare and Institutions Code Section 317(e) without substantive change.

#### § 10314. Access of counsel to records

10314. (a) Notwithstanding any other provision of law, counsel shall be given access to all records relevant to the case which are maintained by state or local public agencies.

(b) Counsel shall be given access to records maintained by hospitals or by other medical or nonmedical practitioners or by child care custodians, in the manner prescribed by Section 1158 of the Evidence Code.

Comment. Section 10314 continues former Welfare and Institutions Code Section 317(f) without substantive change.

#### § 10315. Counsel for petitioner

10315. In a juvenile court hearing, where the parent or guardian is represented by counsel, the county counsel or district attorney shall, at the request of the juvenile court judge, appear and participate in the hearing to represent the petitioner.

Comment. Section 10315 continues former Welfare and Institutions Code Section 318.5 without substantive change.

### Article 3. Initial Hearing



§ 10320. "Relative" defined

10320. As used in this article, "relative" means an adult who is related to the minor by blood or affinity, including all relatives whose status is preceded by the words "step", "great", "great-great", or "grand". However, only a relative who is an adult grandparent, aunt, uncle, or a sibling of the minor shall be given preferential treatment for placement of the minor.

Comment. Section 10320 continues the last paragraph of former Welfare and Institutions Code Section 319 without substantive change.

Staff Note. This provision might be generalized for the entire division.

§ 10321. Court proceedings

10321. (a) At the initial petition hearing the court shall examine the minor's parents, guardians, or other persons having relevant knowledge and hear the relevant evidence as the minor, the minor's parents or guardians, the petitioner, or their counsel desires to present. The court may examine the minor, as provided in Section 10608.

(b) The probation officer shall report to the court on the reasons why the minor has been removed from the parent's custody; the need, if any, for continued detention; on the available services and the referral methods to those services which could facilitate the return of the minor to the custody of the minor's parents or guardians; and whether there are any relatives who are able and willing to take temporary custody of the minor.

Comment. Section 10321 continues the first paragraph and the first sentence of the second paragraph of former Welfare and Institutions Code Section 319 without substantive change.

§ 10322. Circumstances requiring continued detention

10322. The court shall order the release of the minor from custody unless a prima facie showing has been made that the minor comes within Part 3 (commencing with Section 10200) and any of the following circumstances exist:

(a) There is a substantial danger to the physical health of the minor or the minor is suffering severe emotional damage, and there are no reasonable means by which the minor's physical or emotional health

may be protected without removing the minor from the parents' or guardians' physical custody.

(b) There is substantial evidence that a parent, guardian, or custodian of the minor is likely to flee the jurisdiction of the court.

(c) The minor has left a placement in which the minor was placed by the juvenile court.

(d) The minor indicates an unwillingness to return home, if the minor has been physically or sexually abused by a person residing in the home.

Comment. Section 10322 continues the second sentence of the second paragraph and related subdivisions of former Welfare and Institutions Code Section 319 without substantive change.

§ 10323. Court determination concerning available services

10323. (a) The court shall make a determination on the record as to whether reasonable efforts were made to prevent or eliminate the need for removal of the minor from the minor's home and whether there are available services which would prevent the need for further detention.

(b) Services to be considered for purposes of making the determination required by this section are case management, counseling, emergency shelter care, emergency in-home caretakers, out-of-home respite care, teaching and demonstrating homemakers, parenting training, transportation, and any other child welfare services authorized by the State Department of Social Services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9 of the Welfare and Institutions Code. The court shall also review whether the social worker has considered whether a referral to public assistance services pursuant to Chapter 2 (commencing with Section 11200) of Part 3, Chapter 7 (commencing with Section 14000) of Part 3, Chapter 1 (commencing with Section 17000) of Part 5, and Chapter 10 (commencing with Section 18900) of Part 6, of Division 9 of the Welfare and Institutions Code would have eliminated the need to take temporary custody of the minor or would prevent the need for further detention.

(c) Where the first contact with the family has occurred during an emergency situation in which the child could not safely remain at home, even with reasonable services being provided, the court shall make a

finding that the lack of preplacement preventive efforts were reasonable.

Comment. Subdivision (a) of Section 10323 continues the first sentence of the third paragraph of former Welfare and Institutions Code Section 319 without substantive change. Subdivision (b) continues the second and third sentences of the third paragraph of former Welfare and Institutions Code Section 319 without substantive change. Subdivision (c) continues the sixth sentence of the third paragraph of former Welfare and Institutions Code Section 319 without substantive change.

#### § 10324. Placement of minor

10324. (a) If the minor can be returned to the custody of the minor's parent or guardian through the provision of services considered under Section 10323, the court shall place the minor with the minor's parent or guardian and order that the services shall be provided.

(b) If the minor cannot be returned to the custody of the minor's parent or guardian, the court shall determine if there is a relative who is able and willing to care for the child.

(c) When the minor is not released from custody the court may order that the minor shall be placed in the suitable home of a relative or in an emergency shelter or other suitable licensed place or a place exempt from licensure designated by the juvenile court or in an appropriate certified family home whose license is pending and all the prelicense requirements for such a placement have been met as set forth in Section 10724 for a period not to exceed 15 judicial days.

Comment. Subdivision (a) of Section 10324 continues the fourth sentence of the third paragraph of former Welfare and Institutions Code Section 319 without substantive change. Subdivision (b) continues the fifth sentence of the third paragraph of former Welfare and Institutions Code Section 319 without substantive change. Subdivision (c) continues the fourth paragraph of former Welfare and Institutions Code Section 319 without substantive change.

#### § 10325. Detention order

10325. Whenever a court orders a minor detained, the court shall state the facts on which the decision is based, shall specify why the initial removal was necessary, and shall order services to be provided as soon as possible to reunify the minor and the minor's family if appropriate.

Comment. Section 10325 continues the seventh sentence of the third paragraph of former Welfare and Institutions Code Section 319 without substantive change,

§ 10326. Specialized mental health treatment

10326. (a) When the court finds a minor to be a person described by Part 3 (commencing with Section 10200), and believes that the minor may need specialized mental health treatment while the minor is unable to reside in the minor's natural home, the court shall notify the director of the county mental health department in the county where the minor resides. The county mental health department shall perform the duties required under Section 5697.5 of the Welfare and Institutions Code for all those minors.

(b) Nothing in this section shall restrict the provisions of emergency psychiatric services to those minors who are involved in dependency cases and have not yet reached the point of adjudication or disposition, nor shall it operate to restrict evaluations at an earlier stage of the proceedings or to restrict orders removing the minor from a detention facility for psychiatric treatment.

Comment. Section 10326 continues former Welfare and Institutions Code Section 319.1 without substantive change.

Article 4. Rehearing

§ 10330. Rehearing in case of default

10330. (a) When a hearing is held under the provisions of this article and no parent or guardian of the minor is present and no parent or guardian has had actual notice of the hearing, a parent or guardian of the minor may file an affidavit setting forth the facts with the clerk of the juvenile court and the clerk shall immediately set the matter for rehearing at a time within 24 hours, excluding Sundays and nonjudicial days from the filing of the affidavit.

(b) Upon the rehearing, the court shall proceed in the same manner as upon the original hearing.

Comment. Section 10330 continues the first paragraph of former Section 321 without substantive change.

§ 10331. Rehearing to determine prima facie case

10331. (a) If the minor, a parent or guardian, or the minor's attorney or guardian ad litem, if either one or the other has been appointed by the court, requests evidence of the prima facie case, a rehearing shall be held within three judicial days to consider evidence of the prima facie case.

(b) If the prima facie case is not established, the minor shall be released from detention.

Comment. Section 10331 continues the second paragraph of former Welfare and Institutions Code Section 321 without substantive change.

§ 10332. Continuance

10332. When the court ascertains that the rehearing cannot be held within three judicial days because of the unavailability of a witness, a reasonable continuance may be granted for a period not to exceed five judicial days.

Comment. Section 10332 continues the fourth paragraph of former Welfare and Institutions Code Section 321 without substantive change.

§ 10333. Trial in lieu of rehearing

10333. In lieu of a requested rehearing, the court may set the matter for trial within 10 days.

Comment. Section 10333 continues the third paragraph of former Welfare and Institutions Code Section 321 without substantive change.

PART 5. COMMENCEMENT OF PROCEEDINGS

CHAPTER 1. GENERAL PROVISIONS

§ 10500. Commencement of proceeding

10500. A proceeding in the juvenile court to declare a minor a dependent child of the court is commenced by the filing with the court, by the probation officer, of a petition, in conformity with the requirements of this part.

Comment. Section 10500 continues former Welfare and Institutions Code Section 325 without substantive change.

§ 10501. Guardian ad litem

10501. (a) For the purposes of Child Abuse Prevention and Treatment Act grants to states (Public Law 93-247), in all cases in which there is filed a petition based upon alleged neglect or abuse of the minor, or in which a prosecution is initiated under the Penal Code arising from neglect or abuse of the minor, the probation officer or a social worker who files a petition under this division shall be the guardian ad litem to represent the interests of the minor in proceedings under this division, unless the court shall appoint another adult as guardian ad litem. However, the guardian ad litem shall not be the attorney responsible for presenting evidence alleging child abuse or neglect in judicial proceedings.

(b) No bond shall be required from any guardian ad litem acting under this section.

Comment. Section 10501 continues former Welfare and Institutions Code Section 326 without substantive change.

Staff Note. *The provision relating to a social worker appears to conflict with the preceding section providing for commencement by a probation officer.*

§ 10502. Venue

10502. Either the juvenile court in the county in which a minor resides or in the county where the minor is found or in the county in which the acts take place or the circumstances exist which are alleged to bring such minor within the provisions of Part 3 (commencing with Section 10200), is the proper court to commence proceedings under this chapter.

Comment. Section 10502 continues former Welfare and Institutions Code Section 327 without substantive change.

CHAPTER 2. COMMENCEMENT BY PROBATION OFFICER

§ 10510. Probation officer investigation

10510. (a) Whenever the probation officer has cause to believe that there was or is within the county, or residing therein, a person described in Part 3 (commencing with Section 10200), the probation officer shall immediately make any investigation the probation officer

deems necessary to determine whether child welfare services should be offered to the family and whether proceedings in the juvenile court should be commenced.

(b) The probation officer shall interview any minor four years of age or older who is a subject of an investigation, and who is in juvenile hall or other custodial facility, or has been removed to a foster home, to ascertain the minor's view of the home environment. If proceedings are commenced, the probation officer shall include the substance of the interview in any written report submitted at an adjudicatory hearing, or if no report is then received in evidence, the probation officer shall include the substance of the interview in the social study required by Section 10642.

(c) If the probation officer determines that it is appropriate to offer child welfare services to the family, the probation officer shall make a referral to these services pursuant to Chapter 5 (commencing with Section 16500) of Part 4 of Division 9 of the Welfare and Institutions Code.

(d) This section does not require an investigation by the probation officer with respect to a minor delivered or referred to any agency pursuant to Section 10274.

Comment. Section 10510 continues former Welfare and Institutions Code Section 328 without substantive change.

#### § 10511. Referral agency investigation

10511. (a) Whenever any officer refers or delivers a minor pursuant to Section 10274, the agency to which the minor is referred shall immediately make the investigation it deems necessary to determine what disposition of the referral or delivery should be made.

(b) If the referral agency does not initiate a service program on behalf of a minor referred to the agency within 20 calendar days, or initiate a service program on behalf of a minor delivered to the agency within 10 calendar days, that agency shall immediately notify the referring officer of that decision in writing. The referral agency shall retain a copy of that written notification for 30 days.

(c) The referring agency may, within 10 court days following receipt of the notification from the referral agency, apply to the probation officer for a review of that decision.

Comment. Subdivisions (a)-(b) of Section 10511 continue former Welfare and Institutions Code Section 328.3 without substantive change. Subdivision (c) continues former Welfare and Institutions Code Section 331.5 without substantive change.

§ 10512. Application to probation officer for commencement

10512. (a) Whenever any person applies to the probation officer to commence proceedings in the juvenile court, the application shall be in the form of an affidavit alleging that there was or is within the county, or residing therein, a minor within the provisions of Part 3 (commencing with Section 10200), and setting forth facts in support thereof.

(b) The probation officer shall immediately make the investigation the probation officer deems necessary to determine whether proceedings in the juvenile court should be commenced.

(c) If the probation officer does not take action under Section 10140 and does not file a petition in the juvenile court within three weeks after the application, the probation officer shall endorse upon the affidavit of applicant the probation officer's decision not to proceed further and the reasons therefor and shall immediately notify the applicant of the action taken or the decision rendered under this section. The probation officer shall retain the affidavit and the probation officer's endorsement thereon for a period of 30 days after notice to applicant.

(d) If the probation officer fails to file a petition within three weeks after the application of a person to commence juvenile court proceedings, the person may, within one month after making the application, apply to the juvenile court to review the decision of the probation officer, and the court may either affirm the decision of the probation officer or order the probation officer to commence juvenile court proceedings.

Comment. Subdivisions (a)-(c) of Section 10512 continue former Welfare and Institutions Code Section 329 without substantive change. Subdivision (d) continues former Welfare and Institutions Code Section 331 without substantive change.



## CHAPTER 3. PETITION

### § 10530. Contents of petition

10530. A petition to commence proceedings in the juvenile court to declare a minor a dependent child of the court shall be verified and shall contain all of the following:

(a) The name of the court to which it is addressed.

(b) The title of the proceeding.

(c) The code section and the subdivision under which the proceedings are instituted. If it is alleged that the minor is a person described by Section 10205, the petition shall include an allegation pursuant to that section.

(d) The name, age, and address, if any, of the minor upon whose behalf the petition is brought.

(e) The names and residence addresses, if known to the petitioner, of both parents and any guardian of the minor. If there is no parent or guardian residing within the state, or if the parent or guardian's place of residence is not known to the petitioner, the petition shall also contain the name and residence address, if known, of any adult relative residing within the county, or, if there is none, the adult relative residing nearest to the location of the court.

(f) A concise statement of facts, separately stated, to support the conclusion that the minor upon whose behalf the petition is being brought is a person within the definition of each of the sections and subdivisions under which the proceedings are being instituted.

(g) The fact that the minor upon whose behalf the petition is brought is detained in custody or is not detained in custody, and if the minor is detained in custody, the date and the precise time the minor was taken into custody.

(h) A notice to the father, mother, spouse, or other person liable for support of the minor child, of the matters specified in Section 10531.

Comment. Section 10530 continues former Welfare and Institutions Code Section 332(a)-(h) without substantive change. The reference to a ward is not continued because it duplicates Welfare and Institutions Code Section 656. The contents of former subdivision (h) are elaborated in Section 10531 (notice to person liable for support).

§ 10531. Notice to person liable for support

10531. The notice to the father, mother, spouse, or other person liable for support of the minor child required by Section 10530 shall state all of the following:

(a) Section 903 of the Welfare and Institutions Code makes that person, the estate of that person, and the estate of the minor child, liable for the cost of the care, support, and maintenance of the minor child in any county institution or any other place in which the child is placed, detained, or committed pursuant to an order of the juvenile court.

(b) Section 903.1 of the Welfare and Institutions Code makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of legal services rendered to the minor or the parent by a private attorney or a public defender appointed pursuant to the order of the juvenile court.

(c) Section 903.2 makes that person, the estate of that person, and the estate of the minor child, liable for the cost to the county of the probation supervision of the minor child by the probation officer pursuant to the order of the juvenile court.

(d) The liabilities established by these sections are joint and several.

Comment. Section 10531 continues former Welfare and Institutions Code Section 332(h) without substantive change.

§ 10532. Verification of petition

10532. Any petition filed in juvenile court to commence proceedings pursuant to this chapter that is not verified may be dismissed without prejudice by such court.

Comment. Section 10532 continues former Welfare and Institutions Code Section 333 without substantive change.

§ 10533. Setting petition for hearing

10533. Upon the filing of the petition, the clerk of the juvenile court shall set the petition for hearing within 30 days, except that in the case of a minor detained in custody at the time of the filing of the petition, the petition shall be set for hearing within 15 judicial days from the date of the order of the court directing the detention.

Comment. Section 10533 continues former Welfare and Institutions Code Section 334 without substantive change.

§ 10534. Subsequent petition

10534. (a) In any case in which a minor has been found to be a person described by Part 3 (commencing with Section 10200) and the petitioner alleges new facts or circumstances, other than those under which the original petition was sustained, sufficient to state that the minor is a person described in Part 3 (commencing with Section 10200), the petitioner shall file a subsequent petition. This subdivision does not apply if the jurisdiction of the juvenile court has been terminated before the new allegations.

(b) All procedures and hearings required for an original petition are applicable to a subsequent petition filed under this section.

Comment. Section 10534 continues former Welfare and Institutions Code Section 342 without substantive change.

CHAPTER 4. NOTICE

§ 10540. Notice of hearing

10540. Upon the filing of the petition, the clerk of the juvenile court shall issue a notice containing the time, date, and place of the hearing, to which shall be attached a copy of the petition. The clerk shall cause the notice and copy of the petition to be served upon all of the following persons:

(a) The minor, if the minor is 10 or more years of age.

(b) Each of the persons described in subdivision (e) of Section 10530 whose residence addresses are set forth in the petition or whose residence addresses become known to the clerk before the hearing.

(c) The attorney for the minor's parent or guardian.

(d) The district attorney, if the district attorney has notified the clerk that the district attorney wishes to receive the petition.

Comment. Section 10540 continues former Welfare and Institutions Code Section 335(a) without substantive change.

§ 10541. Notification of probate depart of superior court

10541. (a) If the minor is a ward of a guardian appointed pursuant to the Probate Code, the clerk of the juvenile court shall notify the probate department of the superior court which appointed the guardian of the proceedings in the juvenile court.

(b) The probation department or counsel for the minor, if any, may petition the probate department of the superior court to have the guardian removed pursuant to Chapter 9 (commencing with Section 2650) of Part 4 of Division 4 of the Probate Code.

Comment. Section 10541 continues former Welfare and Institutions Code Section 335(b) without substantive change.

§ 10542. Contents of notice

10542. The notice required by Section 10540 shall contain all of the following:

(a) The name and address of the person to whom the notice is directed.

(b) The date, time, and place of the hearing on the petition.

(c) The name of the minor upon whose behalf the petition has been brought.

(d) Each section and subdivision under which the proceeding has been instituted.

(e) A statement that the parent or guardian or adult relative to whom notice is required to be given, and the minor, are entitled to have an attorney present at the hearing on the petition, and that, if the parent or guardian or an adult relative is indigent and cannot afford an attorney, and desires to be represented by an attorney, the parent or guardian or adult relative shall promptly notify the clerk of the juvenile court, and that in the event counsel or legal assistance is furnished by the court, the parent or guardian or adult relative shall be liable to the county, to the extent of the financial ability of the parent, guardian, or adult relative, for all or a portion of the cost thereof.

(f) A statement that the parent or guardian or responsible relative may be liable for the costs of support of the minor in a county institution.

Comment. Section 10542 continues former Welfare and Institutions Code Section 336 without substantive change.

§ 10543. Time and manner of service if minor is detained

10543. (a) If the minor is detained, service of the notice of hearing and copy of the petition shall be made on all persons required to receive the notice and copy of the petition in the manner and within the time provided in this section.

(b) Service shall be made either personally or by certified mail with request for return receipt, except that if all persons entitled to notice were present at the detention hearing, service shall be made either personally or by first-class mail.

(c) Service shall be made as soon as possible after filing of the petition and at least five days before the time set for hearing, unless the hearing is set less than five days from the filing of the petition, in which case service shall be made at least 24 hours before the time set for hearing.

Comment. Section 10543 continues former Welfare and Institutions Code Section 337(a)-(b) without substantive change.

Staff Note. *This draft assumes a general provision to the effect the service by certified mail satisfies any requirement of service by first class mail.*

*There is also an issue on extension of time for notice where notice is mailed. Do general CCP provisions apply? Cf. Family Code § 210.*

§ 10544. Time and manner of service if minor is not detained

10544. If the minor is not detained, service of the notice of hearing and copy of the petition shall be made on all persons required to receive the notice and copy of the petition either personally or by first-class mail, at least 10 days before the time set for hearing. If a person on whom service is to be made is known to reside outside of the county, the clerk of the juvenile court shall make service on the person by first-class mail as soon as possible after filing of the petition and at least 10 days before the time set for hearing. Failure to respond to the notice shall in no way result in arrest or detention. In the instance of failure to appear after notice by first-class mail, the court shall direct that the notice and copy of the petition is to be personally served on all persons required to receive the notice and copy of the petition. Personal service of the notice and copy of the petition outside of the county at least 10 days before the time set for hearing is equivalent to service by first-class

mail. Service may be waived by any person by a voluntary appearance entered in the minutes of the court or by a written waiver of service filed with the clerk of the court at or prior to the hearing.

Comment. Section 10544 continues former Welfare and Institutions Code Section 337(c) without substantive change.

Staff Note. We would like to break this mass into manageable subdivisions, but it is not clear which provisions are intended to be general in nature and which are intended to be limited in nature.

See also Staff Note for the preceding section.

§ 10545. Citation to parent or guardian

10545. (a) In addition to the notice provided in Sections 10530 and 10542, the juvenile court may issue its citation directing any parent or guardian of the person concerning whom a petition has been filed to appear at the time and place set for any hearing or financial evaluation under the provisions of this chapter, including a hearing under the provisions of Section 257 of the Welfare and Institutions Code, and directing any person having custody or control of the minor concerning whom the petition has been filed to bring the minor with the person.

(b) The notice shall in addition state that a parent or guardian may be required to participate in a counseling program with the minor concerning whom the petition has been filed.

(c) Personal service of the citation shall be made at least 24 hours before the time stated in the citation for the appearance.

(d) In case the citation cannot be served, or the person served fails to obey it, or in any case in which it appears to the court that the citation will probably be ineffective, a warrant of arrest may issued on the order of the court either against the parent, or guardian, or the person having the custody of the minor, or with whom the minor is living.

Comment. Subdivisions (a)-(c) of Section 10545 continue former Welfare and Institutions Code Section 338 without substantive change. Subdivision (d) continues former Welfare and Institutions Code Section 339 without substantive change.

Staff Note. The notice referred to in subdivision (b) is presumably part of the citation rather than part of the notice of hearing mentioned in subdivision (a).

§ 10546. Citation to parent or guardian

10546. In addition to the notice provided in Sections 10531 and 10540, the juvenile court may issue its citation directing any parent, guardian, or foster parent of the person concerning whom a petition has been filed to appear at the time and place set for any hearing under the provisions of this division, and directing any person having custody or control of the minor concerning whom the petition has been filed to bring the minor with the person. The notice shall, in addition, state that a parent, guardian, or foster parent may be required to participate in a counseling or education program with the minor concerning whom the petition has been filed. Personal service of the citation shall be made at least 24 hours before the time stated therein for the appearance.

Comment. Section 10546 continues former Welfare and Institutions Code Section 362.3 without substantive change.

Staff Note. Compare this with preceding section.

CHAPTER 5. PROTECTIVE ORDERS

Article 1. General Provisions

§ 10550. Protective custody warrant for minor

10550. Whenever a petition has been filed in the juvenile court alleging that a minor comes within Part 3 (commencing with Section 10200) and praying for a hearing thereon, or whenever any subsequent petition has been filed praying for a hearing in the matter of the minor and it appears to the court that the circumstances of the minor's home environment may endanger the health, person, or welfare of the minor, or whenever a dependent minor has run away from a court ordered placement, a protective custody warrant may be issued immediately for the minor.

Comment. Section 10550 continues former Welfare and Institutions Code Section 340 without substantive change.

§ 10551. Protection of social worker

10551. (a) Whenever pursuant to Part 7 (commencing with Section 10700) a social worker is assigned to provide child welfare services, family reunification services, or other services to a dependent child

of the juvenile court, the juvenile court may, for good cause shown and after an ex parte hearing, issue its order restraining the parents of the dependent child from threatening the social worker, or any member of the social worker's family, with physical harm.

(b) For purposes of this section, "good cause" means at least one threat of physical harm to the social worker, or any member of the social worker's family, made by the person who is to be the subject of the restraining order, with the apparent ability to carry out the threat.

(c) Violation of a restraining order issued pursuant to this section shall be punishable as contempt.

Comment. Section 10551 continues former Welfare and Institutions Code Section 340.5 without substantive change.

#### § 10552. Hospitalization of mentally ill minor

10552. Whenever the court, before or during the hearing on the petition, is of the opinion that the minor is mentally ill or if the court is in doubt concerning the mental health of the minor, the court may order that the minor be held temporarily in the psychopathic ward of the county hospital or hospital whose services have been approved and/or contracted for by the department of health of the county, for observation and recommendation concerning the future care, supervision, and treatment of the minor.

Comment. Section 10552 continues former Welfare and Institutions Code Section 357 without substantive change.

#### Article 2. Facility for 72-Hour Treatment and Evaluation

##### § 10560. Narcotics or restricted or dangerous drugs

10560. Whenever a minor who appears to be a danger to self or others as a result of the use of narcotics (as defined in Section 11001 of the Health and Safety Code), or a restricted dangerous drug (as defined in Section 11901 of the Health and Safety Code), is brought before any judge of the juvenile court, the judge may continue the hearing and proceed pursuant to this article.

Comment. Section 10560 continues the first sentence of the first paragraph of former Section 359.



§ 10561. Referral to facility for 72-hour treatment and evaluation

10561. The court may order the minor taken to a facility designated by the county and approved by the State Department of Mental Health as a facility for 72-hour treatment and evaluation. Thereupon the provisions of Section 11922 of the Health and Safety Code shall apply, except that the professional person in charge of the facility shall make a written report to the court concerning the results of the evaluation of the minor.

Comment. Section 10561 continues the second and third sentences of the first paragraph of former Welfare and Institutions Code Section 359 without substantive change.

§ 10562. Disposition of case

10562. (a) If the professional person in charge of the facility for 72-hour evaluation and treatment reports to the juvenile court that the minor is not a danger to self or others as a result of the use of narcotics or restricted dangerous drugs or that the minor does not require 14-day intensive treatment, or if the minor has been certified for not more than 14 days of intensive treatment and the certification is terminated, the minor shall be released if the juvenile court proceedings have been dismissed; referred for further care and treatment on a voluntary basis, subject to the disposition of the juvenile court proceedings; or returned to the juvenile court, in which event the court shall proceed with the case pursuant to this division.

Comment. Section 10562 continues the second paragraph of former Welfare and Institutions Code Section 359 without substantive change.

§ 10563. Expenditures under article

10563. Any expenditure for the evaluation or intensive treatment of a minor under this article shall be considered an expenditure made under Part 2 (commencing with Section 5600) of Division 5 of the Welfare and Institutions Code, and shall be reimbursed by the state as are other local expenditures pursuant to that part.

Comment. Section 10563 continues the third paragraph of former Welfare and Institutions Code Section 359 without substantive change.

## CHAPTER 6. DISCOVERY

### § 10570. Subpoenas

10570. (a) Upon request of the probation officer, district attorney, the minor or the minor's parent, guardian, or custodian, or upon its own motion, the court or the clerk of the court, or an attorney, pursuant to Section 1985 of the Code of Civil Procedure shall issue subpoenas requiring attendance and testimony of witnesses and production of papers at any hearing under the provisions of this division.

(b) When a person attends a juvenile court hearing as a witness upon a subpoena at its discretion, the court may by an order on its minutes, direct the county auditor to draw a warrant upon the county treasurer in favor of the witness for witness fees in the amount and manner prescribed by Section 68093 of the Government Code. The fees are county charges.

Comment. Section 10570 continues former Welfare and Institutions Code Section 341 without substantive change.

## PART 6. HEARINGS

### CHAPTER 1. CONDUCT OF HEARING

#### § 10600. Special or separate session of court

10600. (a) All cases under this division shall be heard at a special or separate session of the court, and no other matter shall be heard at that session.

(b) No person on trial, awaiting trial, or under accusation of crime, other than a parent, guardian, or relative of the minor, shall be permitted to be present at the special or separate session, except as a witness.

(c) Cases in which the minor is detained and the sole allegation is that the minor is a person described in Part 3 (commencing with Section 10200) shall be granted precedence on the calendar of the court for the day on which the case is set for hearing.

Comment. Section 10600 continues former Welfare and Institutions Code Section 345 without substantive change.

§ 10601. Closed hearing

10601. Unless requested by a parent or guardian and consented to or requested by the minor concerning whom the petition has been filed, the public shall not be admitted to a juvenile court hearing. The judge or referee may nevertheless admit persons the judge or referee deems to have a direct and legitimate interest in the particular case or the work of the court.

Comment. Section 10601 continues former Welfare and Institutions Code Section 346 without substantive change.

§ 10602. Presence of affected persons at hearing

10602. A minor who is the subject of a juvenile court hearing and any person entitled to notice of the hearing under the provisions of Section 10540, is entitled to be present at the hearing and has the right to be represented at the hearing by counsel of the minor's or person's own choice.

Comment. Section 10602 continues former Welfare and Institutions Code Section 349 without substantive change.

§ 10603. Commencement of hearing

10603. (a) At the beginning of the hearing on a petition filed pursuant to Part 5 (commencing with Section 10500), the judge or clerk shall first read the petition to those present.

(b) Upon request of any parent, guardian, or adult relative, counsel for the minor, or the minor, if the minor is present, the judge shall explain any term of allegation contained therein and the nature of the hearing, its procedures, and possible consequences.

Comment. Subdivision (a) of Section 10603 continues the first sentence of former Welfare and Institutions Code Section 353 without substantive change. Subdivision (b) continues the second sentence of former Welfare and Institutions Code Section 353 without substantive change.

§ 10604. Representation by counsel

10604. (a) The judge shall ascertain whether the parent, guardian, or adult relative and, when required by Article 2 (commencing with Section 10310) of Chapter 3 of Part 4, the minor have been

informed of their right to be represented by counsel, and if not, the judge shall advise those persons, if present, of the right to have counsel present and where applicable, of the right to appointed counsel.

(b) If a person described in subdivision (a) is unable to afford counsel and desires to be represented by counsel, the court shall appoint counsel in accordance with Section 10311.

(c) The court shall continue the hearing for not to exceed seven days, as necessary to make an appointment of counsel, or to enable counsel to become acquainted with the case, or to determine whether the parent or guardian or adult relative is unable to afford counsel at the parent's, guardian's, or adult relative's expense, and shall continue the hearing as necessary to provide reasonable opportunity for the minor and the parent or guardian or adult relative to prepare for the hearing.

Comment. Subdivision (a) of Section 10604 continues the third sentence of former Welfare and Institutions Code Section 353 without substantive change. Subdivision (b) continues the fourth sentence of former Welfare and Institutions Code Section 353 without substantive change. Subdivision (c) continues the fifth sentence of former Welfare and Institutions Code Section 353 without substantive change.

Staff Note. Notwithstanding subdivision (a), it is not clear that former Section 317 required notification of a minor.

Subdivision (c) appears to be a specific incident of the general continuance provisions.

#### § 10605. Report of proceedings

10605. (a) At any juvenile court hearing conducted by a juvenile court judge, an official court reporter shall, and at any juvenile court hearing conducted by a juvenile court referee, the official reporter, as directed by the court, may take down in shorthand all the testimony and all of the statements and remarks of the judge and all persons appearing at the hearing.

(b) If directed by the judge, or requested by the person on whose behalf the petition was brought, or by the person's parent or legal guardian, or the attorneys of those persons, the reporter shall, within a reasonable time after the hearing of the petition that the court designates, write out the reporter's shorthand notes or the specific portions of them that are requested in plain and legible longhand or by typewriter or other printing machine and certify to the transcript as

being correctly reported and transcribed, and when directed by the court, file the transcript with the clerk of the court. Unless otherwise directed by the judge, the costs of writing out and transcribing all or any portion of the reporter's shorthand notes shall be paid in advance at the rates fixed for transcriptions in a civil action by the person requesting the transcript.

Comment. Section 10605 continues former Welfare and Institutions Code Section 347 without substantive change.

§ 10606. Variance and amendment of pleadings

10606. The provisions of Chapter 8 (commencing with Section 469) of Title 6 of Part 2 of the Code of Civil Procedure relating to variance and amendment of pleadings in civil actions shall apply to petitions and proceedings under this division, to the same extent and with the same effect as if proceedings under this division were civil actions.

Comment. Section 10606 continues former Welfare and Institutions Code Section 348 without substantive change.

§ 10607. Conduct of hearing by judge

10607. (a) The judge of the juvenile court shall control all proceedings during the hearings with a view to the expeditious and effective ascertainment of the jurisdictional facts and the ascertainment of all information relative to the present condition and future welfare of the person upon whose behalf the petition is brought.

(b) Except where there is a contested issue of fact or law, the proceedings shall be conducted in an informal nonadversary atmosphere with a view to obtaining the maximum cooperation of the minor upon whose behalf the petition is brought and all persons interested in the minor's welfare with any provisions that the court may make for the disposition and care of the minor.

Comment. Section 10607 continues former Welfare and Institutions Code Section 350(a) without substantive change.

§ 10608. Testimony of minor in chambers

10608. (a) The testimony of a minor may be taken in chambers and outside the presence of the minor's parent or parents, if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of the minor's parent or parents.

(b) After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(c) The testimony of a minor may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this section.

Comment. Section 10608 continues former Welfare and Institutions Code Section 350(b) without substantive change.

§ 10609. Summary judgment

10609. (a) At any hearing in which the probation department bears the burden of proof, after the presentation of evidence on behalf of the probation department has been closed, the court, on motion of the minor, parent or guardian, or on its own motion, shall order whatever action the law requires of it if the court, upon weighing the evidence then before it, finds that the probation department has not met its burden.

(b) Action by the court under this section includes, but is not limited to, the dismissal of the petition and release of the minor at a jurisdictional hearing, the return of the minor at an out-of-home review held prior to the permanency planning hearing, or the termination of jurisdiction at an in-home review.

(c) If the motion is not granted, the minor, parent, or guardian may offer evidence without first having reserved that right.

Comment. Section 10609 continues former Welfare and Institutions Code Section 350(c) without substantive change.

§ 10610. Appointment of child advocate

10610. A child advocate appointed by the court to represent the interests of a dependent child in a proceeding under this division shall have the same duties and responsibilities as a guardian ad litem and shall be trained by and function under the auspices of a court appointed special advocate guardian ad litem program, formed and operating under the guidelines established by the National Court Appointed Special Advocate Association.

Comment. Section 10610 continues former Welfare and Institutions Code Section 356.6 without substantive change.

Staff Note. The court-appointed special advocate program expires by its terms on January 1, 1994, unless extended before then. Welf. & Inst. Code § 110.

CHAPTER 2. CONTINUANCES

§ 10620. Continuances authorized

10620. (a) Upon request of counsel for the parent, guardian, minor, or petitioner, the court may continue any hearing under this division beyond the time limit within which the hearing is otherwise required to be held, provided that no continuance shall be granted that is contrary to the interest of the minor.

(b) In considering the minor's interests, the court shall give substantial weight to a minor's need for prompt resolution of the minor's custody status, the need to provide children with stable environments, and the damage to a minor of prolonged temporary placements.

Comment. Section 10620 continues the first paragraph of former Welfare and Institutions Code Section 352(a) without substantive change.

§ 10621. Grounds for continuance

10621. (a) Continuances shall be granted only upon a showing of good cause and only for that period of time shown to be necessary by the evidence presented at the hearing on the motion for the continuance. Neither a stipulation between counsel nor the convenience of the parties is in and of itself a good cause. Neither a pending criminal prosecution nor family law matter shall be considered in and of itself as good cause.

(b) Whenever any continuance is granted, the facts proven which require the continuance shall be entered upon the minutes of the court.

Comment. Section 10621 continues the second paragraph of former Welfare and Institutions Code Section 352(a) without substantive change.

§ 10622. Motion for continuance

10622. In order to obtain a motion for a continuance of the hearing, written notice shall be filed at least two court days prior to the date set for hearing, together with affidavits or declarations detailing specific facts showing that a continuance is necessary, unless the court for good cause entertains an oral motion for continuance.

Comment. Section 10622 continues the third paragraph of former Welfare and Institutions Code Section 352(a) without substantive change.

§ 10623. Continuance where minor removed from custody

10623. Notwithstanding any other provision of law, if a minor has been removed from the parents' or guardians' custody:

(a) No continuance shall be granted that would result in the dispositional hearing held pursuant to Article 1 (commencing with Section 10710) of Chapter 2 of Part 7 being completed longer than 60 days after the hearing at which the minor was ordered removed or detained, unless the court finds that there are exceptional circumstances requiring such a continuance. The facts supporting such a continuance shall be entered upon the minutes of the court.

(b) In no event shall the court grant continuances that would cause the hearing pursuant to Article 1 (commencing with Section 10710) of Chapter 2 of Part 7 to be completed more than six months after the hearing pursuant to Section 10321.

Comment. Section 10623 continues former Welfare and Institutions Code Section 352(b) without substantive change.

§ 10624. Failure of counsel to object to continuance

10624. In any case in which the parent, guardian, or minor is represented by counsel and no objection is made to an order continuing any such hearing beyond the time limit within which the hearing is otherwise required to be held, the absence of such an objection shall be deemed a consent to the continuance. The consent does not affect the requirements of this chapter.



Comment. Section 10624 continues former Welfare and Institutions Code Section 352(c) without substantive change.

§ 10625. Continuance for necessary witness

10625. Except where a minor is in custody, any hearing on a petition filed pursuant to Part 5 (commencing with Section 10500) may be continued by the court for not more than 10 days in addition to any other continuance authorized in this division whenever the court is satisfied that an unavailable and necessary witness will be available within that time.

Comment. Section 10625 continues former Welfare and Institutions Code Section 354 without substantive change.

CHAPTER 3. JURISDICTIONAL DETERMINATION

§ 10630. Burden of proof

10630. (a) At the jurisdictional hearing, the court shall first consider only the question whether the minor is a person described by Part 3 (commencing with Section 10200), and for this purpose, any matter or information relevant and material to the circumstances or acts which are alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be received in evidence.

(b) Proof by a preponderance of evidence, legally admissible in the trial of civil cases, must be adduced to support a finding that the minor is a person described by Part 3 (commencing with Section 10200).

(c) If the parent or guardian is not represented by counsel at the hearing, it shall be deemed that objections that could have been made to the evidence were made.

Comment. Section 10630 continues former Welfare and Institutions Code Section 355 without substantive change.

Staff Note. This section and the next require reorganization for logic.

§ 10631. Evidence

10631. (a) Where the court finds, based upon competent professional evidence, that an injury, injuries, or detrimental condition sustained by a minor, of such a nature as would ordinarily not be sustained except as the result of the unreasonable or neglectful

acts or omissions of either parent, the guardian, or other person who has the care or custody of the minor, that evidence shall be prima facie evidence that the minor is a person described by Section 10201, 10210, or 10204. The presumption created by this subdivision constitutes a presumption affecting the burden of producing evidence.

(b) Proof that either parent, the guardian, or other person who has the care or custody of a minor who is the subject of a petition filed under this division, has physically abused, neglected, or cruelly treated another minor shall be admissible in evidence.

(c) Testimony by a parent, guardian, or other person who has the care or custody of the minor made the subject of a proceeding under this division shall not be admissible as evidence in any other action or proceeding.

Comment. Section 10631 continues former Welfare and Institutions Code Section 355.1 without substantive change.

#### § 10632. Finding

10632. (a) After hearing the evidence, the court shall make a finding, noted in the minutes of the court, whether or not the minor is a person described by Part 3 (commencing with Section 10200) and the specific sections of that chapter under which the petition is sustained.

(b) If the court finds that the minor is not a person described by Part 3 (commencing with Section 10200), it shall order that the petition be dismissed and the minor be discharged from any detention or restriction theretofore ordered.

(c) If the court finds that the minor is a person described by Part 3 (commencing with Section 10200), it shall make and enter its findings and order accordingly.

Comment. Section 10632 continues former Welfare and Institutions Code Section 356 without substantive change.

### CHAPTER 4. EVIDENCE

#### § 10640. Proceedings after jurisdictional finding

10640. (a) After finding that a minor is a person described in Part 3 (commencing with Section 10200), the court shall hear evidence on the question of the proper disposition to be made of the minor.

(b) If the court finds that a minor is described by Section 10208 or that Section 10742 may be applicable, the court shall conduct the dispositional proceeding pursuant to Article 4 (commencing with Section 10740) of Chapter 2 of Part 7.

Comment. Subdivision (a) of Section 10640 continues the first sentence of former Welfare and Institutions Code Section 358(a) without substantive change. Subdivision (b) continues former Welfare and Institutions Code Section 358(c) without substantive change.

#### § 10641. Continuance

10641. Before making a finding required by this chapter, the court may continue the hearing on its own motion, the motion of the parent or guardian, or the motion of the minor, as follows:

(a) If the minor is detained during the continuance, and the probation officer is not alleging that Section 10742 is applicable, the continuance shall not exceed 10 judicial days. The court may make an order for detention of the minor or for the minor's release from detention, during the period of continuance, that is appropriate.

(b) If the minor is not detained during the continuance, the continuance shall not exceed 30 days after the date of the finding pursuant to Section 10632. However, the court may, for cause, continue the hearing for an additional 15 days.

(c) If the probation officer is alleging that Section 10742 is applicable, the court shall continue the proceedings for a period not to exceed 30 days. The probation officer shall notify each parent of the content of Section 10742 and shall inform each parent that if the court does not order reunification a permanency planning hearing will be held, and that the parent's parental rights may be terminated within the time frames specified by law.

Comment. Section 10641 continues paragraphs (1)-(3) of former Welfare and Institutions Code Section 358(a) without substantive change.

#### § 10642. Social study and other evidence

10642. (a) Before determining the appropriate disposition, the court shall receive in evidence the social study of the minor made by the probation officer, any study or evaluation made by a child advocate

appointed by the court, and such other relevant and material evidence as may be offered. Any social study or report submitted to the court by the probation officer shall include the individual child's case plan developed pursuant to Section 16501.1.

(b) In any judgment and order of disposition, the court shall specifically state that the social study made by the probation officer and the study or evaluation made by the child advocate appointed by the court, if there be any, has been read and considered by the court in arriving at its judgment and order of disposition.

Comment. Section 10642 continues former Welfare and Institutions Code Section 358(b) without substantive change.

#### § 10643. Contents of social study

10643. Each social study or evaluation made by a probation officer or child advocate appointed by the court, required to be received in evidence pursuant to Section 10642 shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department or probation officer has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9 of the Welfare and Institutions Code, as a possible solution to the problems at hand, and has offered these services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for return of the child is recommended to the court by the county welfare department or probation officer.

(c) Whether the best interests of the minor will be served by granting reasonable visitation rights with the minor to the minor's grandparents, in order to maintain and strengthen the minor's family relationships.

(d) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child from parental custody and control.

Comment. Section 10643 continues former Welfare and Institutions Code Section 358.1 without substantive change.

PART 7. JUDGMENTS AND ORDERS

CHAPTER 1. GENERAL PROVISIONS

§ 10700. Juvenile court judgment

10700. After receiving and considering the evidence on the proper disposition of the case, the juvenile court may enter judgment as follows:

(a) If the court finds that the minor is a person described by Part 3 (commencing with Section 10200), it may, without adjudicating the minor a dependent child of the court, order that services be provided to keep the family together and place the minor and the minor's parent or guardian under the supervision of the probation officer for a time period consistent with Section 10140.

(b) If the family subsequently is unable or unwilling to cooperate with the services being provided, the probation officer may file a petition with the juvenile court pursuant to Section 10530 alleging that a previous petition has been sustained and that disposition pursuant to subdivision (a) has been ineffective in ameliorating the situation requiring the child welfare services. Upon hearing the petition, the court shall order either that the petition shall be dismissed or that a new disposition hearing shall be held pursuant to subdivision (c).

(c) If the court finds that the minor is a person described by Part 3 (commencing with Section 10200), it may order and adjudge the minor to be a dependent child of the court.

Comment. Section 10700 continues former Welfare and Institutions Code Section 360 without substantive change.

§ 10701. Limitation on parental control

10701. In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Part 3 (commencing with Section 10200), the court may limit the control to be exercised over the dependent child by any parent or

guardian and shall by its order clearly and specifically set forth all such limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations shall not exceed those necessary to protect the child.

Comment. Section 10701 continues former Welfare and Institutions Code Section 361(a) without substantive change.

§ 10702. Orders for care of minor

10702. When a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Part 3 (commencing with Section 10200), the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, subject to further order of the court.

Comment. Section 10702 continues former Welfare and Institutions Code Section 362(a) without substantive change.

§ 10703. Orders where parent retains custody

10703. When a minor is adjudged a dependent child of the court, on the ground that the minor is a person described by Part 3 (commencing with Section 10200) and the court orders that a parent or guardian shall retain custody of the minor subject to the supervision of the probation officer, the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.

Comment. Section 10703 continues former Welfare and Institutions Code Section 362(b) without substantive change.

§ 10704. Order to participate in counseling or education program

10704. (a) The juvenile court may direct any and all reasonable orders to the parents or guardians of the minor who is the subject of any proceedings under this division as the court deems necessary and proper to carry out the provisions of this chapter, including orders to appear before a county financial evaluation officer.

(b) An order under this section may include a direction to participate in a counseling or education program, including, but not

limited to, a parent education and parenting program operated by a community college, school district, or other appropriate agency designated by the court. A foster parent or relative with whom the minor is placed may be directed to participate in such a program in cases in which the court deems participation is appropriate and in the child's best interest. The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the minor is a person described by Part 3 (commencing with Section 10200).

Comment. Section 10704 continues former Welfare and Institutions Code Section 362(c) without substantive change.

#### § 10705. Visitation of parent

10705. In order to maintain ties between the parent and minor, and to provide information relevant to deciding if, and when, to return a minor to the custody of his or her parent or guardian, every order placing a minor in foster care, and ordering reunification services, shall provide for visitation between the parent or guardian and the minor. Visitation shall be as frequent as possible, consistent with the well-being of the minor.

Comment. Section 10705 continues former Welfare and Institutions Code Section 362 without substantive change.

#### § 10706. Public assistance

10706. If the parent or person legally responsible for the care of an minor who is found to be a person described in Part 3 (commencing with Section 10200) receives public assistance or care, any portion of which is attributable to the minor, a copy of the order of the court providing for the removal of the minor from the parent or other person's home shall be furnished to the appropriate social services official, who shall reduce the public assistance and care furnished the parent or other person by the amount attributable to the minor.

Comment. Section 10706 continues former Welfare and Institutions Code Section 363 without substantive change.

#### § 10707. Reports concerning minors

10707. (a) The court may require the probation officer or any other agency to render periodic reports concerning minors committed to

its care, custody, and control under the provisions of this chapter that the court deems necessary or desirable.

(b) The court may require that the probation officer, or any other public agency organized to provide care for needy or neglected children, shall perform visitation and make periodic reports to the courts concerning minors committed under this provisions of this chapter that the court deems necessary or desirable.

Comment. Section 10707 continues former Welfare and Institutions Code Section 365 without substantive change.

## CHAPTER 2. REMOVAL FROM PARENTAL CUSTODY

### Article 1. Court Determination

#### § 10710. Grounds for removal

10710. (a) No dependent child shall be taken from the physical custody of the child's parent or guardian with whom the child resides at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of any of the following:

(1) There is a substantial danger to the physical health of the minor or would be if the minor was returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to Section 10215 constitutes prima facie evidence that the minor cannot be safely left in the custody of the parent or guardian with whom the minor resided at the time of injury.

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Chapter 6 (commencing with Section 10800) or Chapter 7 (commencing with Section 10850), the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive



behavior toward self or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of the minor's parent or guardian.

(4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at a substantial risk of being sexually abused, by a parent, guardian, or member of the minor's household, or other person known to the minor's parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from the minor's parent or guardian or the minor does not wish to return to the minor's parent or guardian.

(5) The minor has been left without any provision for the minor's support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate the parent have been unsuccessful.

(b) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from the minor's home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (a), whether it was reasonable under the circumstances not to make those efforts. The court shall state the facts on which the decision to remove the minor is based.

Comment. Section 10710 continues former Welfare and Institutions Code Section 361(b)-(c) without substantive change. See also Section 10 (singular includes plural).

#### § 10711. Court findings required

10711. The court shall make all of the findings required by Section 10770 in either of the following circumstances:

(a) The minor has been taken from the custody of the minor's parent or guardian and has been living in an out-of-home placement pursuant to Section 10324.

(b) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4 of the Welfare and Institutions Code.

Comment. Section 10711 continues former Welfare and Institutions Code Section 361(d) without substantive change.

§ 10712. Grandparent visitation rights

10712. Where the court has ordered removal of the child from the physical custody of the child's parents pursuant to Section 10710, the court shall consider whether the family ties and best interest of the minor will be served by granting visitation rights to the minor's grandparents. The court shall clearly specify those rights to the supervising probation officer.

Comment. Section 10712 continues former Welfare and Institutions Code Section 361.2(f) without substantive change.

Article 2. Placement of Minor

§ 10720. Placement with noncustodial parent

10720. (a) When a court orders removal of a minor pursuant to Section 10710, the court shall first determine whether there is a parent of the minor, with whom the minor was not residing at the time that the events or conditions arose that brought the minor within the provisions of Part 3 (commencing with Section 10200), who desires to assume custody of the minor. If such a parent requests custody the court shall place the minor with the parent unless it finds that placement with that parent would be detrimental to the minor.

(b) If the court places the minor with a parent under subdivision (a) it may do either of the following:

(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the minor. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the supervision of the juvenile court. In that case the court may order that reunification services be provided to the parent or guardian from whom the minor is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in

order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 10770, which parent, if either, shall have custody of the minor.

Comment. Section 10720 continues subdivision (a) of former Welfare and Institutions Code Section 361.2 without substantive change.

§ 10721. Authority of probation officer

10721. When the court orders removal pursuant to Section 10710, the court shall order the care, custody, control, and conduct of the minor to be under the supervision of the probation officer who may place the minor in any of the following:

(a) The home of a relative, including a noncustodial parent.

(b) A foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(c) A suitable licensed community care facility.

(d) With a foster family agency to be placed in a suitable licensed foster family home or certified family home which has been certified by the agency as meeting licensing standards.

(e) A home or facility in accordance with the federal Indian Child Welfare Act.

Comment. Section 10721 continues subdivision (b) of former Welfare and Institutions Code Section 361.2 without substantive change.

§ 10722. Placement in county of parents' residence

10722. (a) If the minor is taken from the physical custody of the minor's parents or guardians and unless the minor is placed with relatives, the minor shall be placed in foster care in the county of residence of the minor's parents or guardians in order to facilitate reunification of the family. In the event that there are no appropriate placements available in the parents' or guardians' county, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parents' or guardians' community of residence.

(b) Nothing in this section shall be interpreted as requiring multiple disruptions of the minor's placement corresponding to frequent changes of residence by the parents or guardians. In determining

whether the minor should be moved, the probation officer will take into consideration the potential harmful effects of disrupting the placement of the minor and the parents' or guardians' reason for the move.

Comment. Section 10722 continues subdivision (c) of former Welfare and Institutions Code Section 361.2 without substantive change.

§ 10723. Placement outside county of parents' residence

10723. (a) Whenever the probation officer must change the placement of the minor and is unable to find a suitable placement within the county and must place the minor outside the county, the placement shall not be made until the probation officer has served written notice on the parents or guardians at least 14 days before the placement, unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given.

(b) The notice shall state the reasons that require placement outside the county. The parents or guardians may object to the placement not later than seven days after receipt of the notice and, upon objection the court shall hold a hearing not later than five days after the objection and before the placement.

(c) The court shall order out-of-county placement if it finds that the minor's particular needs require placement outside the county.

Comment. Section 10723 continues subdivision (d) of former Welfare and Institutions Code Section 361.2 without substantive change.

§ 10724. Placement with foster family home applicant

10724. (a) Where the court has ordered a minor placed under the supervision of the probation officer and the probation officer has found that the needs of the child cannot be met in any available licensed or exempt facility, including emergency shelter, the minor may be placed in a suitable family home that has filed a license application with the State Department of Social Services, if all of the following certification conditions are met:

(1) A preplacement home visit is made by the probation officer to determine the suitability of the family home.

(2) The probation officer verifies to the licensing agency in writing that the home lacks any deficiencies which would threaten the physical health, mental health, safety, or welfare of the minor.

(3) The probation officer notifies the licensing agency of the

proposed placement and determines that the foster family home applicant has filed specific license application documents prior to and after the placement of the minor.

(b) If the license is subsequently denied, the minor shall be removed from the home immediately. The denial of the license constitutes a withdrawal of the certification.

Comment. Section 10724 continues subdivision (e) of former Welfare and Institutions Code Section 361.2 without substantive change.

### Article 3. Placement With Relative

#### § 10730. Definitions

10730. For purposes of this article:

(1) "Preferential consideration" means that the relative seeking placement shall be the first placement to be considered and investigated.

(2) "Relative" means an adult who is a grandparent, aunt, uncle, or sibling.

Comment. Section 10730 continues former Welfare and Institutions Code Section 361.3(c) without substantive change.

#### § 10731. Request by relative

10732. In any case in which a child is removed from the physical custody of the minor's parents pursuant to Section 10710, preferential consideration shall be given to a request by a relative of the child for placement of the child with the relative.

Comment. Section 10731 continues the first sentence of subdivision (a) of former Welfare and Institutions Code Section 361.3 without substantive change.

#### § 10732. Determination whether placement with relative is appropriate

10732. (a) In determining whether a placement of a child with a relative is appropriate, the probation officer and court shall consider the ability of the relative to provide a secure and stable environment for the child.

(b) Factors to be considered in the assessment under this section include, but are not limited to:

(1) The good moral character of the relative.

(2) The ability of the relative to exercise proper and effective

care and control of the child.

(3) The ability of the relative to provide a home and the necessities of life for the child.

(4) Which relative is most likely to protect the child from the child's parents.

(5) Which relative is most likely to facilitate visitation with the child's other relatives and to facilitate reunification efforts with the parents.

(6) The best interests of the child.

(c) The Legislature declares that a physical disability, such as blindness or deafness, is no bar to the raising of children, and a probation officer's determination as to the ability of a disabled relative to exercise care and control should center upon whether the relative's disability prevents the relative from exercising care and control.

Comment. Section 10732 continues the second, third, and fourth sentences of former Welfare and Institutions Code Section 361.3(a).

#### § 10733. Selection among relatives

10733. In any case in which more than one appropriate relative requests preferential consideration pursuant to this article, the probation officer and the court, in determining which relative should receive preferential consideration, shall consider the best interests of the child, and which of the relatives is most likely to protect the child from the child's parents, to facilitate visitation with the child's other relatives, and to facilitate reunification efforts with the parents. Consideration shall also be given to attempting to place siblings and stepsiblings in the same home if such a placement is found to be in their best interests.

Comment. Section 10733 continues former Welfare and Institutions Code Section 361.3(b) without substantive change.

### Article 4. Reunification Services

#### § 10740. Reunification services required

10740. Except as provided in Section 10742, whenever a minor is removed from a parent's or guardian's custody:

(a) The juvenile court shall order the probation officer to

provide child welfare services to the minor and the minor's parents or guardians for the purpose of facilitating reunification of the family within a maximum time period not to exceed 12 months. Services may be extended up to an additional six months if it can be shown that the objectives of the service plan can be achieved within the extended time period. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period.

(b) The juvenile court shall make findings pursuant to Section 10770.

Comment. Section 10740 continues the first, second, fourth, and fifth sentences of former Welfare and Institutions Code Section 361.5(a) without substantive change.

Staff Note. *Subdivision (b) seems to duplicate earlier provisions.*

#### § 10741. Order and notice to parents

10741. (a) When counseling or other treatment services are ordered, the parent shall be ordered to participate in those services, unless the parent's participation is deemed by the court to be inappropriate or potentially detrimental to the child.

(b) In cases where, pursuant to Section 10742, the court does not order reunification services, the court shall inform the parent or parents of Chapter 6 (commencing with Section 10800) or Chapter 7 (commencing with Section 10850) and shall specify that the parent's or parents' parental rights may be terminated.

Comment. Section 10741 continues the third sentence of the first paragraph and the second paragraph of former Welfare and Institutions Code Section 361.5(a).

#### § 10742. When reunification services not required

10742. Reunification services need not be provided to a parent described in this section when the court finds, by clear and convincing evidence, any of the following:

(a) That the whereabouts of the parents is unknown. A finding pursuant to this subdivision shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent. The posting or publication of notices is not required in the search.

(b) That the parent is suffering from a mental disability that is

described in Chapter 2 (commencing with Section 7820) of Part 4 of Division 12 and that renders the parent incapable of utilizing those services.

(c) That the minor had been previously adjudicated a dependent pursuant to any section of Part 3 (commencing with Section 10200) as a result of physical or sexual abuse, that following that adjudication the minor had been removed from the custody of the minor's parent or guardian pursuant to Section 10710, that the minor has been returned to the custody of the parent or parents, guardian, or guardians from whom the minor had been taken originally, and that the minor is being removed pursuant to Section 10710 due to additional physical or sexual abuse. However, this article is not applicable if the jurisdiction of the juvenile court has been dismissed prior to the additional abuse.

(d) That the parent of the minor has been convicted of causing the death of another child through abuse or neglect.

(e) That the minor was brought within the jurisdiction of the court under Section 10215 because of the conduct of that parent.

Comment. Section 10742 continues former Welfare and Institutions Code Section 361.5(b) without substantive change.

#### § 10743. Hearing

10743. (a) In deciding whether to order reunification in any case in which this article applies, the court shall hold a dispositional hearing.

(b) The probation officer shall prepare a report which discusses whether reunification services shall be provided.

Comment. Section 10743 continues the first and second sentences of former Welfare and Institutions Code Section 361.5(c) without substantive change.

#### § 10744. Parent alleged to have mental disability

10744. When it is alleged, pursuant to subdivision (b) of Section 10742, that the parent is incapable of utilizing services due to mental disability, the court shall order reunification services unless competent evidence from mental health professionals establishes that, even with the provision of services, the parent is unlikely to be capable of adequately caring for the child within 12 months.

Comment. Section 10744 continues the third sentence of former Welfare and Institutions Code Section 361.5(c) without substantive change.



§ 10745. Likelihood of success of reunification services

10745. (a) When subdivision (c), (d), or (e) of Section 10742 is applicable, the court shall not order reunification unless it finds that, based on competent testimony, those services are likely to prevent reabuse or continued neglect of the child or that failure to try reunification will be detrimental to the child because the child is closely and positively attached to that parent. The probation officer shall investigate the circumstances leading to the removal of the minor and advise the court whether there are circumstances which indicate that reunification is likely to be successful or unsuccessful and whether failure to order reunification is likely to be detrimental to the child.

(b) The failure of the parent to respond to previous services, the fact that the child was abused while the parent was under the influence of drugs or alcohol, a past history of violent behavior, or testimony by a competent professional that the parent's behavior is unlikely to be changed by services are among the factors indicating that reunification services are unlikely to be successful. The fact that a parent or guardian is no longer living with an individual who severely abused the minor may be considered in deciding that reunification services are likely to be successful, provided that the court shall consider any pattern of behavior on the part of the parent that has exposed the child to repeated abuse.

Comment. Section 10745 continues the second and third paragraphs of former Welfare and Institutions Code Section 361.5(c) without substantive change.

§ 10746. Whereabouts of parent unknown

10746. (a) If reunification services are not ordered pursuant to subdivision (a) of Section 10742 and the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court shall order the probation officer to provide family reunification services in accordance with this section.

(b) The time limits specified in Section 10740 and Section Chapter 7 (commencing with Section 10850) are not tolled by the parent's absence.

Comment. Section 10746 continues former Welfare and Institutions Code Section 361.5(d) without substantive change.

§ 10747. Parent incarcerated

10747. (a) If the parent or guardian is incarcerated or institutionalized, the court shall order reasonable services unless the court determines those services would be detrimental to the minor. In determining detriment, the court shall consider the age of child, the degree of parent-child bonding, the length of the sentence, the nature of the treatment, the nature of crime or illness, the degree of detriment to the child if services are not offered and, for minors 10 years of age or older, the minor's attitude toward the implementation of family reunification services, and any other appropriate factors.

(b) Services may include, but shall not be limited to, all of the following:

(1) Maintaining contact between parent and child through collect phone calls.

(2) Transportation services, where appropriate.

(3) Visitation services, where appropriate.

(4) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

(c) An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

Comment. Section 10747 continues former Welfare and Institutions Code Section 361.5(e) without substantive change.

§ 10748. Subsequent hearing

10748. (a) If a court, pursuant to subdivision (b), (c), (d), or (e) of Section 10742, does not order reunification services, it shall conduct a hearing pursuant to Chapter 6 (commencing with Section 10800) or Chapter 7 (commencing with Section 10850) within 120 days of the dispositional hearing. The court shall not schedule a hearing so long as the other parent is being provided reunification services pursuant to Section 10740. The court may continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor.

(b) Whenever a court orders that a hearing shall be held pursuant to Chapter 6 (commencing with Section 10800) or Chapter 7 (commencing with Section 10850) it shall direct the agency supervising

the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment which shall include:

- (1) Current search efforts for an absent parent or parents.
- (2) A review of the amount of and nature of any contact between the minor and the minor's parents since the time of placement.
- (3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.
- (4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.
- (5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor, if the minor is 10 years of age or older, concerning placement and the adoption or guardianship.
- (6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

Comment. Section 10748 continues former Welfare and Institutions Code Section 361.5(f)-(g) without substantive change.

### CHAPTER 3. ORDERS AFTER TERMINATION OF JURISDICTION

#### § 10750. Authority of court after termination of jurisdiction

10750. When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court before the minor's attainment of the age of 18 years, and proceedings for the declaration of the nullity or dissolution of the marriage, or for legal separation, of the minor's parents, or proceedings to establish the paternity of the minor child brought under the Uniform Parentage Act (Part 3 (commencing with Section 7600) of Division 12), are pending in the superior court of any county, or an order has been entered with regard to the custody of that minor, the

juvenile court on its own motion may issue an order directed to either of the parents enjoining any action specified in subdivision (b), (c), or (d) of Section 2035 or determining the custody of, or visitation with, the child.

Comment. Section 10750 continues the first paragraph of former Welfare and Institutions Code Section 362.4 without substantive change.

#### § 10751. Court order

10751. (a) An order issued under this chapter continues until modified or terminated by a later order of the superior court.

(b) The order of the juvenile court shall be filed in the proceeding for nullity, dissolution, or legal separation, or in the proceeding to establish paternity, at the time the juvenile court terminates its jurisdiction over the minor, and becomes a part of the proceeding.

Comment. Section 10751 continues the second paragraph of former Welfare and Institutions Code Section 362.4 without substantive change.

#### § 10752. Court order as basis for opening file

10752. If no action is filed or pending relating to the custody of the minor in the superior court of any county, the juvenile court order may be used as the sole basis for opening a file in the superior court of the county in which the parent who has been given custody resides. The court may direct the parent or the clerk of the juvenile court to transmit the order to the clerk of the superior court of the county in which the order is to be filed. The clerk of the superior court shall, immediately upon receipt, open a file, without a filing fee, and assign a case number.

Comment. Section 10752 continues the third paragraph of former Welfare and Institutions Code Section 362.4 without substantive change.

#### § 10753. Notice of filing of custody order

10753. The clerk of the superior court shall, upon the filing of any juvenile court custody order, send by first-class mail a copy of the order with the case number to the juvenile court and to the parents at the address listed on the order.

Comment. Section 10753 continues the fourth paragraph of former Welfare and Institutions Code Section 362.4 without substantive change.

§ 10754. Judicial Council form orders

10754. (a) The Judicial Council shall adopt forms for any custody or restraining order issued under this chapter.

(b) The form orders are not confidential.

Comment. Section 10754 continues the fifth paragraph of former Welfare and Institutions Code Section 362.4 without substantive change.

CHAPTER 4. CONTINUED HEARING

§ 10760. Procedure applicable where minor not removed from custody

10760. (a) Every hearing in which an order is made placing a minor under the supervision of the juvenile court pursuant to this division and in which the minor is not removed from the physical custody of the minor's parent or guardian shall be continued to a specific future date not to exceed six months after the date of the original dispositional hearing.

(b) The continued hearing shall be placed on the appearance calendar.

(c) The court shall advise all persons present of the date of the future hearings, of their rights to be present, and to be represented by counsel.

Comment. Section 10760 continues former Welfare and Institutions Code Section 364(a) without substantive change.

§ 10761. Supplemental report and recommendation

10761. (a) At least 10 calendar days before the hearing, the probation officer shall file a supplemental report with the court describing the services offered to the family and the progress made by the family in eliminating the conditions or factors requiring court supervision.

(b) The probation officer shall also make a recommendation regarding the necessity of continued supervision. A copy of this report shall be furnished to all parties at least 10 calendar days before the hearing.

Comment. Section 10761 continues former Welfare and Institutions Code Section 364(b) without substantive change.

§ 10762. Court determination of need for continued supervision

10762. (a) After hearing any evidence presented by the probation officer, the parent, the guardian, or the minor, the court shall determine whether continued supervision is necessary.

(b) The court shall terminate its jurisdiction unless the probation department establishes by a preponderance of evidence that the conditions still exist that would justify initial assumption of jurisdiction under Part 3 (commencing with Section 10200), or that those conditions are likely to exist if supervision is withdrawn.

(c) Failure of the parent or guardian to participate regularly in any court ordered treatment program is prima facie evidence that the conditions that justified initial assumption of jurisdiction still exist and that continued supervision is necessary.

Comment. Section 10762 continues former Welfare and Institutions Code Section 364(c) without substantive change.

#### § 10763. Periodic review

10763. If the court retains jurisdiction it shall continue the matter to a specified date, not more than six months from the time of the hearing, at which point the court shall again follow the procedure specified in Section 10762.

Comment. Section 10763 continues former Welfare and Institutions Code Section 364(d) without substantive change.

#### § 10764. Subsequent removal from parental custody

10764. (a) In any case in which the court has ordered that a parent or guardian shall retain physical custody of a minor subject to supervision by a probation officer, and the probation officer subsequently receives a report of acts or circumstances that indicate there is reasonable cause to believe that the minor is a person described in Section 10211, 10214, or 10215, the probation officer shall commence proceedings under this division.

(b) If, as a result of the proceedings required, the court finds that the minor is a person described in Section 10211, 10214, or 10215, the court shall remove the minor from the care, custody, and control of the minor's parent or guardian and shall commit the minor to the care, custody, and control of the probation officer pursuant to Section 10710.

Comment. Section 10764 continues former Welfare and Institutions Code Section 364(e) without substantive change.

## CHAPTER 5. PERIODIC REVIEW OF STATUS OF DEPENDENT CHILD

### Article 1. Review of Foster Care Placement

#### § 10770. Periodic review required

10770. (a) The status of every dependent child in foster care shall be reviewed periodically as determined by the court but no less frequently than once every six months, as calculated from the date of the original dispositional hearing, until the hearing described in Chapter 6 (commencing with Section 10800) or Chapter 7 (commencing with Section 10850) is completed.

(b) The court shall determine the continuing necessity for and appropriateness of the placement, the extent of compliance with the case plan, and the extent of progress that has been made toward alleviating or mitigating the causes necessitating placement in foster care, and shall project a likely date by which the child may be returned to the home or placed for adoption or legal guardianship.

(c) After the hearing periodic reviews of each child in foster care shall be conducted pursuant to the requirements of Chapter 8 (commencing with Section 10860) and of Section 16503 of the Welfare and Institutions Code.

Comment. Section 10770 continues former Welfare and Institutions Code Section 366 without substantive change.

#### § 10771. Contents of supplemental report

10771. Each supplemental report required to be filed pursuant to Section 10770 shall include, but not be limited to, a factual discussion of each of the following subjects:

(a) Whether the county welfare department or probation officer has considered child protective services, as defined in Chapter 5 (commencing with Section 16500) of Part 4 of Division 9 of the Welfare and Institutions Code, as a possible solution to the problems at hand, and has offered those services to qualified parents if appropriate under the circumstances.

(b) What plan, if any, for return of the child is recommended to the court by the county welfare department or probation officer.

(c) Whether the subject child appears to be a person who is eligible to be considered for further court action to free the child

from parental custody and control.

(d) What actions, if any, have been taken by the parent to correct the problems which caused the child to be made a dependent child of the court.

Comment. Section 10771 continues former Welfare and Institutions Code Section 366.1 without substantive change.

## Article 2. Minor Made a Dependent Before January 1, 1989

### § 10775. Scope of article

10775. (a) This article applies only to a minor made a dependent of the court pursuant to subdivision (c) of Section 10700 before January 1, 1989.

(b) This article does not apply in a case where, pursuant to Article 4 (commencing with Section 10740) of Chapter 2, the court has ordered that reunification services shall not be provided.

Comment. Subdivision (a) of Section 10775 continues subdivision (f) of former Welfare and Institutions Code Section 366.2 without substantive change.

Subdivision (b) continues the last sentence of subdivision (e) of former Welfare and Institutions Code Section 366.2 without substantive change.

### § 10776. Notice of hearing

10776. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing, of their right to be present and represented by counsel.

(b) Except as provided in Chapter 8 (commencing with Section 10860), notice of the hearing shall be mailed by the probation officer to the same persons as in the original proceeding, to the minor's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the minor in the case of a minor removed from the physical custody of the minor's parent or guardian, and to the counsel of record, by certified mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days before the date to which the hearing was continued.



Comment. Section 10776 continues subdivisions (a) and (b) of former Welfare and Institutions Code Section 366.2 without substantive change.

§ 10777. Supplemental report and recommendation

10777. (a) At least 10 calendar days before the hearing the probation officer shall file a supplemental report with the court regarding the services offered to the family, the progress made, and, where relevant, the prognosis for return of the minor to the physical custody of the minor's parent or guardian, and make the probation officer's recommendation for disposition.

(b) The probation officer shall provide the parent or parents with a copy of the report, including the probation officer's recommendation for disposition, at least 10 calendar days prior to the hearing.

(c) In the case of a minor removed from the physical custody of the minor's parent or guardian, the probation officer shall provide a summary of the probation officer's recommendation for disposition to the counsel for the minor, any court appointed child advocate, foster parents, community care facility, or foster family agency having the physical custody of the minor at least 10 calendar days before the hearing.

Comment. Section 10777 continues former Welfare and Institutions Code Section 366.2(c) without substantive change.

§ 10778. Reports containing recommendation for disposition

10778. (a) Before any hearing involving a minor in the physical custody of a community care facility or foster family agency that may result in the return of the minor to the physical custody of the minor's parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition.

(b) Before any hearing involving a minor in the physical custody of a foster parent that may result in the return of the minor to the physical custody of the minor's parent or guardian, or in the adoption or the creation of a legal guardianship, the foster parent may file with the court a report containing its recommendation for disposition.

(c) The court shall consider any report and recommendation under this section before determining any disposition.

Comment. Section 10778 continues former Welfare and Institutions Code Section 366.2(d) without substantive change.

§ 10779. Procedure at review hearing

10779. The court shall proceed as follows at the review hearing:

(a) The court shall order the return of the minor to the physical custody of the minor's parents or guardians unless, by a preponderance of the evidence, it finds that the return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department has the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs constitutes prima facie evidence that return would be detrimental.

(b) In making its determination, the court shall review the probation officer's report and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which the parent or guardian cooperated and used the services provided.

(c) The court shall make appropriate findings.

(d) Where relevant, the court shall order any additional services reasonably believed to facilitate the return of the minor to the custody of minor's parent or guardian.

(e) The court shall inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a proceeding pursuant to Part 4 (commencing with Section 7800) of Division 12 may be instituted.

Comment. Section 10779 continues former Welfare and Institutions Code Section 366.2(e) (with the exception of the last sentence) without substantive change.

Article 3. Minor Made A Dependent On or After January 1, 1989

§ 10780. Scope of article

10780. (a) This article applies only to a minor made a dependent of the court pursuant to subdivision (c) of Section 10700 on or after January 1, 1989.

(b) This article does not apply in a case where, pursuant to Article 4 (commencing with Section 10740) of Chapter 2, the court has ordered that reunification services shall not be provided.

Comment. Subdivision (a) of Section 10780 continues subdivision (j) of former Welfare and Institutions Code Section 366.21 without

substantive change.

Subdivision (b) continues the last sentence of the first paragraph of subdivision (e) of former Welfare and Institutions Code Section 366.21 without substantive change.

§ 10781. Notice of hearing

10781. (a) Every hearing conducted by the juvenile court reviewing the status of a dependent child shall be placed on the appearance calendar. The court shall advise all persons present at the hearing of the date of the future hearing, of their right to be present and represented by counsel.

(b) Except as provided in Article 2 (commencing with Section 10820) of Chapter 6 and Chapter 8 (commencing with Section 10860), notice of the hearing shall be mailed by the probation officer to the same persons as in the original proceeding, to the minor's parent or guardian, to the foster parents, community care facility, or foster family agency having physical custody of the minor in the case of a minor removed from the physical custody of the minor's parent or guardian, and to the counsel of record, by certified mail addressed to the last known address of the person to be notified, or shall be personally served on those persons, not earlier than 30 days nor later than 15 days before the date to which the hearing was continued.

(c) The notice of hearing shall contain a statement regarding the nature of the hearing to be held and any change in the custody or status of the minor being recommended by the supervising agency. The notice to the foster parent shall indicate that the foster parent may attend all hearings or may submit any information the foster parent deems relevant to the court in writing.

Comment. Section 10781 continues subdivisions (a) and (b) of former Welfare and Institutions Code Section 366.21 without substantive change.

§ 10782. Supplemental report and recommendation

10782. (a) At least 10 calendar days before the hearing the probation officer shall file a supplemental report with the court regarding the services provided or offered to the parents to enable them to assume custody, the progress made, and, where relevant, the prognosis for return of the minor to the physical custody of the minor's parent or guardian, and make the probation officer's

recommendation for disposition. If the recommendation is not to return the minor to a parent, the report shall specify why the return of the minor would be detrimental to the minor.

(b) The probation officer shall provide the parent or parents with a copy of the report, including the probation officer's recommendation for disposition, at least 10 calendar days before the hearing.

(c) In the case of a minor removed from the physical custody of the minor's parent or guardian, the probation officer shall provide a summary of the probation officer's recommendation for disposition to the counsel for the minor, any court appointed child advocate, foster parents, community care facility, or foster family agency having the physical custody of the minor at least 10 calendar days before the hearing.

Comment. Section 10782 continues former Welfare and Institutions Code Section 366.21(c) without substantive change.

#### § 10783. Reports containing recommendation for disposition

10783. (a) Before any hearing involving a minor in the physical custody of a community care facility or foster family agency that may result in the return of the minor to the physical custody of the minor's parent or guardian, or in adoption or the creation of a legal guardianship, the facility or agency shall file with the court a report containing its recommendation for disposition.

(b) Before any such hearing involving a minor in the physical custody of a foster parent that may result in the return of the minor to the physical custody of the minor's parent or guardian, or in the adoption or the creation of a legal guardianship, the foster parent may file with the court a report containing its recommendation for disposition.

(c) The court shall consider any report and recommendation under this section before determining any disposition.

Comment. Section 10783 continues former Welfare and Institutions Code Section 366.21(d) without substantive change.

#### § 10784. Procedure at review hearing

10784. (a) At the review hearing held six months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of the minor's parents or guardians

unless, by a preponderance of the evidence, it finds that the return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department has the burden of establishing that detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs constitutes prima facie evidence that return would be detrimental.

(b) In making its determination, the court shall review the probation officer's report, shall review and consider the report and recommendations of any child advocate appointed pursuant to Section 10610, and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which the parent or guardian cooperated and used the services provided.

(c) The court shall make appropriate findings pursuant to Section 10770.

(d) Where relevant, the court shall order any additional services reasonably believed to facilitate the return of the minor to the custody of the minor's parent or guardian.

(e) The court shall also inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a proceeding pursuant to Chapter 6 (commencing with Section 10800) may be instituted.

Comment. Section 10784 continues the first paragraph of former Welfare and Institutions Code Section 366.21(e) (with the exception of the last sentence) without substantive change.

#### § 10785. Disposition

10785. At the review hearing:

(a) If the minor was removed initially under Section 10217 and the court finds by clear and convincing evidence that the whereabouts of the parent is still unknown, or the parent has failed to contact and visit the child, the court may schedule a hearing pursuant to Chapter 6 (commencing with Section 10800) within 120 days.

(b) If the court finds by clear and convincing evidence that the parent has been convicted of a felony indicating parental unfitness, the court may schedule a hearing pursuant to Chapter 6 (commencing with Section 10800) within 120 days.

(c) If the minor had been placed under court supervision with a previously noncustodial parent pursuant to Article 2 (commencing with Section 10720) of Chapter 2, the court

shall determine whether supervision is still necessary. The court may terminate supervision and transfer permanent custody to that parent, as provided for by Section 10720.

(d) In all other cases, the court shall direct that any reunification services previously ordered shall continue to be offered to the parent or guardian, provided that the court may modify the terms and conditions of those services. If the child is not returned to the child's parent or parents, the court shall determine whether reasonable services have been provided or offered to the parent or parents which were designed to aid the parent or parents overcome the problems which led to the initial removal and the continued custody of the minor. The court shall order that those services be initiated or continued.

Comment. Section 10785 continues the second, third, and fourth paragraphs of former Section 366.21(e) without substantive change.

§ 10786. Procedure at 12 month review hearing

10786. (a) At the review hearing held 12 months after the initial dispositional hearing, the court shall order the return of the minor to the physical custody of the minor's parent or guardian unless, by a preponderance of the evidence, it finds that return of the child would create a substantial risk or detriment to the physical or emotional well-being of the minor. The probation department shall have the burden of establishing that detriment.

(b) The court shall determine whether reasonable services have been provided or offered to the parent or parents that were designed to aid the parent or parents to overcome the problems that led to the initial removal and continued custody of the minor. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs constitutes prima facie evidence that return would be detrimental.

(c) In making its determination, the court shall review the probation officer's report and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which the parent or guardian cooperated and used the services provided.

(d) If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental. The court also shall make a finding pursuant to

Section 10770.

Comment. Section 10786 continues former Welfare and Institutions Code Section 366.21(f) without substantive change.

§ 10787. Disposition following 12 month review hearing

10787. If a minor is not returned to the custody of a parent or guardian at the hearing held pursuant to Section 10786, the court shall do one of the following:

(a) Continue the case for up to six months for another review hearing, provided that the hearing shall occur within 18 months of the date the child was originally taken from the physical custody of the child's parent or guardian. The court shall continue the case only if it finds that there is a substantial probability that the minor will be returned to the physical custody of the minor's parent or guardian within six months or that reasonable services have not been provided to the parent or parents. The court shall inform the parent or guardian that if the minor cannot be returned home by the next review hearing, a permanent plan shall be developed at that hearing. The court shall not order that a hearing pursuant to Chapter 6 (commencing with Section 10800) be held unless there is clear and convincing evidence that reasonable services have been provided or offered to the parents.

(b) Order that the minor remain in long-term foster care, if the court finds by clear and convincing evidence, based upon the evidence already presented to it, that the minor is not adoptable and has no one willing to accept legal guardianship.

(c) Order that a hearing be held within 120 days, pursuant to Chapter 6 (commencing with Section 10800).

Comment. Section 10787 continues former Welfare and Institutions Code Section 366.21(g) without substantive change.

§ 10788. Preparation for hearing to terminate parental rights

10788. If the court orders that a hearing under Chapter 6 (commencing with Section 10800) be held, the court shall also do both of the following:

(a) Order the termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor pending the hearing unless it finds that visitation would be detrimental to the minor.

(b) Direct the agency supervising the child and the licensed

county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment. The assessment shall include all of the following:

- (1) Current search efforts for an absent parent or parents.
- (2) A review of the amount of and nature of any contact between the minor and the minor's parents since the time of placement.
- (3) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.
- (4) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.
- (5) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor, if the minor is 10 years of age or older, concerning placement and the adoption or guardianship.
- (6) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

Comment. Section 10788 continues former Welfare and Institutions Code Section 366.21(h)-(i) without substantive change.

#### § 10789. Procedure at 18 month review hearing

10789. (a) When a case has been continued pursuant to subdivision (a) of Section 10787, the court, at the 18-month hearing, shall order the return of the minor to the physical custody of the minor's parent or guardian unless, by a preponderance of the evidence, it finds that return of the child would create a substantial risk of detriment to the physical or emotional well-being of the minor. The probation department has the burden of establishing the detriment. The failure of the parent or guardian to participate regularly in any court-ordered treatment programs constitutes prima facie evidence that return would be detrimental.



(b) In making its determination, the court shall review the probation officer's report and shall review and consider the report and recommendations of any child advocate appointed pursuant to Section 10610 and shall consider the efforts or progress, or both, demonstrated by the parent or guardian and the extent to which the parent or guardian cooperated and used the services provided.

(c) If the minor is not returned to a parent or guardian, the court shall specify the factual basis for its conclusion that return would be detrimental.

Comment. Section 10789 continues the first paragraph of former Welfare and Institutions Code Section 366.22(a) without substantive change.

#### § 10790. Permanent plan

10790. (a) If the minor is not returned to a parent or guardian at the 18-month hearing and the court determines that reasonable services have been offered or provided to the parent or guardian, the court shall develop a permanent plan.

(b) The court shall order that a hearing be held pursuant to Chapter 6 (commencing with Section 10800) in order to determine whether adoption, guardianship, or long-term foster care is the most appropriate plan for the minor. However, if the court finds by clear and convincing evidence, based on the evidence already presented to it that the minor is not adoptable and has no one willing to accept legal guardianship, the court may order that the minor remain in long-term foster care.

(c) The hearing shall be held no later than 120 days from the date of the 18-month hearing.

(d) The court shall also order termination of reunification services to the parent. The court shall continue to permit the parent to visit the minor unless it finds that visitation would be detrimental to the minor. The court shall determine whether reasonable services have been offered or provided to the parent or guardian.

Comment. Section 10790 continues the second paragraph of former Welfare and Institutions Code Section 366.22 without substantive change.

#### § 10791. Assessment

10791. Whenever a court orders that a hearing pursuant to Chapter 6 (commencing with Section 10800) shall be held, it shall direct the agency supervising

the child and the licensed county adoption agency, or the State Department of Social Services when it is acting as an adoption agency in counties which are not served by a county adoption agency, to prepare an assessment. The assessment shall include all of the following:

(a) Current search efforts for an absent parent or parents.

(b) A review of the amount of and nature of any contact between the minor and the minor's parents or other members of the minor's extended family since the time of placement. Although the extended family of each minor shall be reviewed on a case-by-case basis, "extended family" for the purposes of this subdivision includes, but is not limited to, the minor's siblings, grandparents, aunts, and uncles.

(c) An evaluation of the minor's medical, developmental, scholastic, mental, and emotional status.

(d) A preliminary assessment of the eligibility and commitment of any identified prospective adoptive parent or guardian, particularly the caretaker, to include a social history including screening for criminal records and prior referrals for child abuse or neglect, the capability to meet the minor's needs, and the understanding of the legal and financial rights and responsibilities of adoption and guardianship.

(e) The relationship of the minor to any identified prospective adoptive parent or guardian, the duration and character of the relationship, the motivation for seeking adoption or guardianship, and a statement from the minor, if the minor is 10 years of age or older, concerning placement and the adoption or guardianship.

(f) An analysis of the likelihood that the minor will be adopted if parental rights are terminated.

Comment. Section 10791 continues former Welfare and Institutions Code Section 366.22(b) without substantive change.

## CHAPTER 6. TERMINATION OF PARENTAL RIGHTS

### Article 1. General Provisions

#### § 10800. Application of chapter

10800. (a) This chapter applies to a minor who is adjudged a dependent child of the juvenile court pursuant to Section 10710 on or

after January 1, 1989.

(b) The procedures specified in this chapter are the exclusive procedures for conducting these hearings. Part 2 (commencing with Section 3820) of Division 8 is not applicable to these proceedings.

(c) For a minor who is adjudged a dependent child of the juvenile court pursuant to Section 10710, this chapter, Chapter 5 (commencing with Section 7660) of Part 3 of Division 12, and Sections 8064, 8065, 8066, and 8067 specify the exclusive procedures, after January 1, 1990, for permanently terminating parental rights with regard to, or establishing legal guardianship of, the minor while the minor is a dependent child of the juvenile court.

Comment. Section 10800 continues former Welfare and Institutions Code Section 366.26(a) without substantive change.

#### § 10801. Review of order directing hearing under this chapter

10801. An order by the court directing that a hearing pursuant to this chapter be held is not an appealable order, but may be the subject of review by extraordinary writ.

Comment. Section 10801 continues former Welfare and Institutions Code Section 366.26(k) without substantive change.

#### § 10802. Effect of order terminating parental rights

10802. (a) An order of the court permanently terminating parental rights under this chapter is conclusive and binding upon the minor person, upon the parent or parents and upon all other persons who have been served with citation by publication or otherwise as provided in this division.

(b) After making an order permanently terminating parental rights under this chapter, the court has no power to set aside, change, or modify it. Nothing in this subdivision shall be construed to limit the right to appeal the order.

Comment. Section 10802 continues former Welfare and Institutions Code Section 366.26(h) without substantive change.

### Article 2. Notice

#### § 10820. Notice of termination hearing

10820. (a) Whenever a juvenile court schedules a hearing pursuant to this chapter regarding a minor, it shall direct that the fathers,

presumed and alleged, and mother of the minor, the minor, if 10 years of age or older, and any counsel of record, shall be notified of the time and place of the proceedings and advised that they may appear.

(b) The notice under this section shall advise the recipients of the right to counsel, the nature of the proceedings, and of the requirement that at the proceedings the court shall select and implement a plan of adoption, legal guardianship, or long-term foster care for the minor.

(c) In all cases where a parent has relinquished the parent's child for the purpose of adoption, no notice need be given to that parent.

Comment. Section 10820 continues the first three sentences of former Welfare and Institutions Code Section 366.23(a) without substantive change.

#### § 10821. Time for service

10821. (a) Service of the notice shall be completed at least 45 days before the date of the hearing, except in those cases where notice by publication is ordered in which case the service of the notice shall be completed at least 30 days before the date of the hearing.

(b) If the petitioner is recommending termination of parental rights, all persons entitled to receive notice shall also be notified by first-class mail of the recommendation at least 15 days before the scheduled hearing.

Comment. Section 10821 continues the last two sentences of former Welfare and Institutions Code Section 366.23(a).

#### § 10822. Manner of service on parent

10822. Notice to the parent may be given by any of the following means:

(a) Personal service to the parent named in the notice.

(b) Delivery to a competent person who is at least 18 years of age at the parent's usual place of residence or business, and thereafter mailed to the parent named in the notice by first-class mail at the place where the notice was delivered.

(c) If the place of residence is outside the state, service may be made in the manner prescribed in subdivision (a) or (b), or by certified mail, return receipt requested.

(d) If the recommendation of the petitioner is limited to legal guardianship or long-term foster care, service may be made by first-class mail to the parent's usual place of residence or business.

Comment. Section 10822 continues subdivision (b)(1)-(4) of former Welfare and Institutions Code Section 366.23 without substantive change.

§ 10823. Alternative service on parent

10823. (a) If the father or mother of the minor or any person alleged to be or claiming to be the father or mother cannot, with reasonable diligence, be served as provided for in Section 10822, or if the parent's place of residence is not known, the probation officer shall file an affidavit with the court at least 75 days before the date of the hearing, stating the name of the father or mother or alleged father or mother and the parent's place of residence, if known, setting forth the efforts that have been made to locate and serve the parent. If the identity of one or both of the parents or alleged parents of the minor is unknown or if the name of either or both of the minor's parents or alleged parents is uncertain, then that fact shall be set forth in the affidavit.

(b) If the court determines that there has been due diligence in attempting to locate and serve the parent, and the petitioner limits the recommendation to legal guardianship or long-term foster care, the court shall order that notice be given to the grandparents of the minor, if there are any and if their residences and relationships to the minor are known, by first-class mail of the time and place of the proceedings and that they may appear. In any case where the residence of the parent or alleged parent becomes known, notice shall immediately be served upon the parent or alleged parent as set forth in Section 10822.

(c) If the court determines that there has been due diligence in attempting to locate and serve the parent and the petitioner does not limit the recommendation to legal guardianship or long-term foster care:

(1) The court shall order that service to the parent be by certified mail, return receipt requested, to the parent's counsel of record, if any.

(2) If the parent does not have counsel of record, the court shall order that the service be made by publication of a citation requiring

the father or mother, or alleged father or mother, to appear at the time and place stated in the citation, and that the citation be published in a newspaper designated as most likely to give notice to the father or mother. Publication shall be made once a week for four successive weeks. If the identity of one or both of the parents or alleged parents of the minor is unknown or if the name of either or both of the minor's parents or alleged parents is uncertain, the court shall order the published citation to be directed to either the father or the mother, or both, of the minor, and to all persons claiming to be the father or mother of the minor naming and otherwise describing the minor.

(d) In case of service under subdivision (c):

(1) Where the residence of a parent or alleged parent becomes known, notice shall immediately be served upon the parent or alleged parent as set forth in subdivision (a), (b), or (c) of Section 10822.

(2) Service of a copy of the notice in the manner provided for in subdivision (a), (b), or (c) of Section 10822 is equivalent to service by certified mail on the counsel of record or publication.

(3) The court shall also order that notice be given to the grandparents of the minor, if there are any and if their residences and relationships to the minor are known, by first-class mail of the time and place of the proceedings and that they may appear.

Comment. Section 10823 continues subdivision (b)(5) of former Welfare and Institutions Code Section 366.23 without substantive change.

#### § 10824. Notice where parent present at hearing

10824. Notwithstanding any other provision of this article, if the parent is present at the hearing at which the court schedules a hearing pursuant to this chapter regarding the minor, the court shall advise the parent of the time and place of the proceedings, their right to counsel, the nature of the proceedings, and of the requirement that at the proceedings the court select and implement a plan of adoption, legal guardianship, or long-term foster care for the minor. The court shall order the parent to appear for the proceedings and then direct that the parent be noticed thereafter by first-class mail to the parent's usual place of residence or business only.

Comment. Section 10824 continues subdivision (b)(6) of former Welfare and Institutions Code Section 366.23 without substantive change.

§ 10825. Notice where whereabouts of parent is unknown

10825. Notwithstanding any other provision of this article, whenever the whereabouts of a parent is not known at the time the court schedules a hearing pursuant to this chapter regarding a minor, and the petitioner presents to the court an affidavit setting forth the name of the parent and the efforts that have been made to locate the parent, the court shall order that the notice for the parent be as set forth in subdivision (b) or (c) of Section 10823.

Comment. Section 10825 continues subdivision (b)(7) of former Welfare and Institutions Code Section 366.23 without substantive change.

§ 10826. Manner of service on minor

10826. Notice to the minor, if 10 years of age or older, and to any counsel of record, of the hearing shall be by first-class mail.

Comment. Section 10826 continues subdivision (c) of former Welfare and Institutions Code Section 366.23 without substantive change.

§ 10827. When service complete

10827. Service is deemed complete at the time the notice is personally delivered to the party named in the notice, or 10 days after the notice has been placed in the mail, or at the expiration of the time prescribed by the order for publication, whichever occurs first.

Comment. Section 10827 continues subdivision (d) of former Welfare and Institutions Code Section 366.23 without substantive change.

Article 3. Hearing Procedure

§ 10830. Hearing by juvenile court

10830. (a) The hearing shall be held in juvenile court for all minors who are dependents of the juvenile court.

(b) At the hearing the court, in order to provide stable, permanent homes for these minors, shall review the report as specified in Article 4 (commencing with Section 10740) of Chapter 2 or Article 3 (commencing with Section 10780) of Chapter 5, shall indicate that the court has read and considered it, shall receive other evidence that the parties present, and then shall make a determination pursuant to Article 4 (commencing with Section 10840).

Comment. Section 10830 continues the introductory clause of

former Welfare and Institutions Code Section 366.26(b) without substantive change.

§ 10831. Representation by counsel

10831. (a) At the beginning of any proceeding pursuant to this chapter, if the minor or the parents are not being represented by previously retained or appointed counsel, the court shall proceed as follows:

(1) The court shall consider whether the interests of the minor require the appointment of counsel. If the court finds that the interests of the minor do require such protection, the court shall appoint counsel to represent the minor. If the court finds that the interests of the minor require the representation of counsel, counsel shall be appointed whether or not the minor is able to afford counsel. The minor shall not be present in court unless the minor so requests or the court so orders.

(2) If a parent appears without counsel and is unable to afford counsel, the court shall appoint counsel for the parent, unless this representation is knowingly and intelligently waived. The same counsel shall not be appointed to represent both the minor and the minor's parent. The public defender or private counsel may be appointed as counsel for the parent.

(b) Private counsel appointed under this section shall receive a reasonable sum for compensation and expenses, the amount of which shall be determined by the court. The amount shall be paid by the real parties in interest, other than the minor, in such proportions as the court deems just. However, if the court finds that any of the real parties in interest are unable to afford counsel, the amount shall be paid out of the general fund of the county.

(c) The court may continue the proceeding for not to exceed 30 days as necessary to appoint counsel, and to enable counsel to become acquainted with the case.

Comment. Section 10831 continues former Welfare and Institutions Code Section 366.26(e)-(b) without substantive change.

§ 10832. Testimony of minor

10832. (a) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of



the child.

(b) The testimony of the minor may be taken in chambers and outside the presence of the minor's parent or parents if the minor's parent or parents are represented by counsel, the counsel is present, and any of the following circumstances exist:

(1) The court determines that testimony in chambers is necessary to ensure truthful testimony.

(2) The minor is likely to be intimidated by a formal courtroom setting.

(3) The minor is afraid to testify in front of the minor's parent or parents.

(c) After testimony in chambers, the parent or parents of the minor may elect to have the court reporter read back the testimony or have the testimony summarized by counsel for the parent or parents.

(d) The testimony of a minor also may be taken in chambers and outside the presence of the guardian or guardians of a minor under the circumstances specified in this section.

Comment. Section 10832 continues former Welfare and Institutions Code Section 366.26(g) without substantive change.

#### Article 4. Determinations at Hearing

##### § 10840. Determinations by court

10840. (a) At the hearing the court shall do one of the following:

(1) Permanently sever the parent or parents' rights and order that the child be placed for adoption.

(2) Without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days.

(3) Without permanently terminating parental rights, appoint a legal guardian for the minor and issue letters of guardianship.

(4) Order that the minor be placed in long-term foster care, subject to the regular review of the juvenile court.

(b) In choosing among the alternatives in subdivision (a) the court shall proceed pursuant to one of the procedures in this article.

Comment. Section 10840 continues paragraphs (1)-(4) of former Welfare and Institutions Code Section 366.26(b) without substantive

change.

§ 10841. Termination of parental rights

10841. (a) The court shall terminate parental rights only if it determines by clear and convincing evidence that it is likely that the minor will be adopted.

(b) If the court makes the determination required by subdivision (a), any of the following shall then constitute a sufficient basis for termination of parental rights, subject to subdivision (c):

(1) A finding pursuant to Section 10742 that reunification services shall not be offered.

(2) A finding pursuant to Section 10785 that the whereabouts of a parent has been unknown for six months or that the parent has failed to visit or contact the child for six months or that the parent has been convicted of a felony indicating parental unfitness.

(3) A finding pursuant to Article 3 (commencing with Section 10780) of Chapter 5 that a minor cannot or should not be returned to the minor's parent or guardian.

(c) Subdivision (c) does not apply if the court finds that termination would be detrimental to the minor due to one of the following circumstances:

(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.

(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 minor's relative

or foster parent would be detrimental to the emotional well-being of the minor.

(d) The court shall not terminate parental rights if at each and every hearing at which the court was required to consider reasonable efforts or services, the court has found that reasonable efforts were not made or that reasonable services were not offered or provided.

Comment. Section 10841 continues former Welfare and Institutions Code Section 366.26(c)(1)-(2) without substantive change.

§ 10842. Minor difficult to place for adoption

10842. (a) If the court finds that termination of parental rights would not be detrimental to the minor pursuant to Section 10841 and that the minor has a probability for adoption but is difficult to place for adoption and there is no identified or available prospective adoptive parent, the court may identify adoption as the permanent placement goal and without terminating parental rights, order that efforts be made to locate an appropriate adoptive family for the minor for a period not to exceed 60 days. During this period, the public agency responsible for seeking adoptive parents for each child shall, to the extent possible, contact other private and public adoption agencies regarding the availability of the child for adoption.

(b) At the expiration of the 60-day period, another hearing shall be held and the court shall proceed pursuant to paragraph (1), (3), or (4) of subdivision (b) of Section 10840.

(c) For purposes of this section, a minor may only be found to be difficult to place for adoption if there is no identified or available prospective adoptive parent for the minor because of the minor's membership in a sibling group, or the presence of a diagnosed medical, physical, or mental handicap, or the minor is the age of seven years or more.

Comment. Section 10842 continues former Welfare and Institutions Code Section 366.26(c)(3) without substantive change.

§ 10843. Legal guardianship or long term foster care

10843. (a) If the court finds that adoption of the minor or termination of parental rights is not in the interests of the minor, or that one of the conditions in paragraph (1), (2), (3), or (4) of subdivision (c) or in subdivision (d) of Section 10841 applies, the

court shall either order that the present caretakers or other appropriate persons shall become legal guardians of the minor or order that the minor remain in long-term foster care. Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found. When the minor is living with a relative or a foster parent who is willing and capable of providing a stable and permanent environment, but not willing to become a legal guardian, the minor shall not be removed from the home if the court finds the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the relative caretaker or foster parents. The court shall also make an order for visitation with the parents or guardians unless the court finds by a preponderance of the evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

Comment. Section 10843 continues former Welfare and Institutions Code Section 366.26(c)(4) without substantive change.

§ 10844. Transfer to licensed foster family agency

10844. (a) If the court finds that the child should not be placed for adoption, that legal guardianship shall not be established, and that there are no suitable foster parents except exclusive-use homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

(b) The licensed foster family agency shall place the minor in a suitable licensed or exclusive-use home which has been certified by the agency as meeting licensing standards. The licensed foster family agency shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for the support of the minor shall not, in and of itself, create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care,

custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504 of the Welfare and Institutions Code.

Comment. Section 10844 continues former Welfare and Institutions Code Section 366.26(c)(5) without substantive change.

§ 10845. Appointment of guardian

10845. (a) The proceeding for the appointment of a guardian for a minor who is a dependent of the juvenile court shall be in the juvenile court.

(b) If the court finds pursuant to this chapter that legal guardianship is the appropriate permanency plan, it shall appoint the legal guardian and issue letters of guardianship.

(c) The assessment prepared pursuant to Sections 10748, 10788, and 10791 shall be read and considered by the court prior to the appointment, and this shall be reflected in the minutes of the court. The person preparing the assessment may be called and examined by any party to the proceeding.

Comment. Section 10845 continues former Welfare and Institutions Code Section 366.26(d) without substantive change.

§ 10846. Adoption proceedings

10846. (a) If the court by order or judgment declared the minor free from the custody and control of both parents, or one parent if the other no longer has custody and control, the court shall at the same time order the minor referred to a licensed county adoption agency for adoptive placement by the agency. The licensed county adoption agency is responsible for the care and supervision of the minor and is entitled to the exclusive care and control of the minor at all times until a petition for adoption is granted.

(b) No petition for adoption may be heard until the appellate rights of the natural parents have been exhausted.

Comment. Section 10846 continues former Welfare and Institutions Code Section 366.26(i) without substantive change.

§ 10847. Preference in adoption

10847. (a) Notwithstanding any other provision of law, the application of any person who, as a relative caretaker or foster parent, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the relative caretaker or foster parent and removal from the relative caretaker or foster parent would be seriously detrimental to the child's well-being.

(b) As used in this section, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

Comment. Section 10847 continues former Welfare and Institutions Code Section 366.26(j) without substantive change.

CHAPTER 7. PERMANENCY PLANNING FOR MINOR ADJUDGED DEPENDENT CHILD  
BEFORE JANUARY 1, 1989

§ 10850. Application of chapter

10850. (a) This chapter applies to a minor adjudged a dependent child of the juvenile court pursuant to Section 10700 before January 1, 1989.

Comment. Section 10850 continues former Welfare and Institutions Code Section 366.25(i) without substantive change.

§ 10851. Hearing to determine future status

10851. (a) In order to provide a stable, permanent home for a child, a court shall, if the minor cannot be returned home pursuant to Section 10779, conduct a hearing to make a determination regarding the future status of the minor no later than 12 months after the original dispositional hearing in which the child was removed from the custody of the child's parent, parents, or guardians, and in no case later than 18 months from the time of the minor's original placement pursuant to Article 3 (commencing with Section 10320) of Chapter 3 of Part 4 or Section 16507.4 of the Welfare and Institutions Code and periodically, but no less frequently than once each 18 months, thereafter during the continuation of foster

care.

(b) The hearing may be combined with the six months' review as provided for in Section 10770.

(c) In the case of a minor who comes within Section 10742 and for whom the court has found that reunification services should not be provided, a hearing shall be held pursuant to Article 4 (commencing with Section 10740) of Chapter 2.

(d) Physical custody of a minor by the minor's parents or guardians for insubstantial periods during the 12-month period prior to a permanency planning hearing shall not serve to interrupt the running of those periods.

(e) Subsequent hearings need not be held if (1) the child has been freed for adoption and placed in the adoptive home identified in the previous hearing and is awaiting finalization of the adoption or (2) the child is the ward of a guardian.

Comment. Section 10851 continues subdivisions (a), (f), and (h) of former Welfare and Institutions Code Section 366.25 without substantive change.

#### § 10852. Notice of hearing

10852. Notice of the proceeding to conduct the review under this chapter shall be mailed by the probation officer to the same persons as in an original proceeding, to the minor's present custodian, and to the counsel of record, by certified mail addressed to the last known address of the person to be notified, or shall be personally served on those persons not earlier than 30 days, nor later than 15 days prior to the date the review is to be conducted.

Comment. Section 10852 continues former Welfare and Institutions Code Section 366.25(b) without substantive change.

#### § 10853. Procedure at hearing

10853. (a) Except in cases where permanency planning is conducted pursuant to Article 4 (commencing with Section 10740) of Chapter 2, the court shall first determine at the hearing whether the minor should be returned to the minor's parent or guardian, pursuant to Section 10779.

(b) If the minor is not returned to the custody of the minor's parent or guardian the court shall determine whether there is a substantial probability that the minor will be returned to the physical

custody of the minor's parent or guardian within six months. If the court so determines it shall set another review hearing for not more than six months, which shall be a hearing pursuant to this chapter.

(d) If the court determines that the minor cannot be returned to the physical custody of the minor's parent or guardian and that there is not a substantial probability that the minor will be returned within six months, the court shall develop a permanent plan for the minor. In order to enable the minor to obtain a permanent home the court shall make the determinations and orders provided in this chapter.

Comment. Section 10853 continues subdivision (c) and the first paragraph of subdivision (d) of former Welfare and Institutions Code Section 366.25 without substantive change.

#### § 10854. Permanent plan where adoption likely

10854. If the court finds that it is likely that the minor can or will be adopted, the court shall authorize the appropriate county or state agency to proceed to free the minor from the custody and control of the minor's parents or guardians pursuant to Part 4 (commencing with Section 7800) of Division 12 unless the court finds that any of the following conditions exist:

(a) The parents or guardians have maintained regular visitation and contact with the minor and the minor would benefit from continuing this relationship.

(b) A minor 10 years of age or older objects to termination of parental rights.

(c) The minor's foster parents, including relative caretakers, are unable to adopt the minor because of exceptional circumstances which do not include an unwillingness to accept legal responsibility for the minor, but are 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 minor's foster parents would be seriously detrimental to the emotional well-being of the minor.

Comment. Section 10854 continues former Welfare and Institutions Code Section 366.25(d)(1) without substantive change.

#### § 10855. Preference for foster parent

10855. (a) Notwithstanding any other provision of law, the application of any person who, as a foster parent, including relative



caretakers, has cared for a dependent child for whom the court has approved a permanent plan for adoption, or who has been freed for adoption, shall be given preference with respect to that child over all other applications for adoptive placement if the agency making the placement determines that the child has substantial emotional ties to the foster parent and removal from the foster parent would be seriously detrimental to the child's well-being.

(b) As used in this section, "preference" means that the application shall be processed and, if satisfactory, the family study shall be completed before the processing of the application of any other person for the adoptive placement of the child.

Comment. Section 10855 continues former Welfare and Institutions Code Section 366.25(g) without substantive change.

§ 10856. Legal guardianship or long-term foster care

10856. (a) If the court finds that it is not likely that the minor can or will be adopted or that one of the conditions in Section 10854 applies, the court shall order the appropriate county department to initiate or facilitate the placement of the minor in a home environment that can be reasonably expected to be stable and permanent. This may be accomplished by initiating legal guardianship proceedings or long-term foster care.

(b) Legal guardianship shall be considered before long-term foster care, if it is in the best interests of the child and if a suitable guardian can be found.

(c) When the minor is in a foster home and the foster parents, including relative caretakers, are willing and capable of providing a stable and permanent environment, the minor shall not be removed from the home if the removal would be seriously detrimental to the emotional well-being of the minor because the minor has substantial psychological ties to the foster parents.

(d) The court shall also make orders for visitation with the parents or guardians unless the court finds by a preponderance of evidence that the visitation would be detrimental to the physical or emotional well-being of the minor.

Comment. Section 10856 continues former Welfare and Institutions Code Section 366.25(d)(2) without substantive change.

§ 10857. Transfer to licensed foster family agency

10857. (a) If the court finds that it is not likely that the minor can or will be adopted, that there is no suitable adult available to become the legal guardian of the minor, and that there are no suitable foster parents except certified homes available to provide the minor with a stable and permanent environment, the court may order the care, custody, and control of the minor transferred from the county welfare department or probation department to a licensed foster family agency. The court shall consider the written recommendation of the county welfare director or chief probation officer regarding the suitability of such a transfer. The transfer shall be subject to further court orders.

(b) The licensed foster family agency shall only use a suitable licensed or other family home which has been certified by the agency as meeting licensing standards. When the care, custody, and control has been transferred to a foster family agency, it shall be responsible for supporting the minor and for providing appropriate services to the minor, including those services ordered by the court. Responsibility for support of the minor shall not in and of itself create liability on the part of the foster family agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a foster family agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(c) Subsequent reviews for these minors shall be conducted every six months by the court. The licensed foster family agency shall be required to submit reports for each minor in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the minor's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the minor.

Comment. Section 10857 continues former Welfare and Institutions Code Section 366.25(d)(3) without substantive change.

§ 10858. Procedure for appointment of guardian

10858. (a) The proceeding for the appointment of a guardian for a minor who is a dependent child of the juvenile court shall be in the

juvenile court.

(b) The court shall receive into evidence a report and recommendation concerning the proposed guardianship. The report shall include, but not be limited to, a discussion of all of the following:

(1) A social history of the proposed guardian, including screening for criminal records and prior referrals for child abuse or neglect.

(2) A social history of the minor, including an assessment of any identified developmental, emotional, psychological, or educational needs, and the capability of the proposed guardian to meet those needs.

(3) The relationship of the minor to the proposed guardian, the duration and character of the relationship, the motivation for seeking guardianship rather than adoption, the proposed guardian's long-term commitment to provide a stable and permanent home for the minor, and a statement from the minor concerning the proposed guardianship.

(4) The plan, if any, for the natural parents for continued involvement with the minor.

(5) The proposed guardian's understanding of the legal and financial rights and responsibilities of guardianship.

(c) The report shall be read and considered by the court before ruling on the petition for guardianship, and this shall be reflected in the minutes of the court. The person preparing the report may be called and examined by any party to the proceeding.

Comment. Section 10858 continues former Section 366.25(e) without substantive change.

#### § 10859. Court order non-appealable

10859. An order by the court that authorizes the filing of a petition to terminate parental rights pursuant to Part 4 (commencing with Section 7800) of Division 12 or that authorizes the initiation of guardianship proceedings is not an appealable order but may be the subject of review by extraordinary writ.

Comment. Section 10859 continues former Welfare and Institutions Code Section 366.25(j) without substantive change.

### CHAPTER 8. IMPLEMENTATION OF PERMANENT PLAN

#### § 10860. Temporary detention until placement

10860. (a) Whenever a person has been adjudged a dependent child

of the juvenile court and has been committed or otherwise disposed of as provided in this division for the care of dependent children of the juvenile court, the court may order that the dependent child be detained in a suitable place designated as the court deems fit until the execution of the order of commitment or of other disposition.

(b) In any case in which a minor is detained for more than 15 days pending the execution of the order of commitment or of any other disposition, the court shall periodically review the case to determine whether the delay is reasonable. The periodic reviews shall be held at least every 15 days, commencing from the time the minor was initially detained pending the execution of the order of commitment or of any other disposition, and during the course of each review the court shall inquire regarding the action taken by the probation department to carry out its order, the reasons for the delay, and the effect of the delay upon the minor.

Comment. Section 10860 continues former Welfare and Institutions Code Section 367 without substantive change.

#### § 10861. Adoption or legal guardianship

10861. (a) If a juvenile court orders a permanent plan of adoption or legal guardianship pursuant to Chapter 6 (commencing with Section 10800) or Chapter 7 (commencing with Section 10850), the court shall retain jurisdiction over the minor until the minor is adopted or the legal guardianship is established. The status of the minor shall be reviewed every six months to ensure that the adoption or guardianship is completed as expeditiously as possible.

(b) When the adoption of the minor has been granted, the court shall terminate its jurisdiction over the minor. The court may continue jurisdiction over the minor as a dependent minor of the juvenile court following the establishment of a legal guardianship or may terminate its dependency jurisdiction and retain jurisdiction over the minor as a ward of the guardianship established pursuant to Chapter 6 (commencing with Section 10800) or Chapter 7 (commencing with Section 10850) and as authorized by Section 10862.

(c) Following a termination of parental rights the parent or parents shall not be a party to, or receive notice of, any subsequent proceedings regarding the minor.

Comment. Section 10861 continues former Welfare and Institutions Code Section 366.3(a) without substantive change.

§ 10862. Jurisdiction over legal guardianship

10862. A minor for whom a guardianship has been established resulting from the selection or implementation of a permanent plan pursuant to Chapter 6 (commencing with Section 10800) or Chapter 7 (commencing with Section 10850) is within the jurisdiction of the juvenile court. For those minors, Part 2 (commencing with Section 1500) of Division 4 of the Probate Code, relating to guardianship, shall not apply. If no specific provision of this code or the California Rules of Court is applicable, the provisions applicable to the administration of estates under Part 4 (commencing with Section 2100) of Division 4 of the Probate Code govern so far as they are applicable to like situations.

Comment. Section 10862 continues former Welfare and Institutions Code Section 366.4 without substantive change.

§ 10863. Termination of legal guardianship

10863. (a) If the court has dismissed dependency jurisdiction following the establishment of a legal guardianship and the legal guardianship is subsequently revoked or otherwise terminated, the county department of social services or welfare department shall notify the juvenile court of this fact. The court may vacate its previous order dismissing dependency jurisdiction over the minor.

(b) Notwithstanding Section 1601 of the Probate Code, the proceedings to terminate a guardianship that has been granted pursuant to Chapter 6 (commencing with Section 10800) or Chapter 7 (commencing with Section 10850) shall be held in the juvenile court, unless the termination is due to the emancipation or adoption of the minor. If the petition to terminate guardianship is granted, the juvenile court may resume dependency jurisdiction over the minor, and may order the county department of social services or welfare department to develop a new permanent plan, which shall be presented to the court within 60 days of the termination.

(c) Unless the parental rights of the child's parent or parents have been terminated, they shall be notified that the guardianship has been revoked or terminated and shall be entitled to participate in the

new permanency planning hearing. The court shall try to place the minor in another permanent placement. At the hearing, the parents may be considered as custodians but the minor shall not be returned to the parent or parents unless they prove, by a preponderance of the evidence, that reunification is the best alternative for the minor. The court may, if it is in the interests of the minor, order that reunification services again be provided to the parent or parents.

Comment. Section 10863 continues former Welfare and Institutions Code Section 366.3(b) without substantive change.

§ 10864. Continuing review of status of minor

10864. (a) If the minor is in a placement other than a preadoptive home or the home of a legal guardian and jurisdiction has not been dismissed, the status of the minor shall be reviewed every six months. The review may be conducted by the court or an appropriate local agency. The court shall conduct the review upon the request of the minor's parents or guardian or of the minor and shall conduct the review 18 months after the hearing held pursuant to Chapter 8 (commencing with Section 10800) and every 18 months thereafter.

(b) The reviewing body shall inquire about the progress being made to provide a permanent home for the minor and shall determine all of the following:

- (1) The appropriateness of the placement.
- (2) The continuing appropriateness and extent of compliance with the permanent plan for the child.
- (3) The extent of compliance with the case plan.
- (4) The adequacy of services provided to the child.
- (5) The services needed to assist a child who is 16 years of age or older make the transition from foster care to independent living.

(c) Each licensed foster family agency shall submit reports for each minor in its care, custody, and control to the court concerning the continuing appropriateness and extent of compliance with the minor's permanent plan, the extent of compliance with the case plan, and the type and adequacy of services provided to the minor.

(d) Unless their parental rights have been permanently terminated, the parent or parents of the minor are entitled to receive notice of, and participate in, those hearings. It shall be presumed that

continued care is in the interests of the minor, unless the parent or parents prove, by a preponderance of the evidence, that further efforts at reunification are the best alternative for the minor. In those cases, the court may order that further reunification services be provided to the parent or parents for a period not to exceed six months.

Comment. Section 10864 continues former Welfare and Institutions Code Section 366.3(c) without substantive change.

§ 10865. Out of state placement

10865. (a) In a case where the residence of a dependent child of the juvenile court is out of the state and in another state or foreign country, or in a case where the minor is a resident of this state but the minor's parents, relatives, guardian, or person charged with the minor's custody is in another state, the court may order the minor sent to the minor's parents, relatives, or guardian, or to the person charged with the minor's custody, or, if the minor is a resident of a foreign country, to an official of a juvenile court of the foreign country or an agency of the country authorized to accept the minor.

(b) In the case of an order under subdivision (a), the court may order transportation and accommodation furnished, with or without an attendant, as the court deems necessary. If the court deems an attendant necessary, the court may order the probation officer or other suitable person to serve as the attendant. The probation officer shall authorize the necessary expenses of the minor and of the attendant and claims therefor shall be audited, allowed and paid in the same manner as other county claims.

Comment. Section 10865 continues former Welfare and Institutions Code Section 368 without substantive change.

PART 8. TRANSFER OF CASES BETWEEN COUNTIES

§ 10900. Transfer authorized

10900. (a) This section applies whenever either of the following occurs:

(1) A petition is filed in the juvenile court of a county other than the residence of the person named in the petition.

(2) After the filing of a petition in the juvenile court of the county where the minor resides, the residence of the person who would be legally entitled to the custody of the minor, were it not for the existence of a court order issued pursuant to this division, is changed to another county.

(b) The entire case may be transferred to the juvenile court of the county wherein the person then resides at any time after the court has made a finding of the facts upon which it has exercised its jurisdiction over the minor, and the juvenile court of the county wherein the person then resides shall take jurisdiction of the case upon the receipt and filing with it of the finding of the facts and an order transferring the case.

Comment. Section 10900 continues former Welfare and Institutions Code Section 375 without substantive change.

§ 10901. Expense of transfer

10901. (a) The expense of the transfer and all expenses in connection with the transfer and for the support and maintenance of the person shall be paid from the county treasury of the court ordering the transfer until the receipt and filing of the finding and order of transfer in the juvenile court of the transferee county.

(b) The judge shall inquire into the financial condition of the person and of the parent, parents, guardian, or other person charged with the person's support and maintenance, and if the judge finds the person, parent, parents, guardian, or other person able, in whole or in part, to pay the expense of the transfer, the judge shall make a further order requiring the person, parent, parents, guardian, or other person to repay to the county the part, or all, of the expense of transfer that, in the opinion of the court, is proper. The repayment



shall be made to the probation officer who shall keep suitable accounts of the expenses and repayments and shall deposit all the collections in the county treasury.

Comment. Section 10901 continues former Welfare and Institutions Code Section 376 without substantive change.

§ 10902. Transfer documentation

10902. (a) Whenever a case is transferred as provided in Section 10900, the order of transfer shall recite each and all of the findings, orders, or modification of orders that have been made in the case, and shall include the name and address of the legal residence of the parent or guardian of the minor. All papers contained in the file shall be transferred to the county where the person resides.

(b) A copy of the order of transfer and of the findings of fact as required in Section 10900 shall be kept in the file of the transferring county.

Comment. Section 10902 continues former Welfare and Institutions Code Section 377 without substantive change.

§ 10903. Proceedings in transferee court

10903. Whenever an order of transfer from another county is filed with the clerk of any juvenile court, the clerk shall place the transfer order on the calendar of the court, and it shall have precedence over all actions and civil proceedings not specifically given precedence by other provisions of law and shall be heard by the court at the earliest possible moment following the filing of the order.

Comment. Section 10903 continues former Welfare and Institutions Code Section 378 without substantive change.

§ 10904. Counties involved in transfer as parties

10904. In any action under the provisions of this article in which the residence of a minor person is determined, both the county in which the court is situated and any other county which, as a result of the determination of residence, might be determined to be the county of residence of the minor person, shall be considered to be parties in the action and shall have the right to appeal any order by which residence of the minor person is determined.

Comment. Section 10904 continues former Welfare and Institutions Code Section 379 without substantive change.

§ 10905. Minor residing outside county of legal residence

10905. (a) Any person adjudged to be a dependent child of the juvenile court may be permitted by order of the court to reside in a county other than the county of the person's legal residence, and the court shall retain jurisdiction over the person.

(b) Whenever a dependent child of the juvenile court is permitted to reside in a county other than the county of the person's legal residence, the person may be placed under the supervision of the probation officer of the county of actual residence, with the consent of the probation officer. The dependent child shall comply with the instructions of the probation officer and upon failure to do so shall be returned to the county of legal residence for further hearing and order of the court.

Comment. Section 10905 continues former Welfare and Institutions Code Section 380 without substantive change.

PART 9. MODIFICATION OF JUDGMENTS AND ORDERS

§ 10930. Authority to modify order

10930. Any order made by the court in the case of any person subject to its jurisdiction may at any time be changed, modified, or set aside, as the judge deems meet and proper, subject to the procedural requirements that are imposed by this part.

Comment. Section 10930 continues former Welfare and Institutions Code Section 385 without substantive change.

§ 10931. Notice required

10931. No order changing, modifying, or setting aside a previous order of the juvenile court shall be made either in chambers or otherwise unless prior notice of the application therefor has been given by the judge or the clerk of the court to the probation officer and to the minor's counsel of record, or, if there is no counsel of record, to the minor and the minor's parent or guardian.

Comment. Section 10931 continues former Welfare and Institutions Code Section 386 without substantive change.

§ 10932. Supplemental petition

10932. (a) An order changing or modifying a previous order by removing a minor from the physical custody of a parent, guardian, relative, or friend and directing placement in a foster home, or commitment to a private or county institution, shall be made only after noticed hearing upon a supplemental petition.

(b) The supplemental petition shall be filed by the probation officer in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the minor.

(c) Upon the filing of the supplemental petition, the clerk of the juvenile court shall immediately set the petition for hearing within 30 days, and the probation officer shall cause notice of the hearing to be served upon the persons and in the manner prescribed by Chapter 4 (commencing with Section 10540) of Part 5.

(d) An order for the detention of the minor pending adjudication of the petition may be made only after a hearing is conducted pursuant to Part 4 (commencing with Section 10250).

Comment. Section 10932 continues former Welfare and Institutions Code Section 387 without substantive change.

§ 10933. Change of circumstance or new evidence

10933. (a) Any parent or other person having an interest in a child who is a dependent child of the juvenile court or the child itself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court.

(b) The petition shall be verified and, if made by a person other than the child, shall state the petitioner's relationship to or interest in the child and shall set forth in concise language any change of circumstance or new evidence which are alleged to require the change of order or termination of jurisdiction.

(c) If it appears that the best interests of the child may be promoted by the proposed change of order or termination of jurisdiction, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the persons and by the means as prescribed by Section 10931, and, where the means of giving notice is not prescribed by that section, then by the means that the court prescribes.

Comment. Section 10933 continues former Welfare and Institutions Code Section 388 without substantive change.

#### § 10934. Dismissal of petition

10934. A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor require the dismissal, and that the parent or guardian of the minor is not in need of treatment or rehabilitation.

Comment. Section 10934 continues former Welfare and Institutions Code Section 390 without substantive change.

Staff Note. Presumably the petition referred to in this section is not the petition for modification but the petition for dependent child status itself.

### PART 10. APPEALS

#### § 10960. Appeal from judgment or order

10960. (a) A judgment in a proceeding under this division may be appealed from in the same manner as any final judgment, and any subsequent order may be appealed from as from an order after judgment.

(b) No order or judgment appealed under this section shall be stayed by the appeal, unless, pending the appeal, suitable provision is made for the maintenance, care, and custody of the person alleged or found to come within the provisions of Part 3 (commencing with Section 10200), and unless the provision is approved by an order of the juvenile court.

(c) The appeal shall have precedence over all other cases in the court to which the appeal is taken.

Comment. Section 10960 continues the first paragraph of former Welfare and Institutions Code Section 395 without substantive change.

§ 10961. Appeal of judgment or order of referee

10961. A judgment or subsequent order entered by a referee shall become appealable whenever proceedings pursuant to Section 252, 253, or 254 of the Welfare and Institutions Code have become completed or, if proceedings pursuant to Section 252, 253, or 254 of the Welfare and Institutions Code are not initiated, when the time for initiating the proceedings has expired.

Comment. Section 10961 continues the second paragraph of former Welfare and Institutions Code Section 395 without substantive change.

§ 10962. Record and fees

10962. (a) The record shall be prepared and transmitted immediately after filing of the notice of appeal, without advance payment of fees.

(b) An appellant unable to afford counsel shall be provided a free copy of the transcript in any appeal.

(c) If the appellant is able to afford counsel, the county may seek reimbursement for the cost of the transcripts under subdivision (c) of Section 68511.3 of the Government Code as though the appellant had been granted permission to proceed in forma pauperis.

Comment. Section 10962 continues the third and fourth paragraphs of former Welfare and Institutions Code Section 395 without substantive change.

PART 11. SEALING OF RECORDS

Staff Note. This section needs to be coordinated with the general provisions on juvenile court records in the Welfare and Institutions Code.

§ 10990. Cases where records may be sealed

10990. A petition for sealing of records may be made under this part in any of the following cases:

(a) Where a petition has been filed with a juvenile court to commence proceedings to adjudge a person a dependent child of the court.

(b) Where a person is cited to appear before a probation officer or is taken before a probation officer pursuant to Section 10273.

(c) Where a minor is taken before any officer of a law enforcement agency.

Comment. Section 10990 continues part of the first sentence of former Welfare and Institutions Code Section 389(a) without substantive change.

§ 10991. Petition to seal records

10991. A person who is the subject of an action described in Section 10990 or the county probation officer may petition the court for sealing of the records, including records of arrest relating to the person's case in the custody of the juvenile court and probation officer and any other agencies, including law enforcement agencies, and public officials, as petitioner alleges in the petition to have custody of the records.

Comment. Section 10991 continues part of the first sentence of former Welfare and Institutions Code Section 389(a) without substantive change.

§ 10992. Time for petition

10992. A petition under this part may be made after the following times:

(a) Five years or more after the jurisdiction of the juvenile court has terminated as to the person.

(b) Where no petition is filed, five years or more after the person was cited to appear before a probation officer or was taken before a probation officer pursuant to Section 10273 or was taken before any officer of a law enforcement agency.

(c) At any time after the person has reached the age of 18 years.

Comment. Section 10992 continues part of the first sentence of former Welfare and Institutions Code Section 389(a) without substantive change.

§ 10993. Notice

10993. The court shall notify all of the following persons of the petition:

(a) The district attorney of the county.

(b) The county probation officer, if the county probation officer is not the petitioner.

Comment. Section 10993 continues part of the second sentence of former Welfare and Institutions Code Section 389(a) without substantive change.

§ 10994. Hearing and order

10994. (a) The district attorney or probation officer or any of their deputies or any other person having relevant evidence may testify at the hearing on the petition.

(b) If, after hearing, the court finds that since the termination of jurisdiction or action pursuant to Article 1 (commencing with Section 10270) of Chapter 2 of Part 4, as the case may be, the person has not been convicted of a felony or of any misdemeanor involving moral turpitude and that rehabilitation has been attained to the satisfaction of the court, it shall order sealed all records, papers, and exhibits in the person's case in the custody of the juvenile court, including the juvenile court record, minute book entries, and entries on dockets, and other records relating to the case in the custody of the other agencies and officials that are named in the order

(c) After issuance of the court order, the proceedings in the case shall be deemed never to have occurred, and the person may properly reply accordingly to any inquiry about the events, records of which are ordered sealed.

Comment. Subdivision (a) of Section 10994 continues part of the second sentence of former Welfare and Institutions Code Section 389(a) without substantive change. Subdivision (b) continues the third sentence of former Welfare and Institutions Code Section 389(a) without substantive change. Subdivision (c) continues the fourth sentence of former Welfare and Institutions Code Section 389(a) without substantive change.

§ 10995. Sealing of records

10995. (a) The court shall send a copy of the order to each agency and official named therein directing the agency to seal its records and five years thereafter to destroy the sealed records.

(b) Each agency and official shall seal records in its custody as directed by the order, shall advise the court of its compliance, and thereupon shall seal the copy of the court's order for sealing of records that it received.

(c) The person who is the subject of records sealed pursuant to this part may petition the superior court to permit inspection of the records by persons named in the petition, and the superior court may so order. Otherwise, except as provided in Section 10996, the records shall not be open to inspection.

Comment. Section 10995 continues the fifth, sixth, seventh, and eighth sentences of former Welfare and Institutions Code Section 389(a) without substantive change.

§ 10996. Use of sealed records in defamation action

10996. (a) In any action or proceeding based upon defamation, a court, upon a showing of good cause, may order any records sealed under this part to be opened and admitted into evidence.

(b) The records shall be confidential and shall be available for inspection only by the court, jury, parties, counsel for the parties, and any other person who is authorized by the court to inspect them.

(c) Upon the judgment in the action or proceeding becoming final, the court shall order the records sealed.

Comment. Section 10996 continues former Welfare and Institutions Code Section 389(b) without substantive change.

§ 10997. Destruction of sealed records

10997. (a) Five years after a juvenile court record has been sealed, the court shall order the destruction of the sealed juvenile court record unless for good cause the court determines that the juvenile court record shall be retained.

(b) Any other agency in possession of sealed records shall destroy their records five years after the records were ordered sealed.

Comment. Section 10997 continues former Welfare and Institutions Code Section 389(c) without substantive change.



CONFORMING CHANGES AND REPEALS  
IN WELFARE AND INSTITUTIONS CODE

*NOTE: Both the Welfare and Institutions Code and other Codes need to be searched for references to the 300 series of the Welfare and Institutions Code.*

Welf. & Inst. Code § 202.5 (repealed). Duties of probation officer

Comment. Former Section 202.5 is continued in Family Code Section 10103 without substantive change.

Welf. & Inst. Code § 212 (amended). Fees

212. There shall be no fee for filing a petition under this chapter nor shall any fees be charged by any public officer for his services in filing or serving papers or for the performance of any duty enjoined upon him by this chapter, except where the sheriff transports a person to a state institution. If the judge of the juvenile court orders that a ward ~~or dependent child~~ go to a state institution without being accompanied by an officer or that a ward ~~or dependent child~~ be taken to an institution by the probation officer of the county or parole officer of the institution or by some other suitable person, all expenses necessarily incurred therefor shall be allowed and paid in the same manner and from the same funds as such expenses would be allowed and paid were such transportation effected by the sheriff.

Comment. The provisions of former Section 212 that related to fees for a dependent child are continued in Family Code Section 10108.

Welf. & Inst. Code § 213.5 (repealed). Pendente lite orders

Comment. Former Section 213.5 is continued in Family Code Section 10112 without substantive change.

Welf. & Inst. Code § 215 (amended). Probation officer

215. As used in this chapter, unless otherwise specifically provided, the term "probation officer" shall mean the juvenile probation officer or the person who is both the juvenile probation officer and the adult probation officer, ~~and shall include any social worker in a county welfare department when supervising dependent children of the juvenile court pursuant to Section 272 by order of the~~

~~court under Section 300,~~ and the term "department of probation" shall mean the department of juvenile probation or the department wherein the services of juvenile and adult probation are both performed.

Comment. The provision of former Section 215 that related to a social worker supervising dependent children is continued in Family Code Section 10020 ("probation officer" defined).

Welf. & Inst. Code § 245 (amended). Juvenile court

245. Each superior court shall exercise the jurisdiction conferred by this chapter and by Division 14 (commencing with Section 10000) of the Family Code, and while sitting in the exercise of such jurisdiction, shall be known and referred to as the juvenile court.

Comment. Section 245 is amended to recognize the relocation of the provisions governing dependent children of the court to the Family Code.

Welf. & Inst. Code § 246 (amended). Designation of judge

246. In counties having more than one judge of the superior court, the presiding judge of such court or the senior judge if there is no presiding judge shall annually, in the month of January, designate one or more judges of the superior court to hear all cases under this chapter and Division 14 (commencing with Section 10000 of the Family Code) during the ensuing year, and he shall, from time to time, designate such additional judges as may be necessary for the prompt disposition of the judicial business before the juvenile court.

In all counties where more than one judge is designated as a judge of the juvenile court, the presiding judge of the superior court shall also designate one such judge as presiding judge of the juvenile court.

Comment. Section 246 is amended to reflect the relocation of the provisions governing dependent children of the court to the Family Code.

Welf. & Inst. Code § 264 (amended). Statewide and regional conferences

264. At the direction and under the supervision of the Judicial Council, judges of the juvenile courts and juvenile court referees shall meet from time to time in statewide or regional conferences, to discuss problems arising in the course of administration of this chapter and Division 14 (commencing with Section 10000) of the Family Code, for the purpose of improving the administration of justice in the

juvenile courts. Actual and necessary expenses incurred by a judge or referee in attending any such conference shall be a charge upon the county.

Comment. Section 264 is amended to reflect the relocation of the provisions governing dependent children of the court to the Family Code.

Welf. & Inst. Code § 272 (repealed). Delegation of duties to county welfare department

Comment. Former Section 272 is continued in Family Code Section 10118 without substantive change.

Welf. & Inst. Code § 280 (amended). Duties of probation officer in court

280. Except where waived by the probation officer, judge, or referee and the minor, the probation officer shall be present in court to represent the interests of each person who is the subject of a petition to declare that person to be a ward ~~or dependent child~~ upon all hearings or rehearings of his or her case, and shall furnish to the court such information and assistance as the court may require. If so ordered, the probation officer shall take charge of that person before and after any hearing or rehearing.

It shall be the duty of the probation officer to prepare ~~for every hearing on the disposition of a case as provided by Section 356, 358, 358.1, 361.5, 364, 366, 366.2, or 366.21 as is appropriate for the specific hearing, or,~~ for a hearing as provided by Section 702, a social study of the minor, containing such matters as may be relevant to a proper disposition of the case. The social study shall include a recommendation for the disposition of the case.

Comment. The provisions of former Section 215 that related to proceedings involving a dependent child are continued in Family Code Section 10120 (duties of probation officer in court).

Welf. & Inst. Code § 281.5. (amended). Placement with relative

281.5. If a probation officer determines to recommend to the court that a minor alleged to come within Section ~~399, 601,~~ 601 or 602, or adjudged to come within Section ~~399, 601,~~ 601 or 602 should be removed from the physical custody of his parent or guardian, the probation officer shall give primary consideration to recommending to

the court that the minor be placed with a relative of the minor, if such placement is in the best interests of the minor and will be conducive to reunification of the family.

Comment. The provisions of former Section 281.5 that related to proceeding involving a dependent child are continued in Family Code Section 10124 (placement with relative).

Welf. & Inst. Code §§ 300-304 (repealed). Dependent children--jurisdiction

SEC. . Article 6 (commencing with Section 300) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is repealed.

Comment. Former Article 6 (commencing with Section 300) is relocated to Part 3 (jurisdiction) of Division 14 of the Family Code. For disposition of individual provisions of the article see the Comment to the particular section.

Welf. & Inst. Code § 300 (repealed). Dependent children of the court

Comment. Subdivision (a) of Section 300 is continued in Family Code Section 10201 (nonaccidental harm) without substantive change.

Subdivision (b) is continued in Family Code Section 10202 (inadequate supervision, protection, or provision) without substantive change.

Subdivision (c) is continued in Family Code Section 10203 (serious emotional damage) without substantive change.

Subdivision (d) is continued in Family Code Section 10204 (sexual abuse) without substantive change.

Subdivision (e) is continued in Family Code Section 10205 (severe physical abuse) without substantive change.

Subdivision (f) is continued in Family Code Section 10206 (death of another child) without substantive change.

Subdivision (g) is continued in Family Code Section 10207 (nonsupport) without substantive change.

Subdivision (h) is continued in Family Code Section 10208(a) (adoption) without substantive change.

Subdivision (i) is continued in Family Code Section 10209 (acts of cruelty) without substantive change.

Subdivision (j) is continued in Family Code Section 10210 (abuse or neglect of sibling) without substantive change.

The penultimate paragraph is continued in Family Code Section 10200 (purpose of chapter) without substantive change.

The last paragraph is continued in Family Code Section 10002 ("guardian" defined).

Welf. & Inst. Code § 300.1 (repealed). Family reunification services

Comment. Former Section 300.1 is continued in Family Code Section 10208(b) (adoption) without substantive change.

Welf. & Inst. Code § 300.5 (repealed). Treatment by spiritual means

Comment. Former Section 300.5 is continued in Family Code Section 10126 (treatment by spiritual means) without substantive change.

Welf. & Inst. Code § 301 (repealed). Program of supervision

Comment. Subdivision (a) of former Section 301 is continued in Family Code Section 10140 (minor within jurisdiction of court). Subdivision (b) is continued in Family Code Section 10141 (controlled substances). Subdivision (c) is continued in Family Code Section 10142 (in-home care programs).

Welf. & Inst. Code § 302 (repealed). Custody issues

Comment. Subdivision (a) of former Section 302 is continued in Family Code Section 10170 (jurisdiction regardless of custody) without substantive change. Subdivision (b) is continued in Family Code Section 10130 (notice to parents) without substantive change. Subdivision (c) is continued in Family Code Section 10171 (exclusive jurisdiction of juvenile court) without substantive change.

Welf. & Inst. Code § 303 (repealed). Jurisdiction until age 21

Comment. Former Section 303 is continued in Family Code Section 10203 (jurisdiction until age 21) without substantive change.

Welf. & Inst. Code § 304 (repealed). Jurisdiction over custody matters

Comment. The first two sentences of former Section 304 are continued in Family Code Section 10172(a) without substantive change. The third sentence is continued in Family Code Section 10172(b) without substantive change. The fourth, fifth, and sixth sentences are continued in Family Code Section 10173 (restraining orders) without substantive change. The last paragraph is continued in Family Code Section 10174 (jurisdiction after termination of dependent status) without substantive change.

Welf. & Inst. Code § 300 (added). Dependent children of the court

SEC. . Article 6 (commencing with Section 300) is added to Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code, to read:

Article 6. Dependent Children of the Court

§ 300. Dependent children of the court

300. (a) The procedure for adjudging a person to be a dependent child of the court is provided in Division 14 (commencing with Section 10000) of the Family Code.

(b) This chapter is applicable to a proceeding under Division 14 (commencing with Section 10000) of the Family Code (dependent children of the court) except to the extent this chapter is inconsistent with that division or is limited expressly or by context to a proceeding involving a ward of the court.

Comment. Subdivision (a) of Section 300 is included for cross-referencing purposes. A reference in any statute to a dependent child of the court means a person adjudicated a dependent child under Division 14 (commencing with Section 10000) of the Family Code.

Subdivision (b) makes clear that the general provisions of this chapter apply in juvenile dependency proceedings, including such matters as commissions and committees (Article 2, commencing with Section 225); probation commission (Article 3, commencing with Section 240); juvenile court (Article 4, commencing with Section 245); probation officers (Article 5, commencing with Section 270); records (Article 22, commencing with Section 825); and support (Article 25, commencing with Section 900).

Subdivision (c) converts existing cross-references.

Welf. & Inst. Code §§ 305-324 (repealed). Dependent children--temporary custody and detention

SEC. . Article 7 (commencing with Section 305) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is repealed.

Comment. Former Article 7 (commencing with Section 305) is relocated to Part 4 (temporary custody and detention) of Division 14 of the Family Code. For disposition of individual provisions of the article see the Comment to the particular section.

Welf. & Inst. Code § 305 (repealed). Temporary custody by peace officer

Comment. Subdivision (a) of former Section 305 is continued in Family Code Section 10250 (immediate need, danger, or threat) without substantive change. Subdivision (b) is continued in Family Code Section 10251 (immediate danger to health or safety) without substantive change. Subdivision (c) is continued in Family Code Section 10252 (dependent child) without substantive change. Subdivision (d) is continued in Family Code Section 10253 (sickness or injury) without substantive change.

Welf. & Inst. Code § 306 (repealed). Temporary custody by social worker

Comment. Subdivisions (a) and (b) of former Section 306 are continued in Family Code Section 10260 (grounds for custody) without substantive change. The last paragraph is continued in Family Code Section 10261 (alternatives to custody) without substantive change.

Welf. & Inst. Code § 307 (repealed). Disposition of minor

Comment. The introductory portion of former Section 307 is continued in Family Code Section 10270(a) (determination by officer) without substantive change. Subdivision (a) is continued in Family Code Section 10271 (release) without substantive change. Subdivision (b) is continued in Family Code Section 10272 (release on promise to

appear) without substantive change. Subdivision (c) is continued in Family Code Section 10273 (custody of probation officer) without substantive change. The last paragraph is continued in Family Code Section 10270(b) (determination by officer) without substantive change.

Welf. & Inst. Code § 307.4 (repealed). Notice of temporary custody

Comment. The first sentence of subdivision (a) of former Section 307.4 is continued in Family Code Section 10282 (notice required) without substantive change. The remainder of subdivision (a) is continued in Family Code Section 10283 (form and contents of written information) without substantive change. Subdivision (b) is continued in Family Code Section 10284 (failure to notify of written information) without substantive change.

Welf. & Inst. Code § 307.5 (release to community service program)

Comment. Former Section 307.5 is continued in Family Code Section 10274 without substantive change.

Welf. & Inst. Code § 308 (notification of custody)

Comment. Subdivision (a) of former Section 308 is continued in Family Code Section 10281 (notification of whereabouts of minor) without substantive change. Subdivision (b) is continued in Family Code Section 10280 (right of minor to make telephone calls) without substantive change.

Welf. & Inst. Code § 309 (repealed). Investigation by probation officer

Comment. The first sentence of subdivision (a) of former Section 309 is continued in Family Code Section 10290 (a) (investigation of circumstances) without substantive change. The remainder of the first sentence is continued in Family Code Section 10191(a) (release of minor) without substantive change. Subdivision (b) is continued in Family Code Section 10290(b) (investigation of circumstances) without substantive change. Subdivision (c) is continued in Family Code Section 10291(c) (release of minor) without substantive change.

Welf. & Inst. Code § 310 (repealed). Promise to appear

Comment. Former Section 310 is continued in Family Code Section 10291(b) (release of minor) without substantive change.

Welf. & Inst. Code § 311 (repealed). Detention of minor

Comment. The first sentence of former Section 311(a) is continued in Family Code Section 10292 (detention of minor and petition) without substantive change. The second and third sentences are continued in Family Code Section 10293(b) (notice of hearing) without substantive change.

Subdivision (b) is continued in Family Code Section 10292(b) (detention of minor and petition) without substantive change.

Welf. & Inst. Code § 312 (repealed). Notification of counsel

Comment. Former Section 312 is continued in Family Code Section 10293(b) without substantive change.

Welf. & Inst. Code § 313 (repealed). Release of minor

Comment. Subdivision (a) of former Section 313 is continued in Family Code Section 10294(a) (release within 48 hours) without substantive change. Subdivision (b) is continued in Family Code Section 10295 (written explanation for custody of released minor).

Welf. & Inst. Code § 314 (repealed). Misrepresentation of age of minor

Comment. Former Section 314 is continued in Family Code Section 10294(b) (release within 48 hours) without substantive change.

Welf. & Inst. Code § 315 (repealed). Hearing required

Comment. Former Section 315 is continued in Family Code Section 10300 (when hearing required) without substantive change.

Welf. & Inst. Code § 316 (repealed). Information to parties

Comment. Former Section 316 is continued in Family Code Section 10302 (information to parties) without substantive change.

Welf. & Inst. Code § 317 (repealed). Appointment of counsel

Comment. Subdivisions (a) and (b) of former Section 317 are continued in Family Code Section 10310 (appointment of counsel for parent or guardian) without substantive change. Subdivision (c) is continued in Family Code Section 10311 (appointment of counsel for minor) without substantive change. Subdivision (d) is continued in Family Code Section 10312 (representation by counsel) without substantive change. Subdivision (e) is continued in Family Code Section 10313 (responsibilities of counsel for minor) without substantive change. Subdivision (f) is continued in Family Code Section 10314 (access of counsel to records) without substantive change.

Welf. & Inst. Code § 318.5 (repealed). Counsel for petitioner

Comment. Former Section 318.5 is continued in Family Code Section 10315 (counsel for petitioner) without substantive change.

Welf. & Inst. Code § 319 (repealed). Initial hearing

Comment. The first paragraph and the first sentence of the second paragraph of former Welfare and Institutions Code Section 319 are continued in Family Code Section 10321 (court proceedings) without substantive change. The remainder of the second paragraph and related subdivisions are continued in Family Code Section 10322 (circumstances requiring continued detention) without substantive change.

The first, second, third, and sixth sentences of the third paragraph are continued in Family Code Section 10323 (court determination concerning available services) without substantive change. The fourth and fifth sentences are continued in Family Code Section 10324(a)-(b) (placement of minor) without substantive change. The sixth sentence is continued in Family Code Section 10325 (Detention order) without substantive change.

The fourth paragraph is continued in Family Code Section 10324(c) (placement of minor) without substantive change.

The last paragraph is continued in Family Code Section 10320 ("relative" defined) without substantive change.



Welf. & Inst. Code § 319.1 (repealed). Specialized mental health treatment

Comment. Former Section 319.1 is continued in Family Code Section 10326 (specialized mental health treatment) without substantive change.

Welf. & Inst. Code § 321 (repealed). Rehearing

Comment. The first paragraph of former Section 321 is continued in Family Code Section 10330 (rehearing in case of default) without substantive change. The second paragraph is continued in Family Code Section 10331 (rehearing to determine prima facie case) without substantive change. The third paragraph is continued in Family Code Section 10333 (trial in lieu of rehearing) without substantive change. The fourth paragraph is continued in Family Code Section 10332 (continuance) without substantive change.

Welf. & Inst. Code § 322 (repealed). Continuance

Comment. Former Section 322 is continued in Family Code Section 10301 (continuance) without substantive change.

Welf. & Inst. Code § 323 (repealed). Order to appear

Comment. Former Section 323 is continued in Family Code Section 10303 (order to appear) without substantive change.

Welf. & Inst. Code § 324 (repealed). Transfer to requesting county

Comment. Former Section 324 is continued in Family Code Section 10275 (transfer to requesting county).

Welf. & Inst. Code §§ 325-342 (repealed). Commencement of proceedings

SEC. . Article 8 (commencing with Section 325) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is repealed.

Comment. Former Article 8 (commencing with Section 325) is relocated to Part 5 (commencement of proceedings) of Division 14 of the Family Code. For disposition of individual provisions of the article see the Comment to the particular section.

Welf. & Inst. Code § 325 (repealed). Proceeding commenced by petition

Comment. Former Section 325 is continued in Family Code Section 10500 (commencement of proceeding) without substantive change.

Welf. & Inst. Code § 326 (repealed). Guardian ad litem

Comment. Former Section 326 is continued in Family Code Section 10501 (guardian ad litem) without substantive change.

Welf. & Inst. Code § 327 (repealed). Venue

Comment. Former Section 327 is continued in Family Code Section 10502 (venue) without substantive change.

Welf. & Inst. Code § 328 (repealed). Probation officer investigation

Comment. Former Section 328 is continued in Family Code Section 10510 (probation officer investigation) without substantive change.

Welf. & Inst. Code § 328.3 (repealed). Referral agency investigation

Comment. Former Section 328.3 is continued in Family Code Section 10511 (referral agency investigation) without substantive change.

Welf. & Inst. Code § 329 (repealed). Application to probation officer for commencement

Comment. Former Section 329 is continued in Family Code Section 10512(a)-(c) (application of probation officer for commencement) without substantive change.

Welf. & Inst. Code § 331 (repealed). Review of probation officer decision

Comment. Former Section 331 is continued in Family Code Section 10512(d) (application of probation officer for commencement) without substantive change.

Welf. & Inst. Code § 331.5 (repealed). Review decision by probation officer

Comment. Former Section 331.5 is continued in Family Code Section 10511(c) (referral agency investigation) without substantive change.

Welf. & Inst. Code § 332 (repealed). Contents of petition

Comment. Former Section 332 is continued in Family Code Section 10530 (contents of petition) without substantive change. The reference to a ward is not continued because it duplicates Welfare and Institutions Code Section 656. The contents of former subdivision (h) are elaborated in Family Code Section 10531 (notice to person liable for support).

Welf. & Inst. Code § 332.5 (repealed). Petition in demonstration county

Comment. Former Section 332.5 is not continued because it is obsolete. See 1981 Cal. Stats. ch. 104 § 18.

Welf. & Inst. Code § 333 (repealed). Verification of petition

Comment. Former Section 333 is continued in Family Code Section 10532 (verification of petition) without substantive change.

Welf. & Inst. Code § 334 (repealed). Setting petition for hearing

Comment. Former Section 334 is continued in Family Code Section 10533 (setting petition for hearing) without substantive change.

Welf. & Inst. Code § 335 (repealed). Notice of hearing

Comment. Subdivision (a) of former Section 335 is continued in Family Code Section 10540 (notice of hearing) without substantive change. Subdivision (b) is continued in Family Code Section 10541 (notification of probate department of superior court) without substantive change.

Welf. & Inst. Code § 336 (repealed). Contents of notice

Comment. Former Section 336 is continued in Family Code Section 10542 (contents of notice) without substantive change.

Welf. & Inst. Code § 337 (repealed). Time and manner of service

Comment. Subdivisions (a) and (b) of former Section 337 are continued in Family Code Section 10543 (time and manner of service if minor is detained). Subdivision (c) is continued in Family Code Section 10544 (time and manner of service if minor is not detained).

Welf. & Inst. Code § 338 (repealed). Citation to parent or guardian  
Comment. Former Section 338 is continued in Family Code Section 10545(a)-(c) (citation to parent or guardian) without substantive change.

Welf. & Inst. Code § 339 (repealed). Arrest  
Comment. Former Section 339 is continued in Family Code Section 10545(d) (citation to parent or guardian) without substantive change.

Welf. & Inst. Code § 340 (repealed). Protective custody warrant  
Comment. Former Section 340 is continued in Family Code Section 10550 (protective custody warrant for minor) without substantive change.

Welf. & Inst. Code § 340.5 (repealed). Protection of social worker  
Comment. Former Section 340.5 is continued in Family Code Section 10551 (protection of social worker) without substantive change.

Welf. & Inst. Code § 341 (repealed). Subpoenas  
Comment. Former Section 341 is continued in Family Code Section 10570 (subpoenas) without substantive change.

Welf. & Inst. Code § 342 (repealed). Subsequent petition  
Comment. Former Section 342 is continued in Family Code Section 10534 (subsequent petition) without substantive change.

Welf. & Inst. Code §§ 345-359 (repealed). Dependent children--hearings  
SEC. . Article 9 (commencing with Section 345) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is repealed.  
Comment. Former Article 9 (commencing with Section 345) is relocated to Part 6 (hearings) of Division 14 of the Family Code. For disposition of individual provisions of the article see the Comment to the particular section.

Welf. & Inst. Code § 345 (repealed). Special or separate session  
Comment. Former Section 345 is continued in Family Code Section 10600 (special or separate session of court) without substantive change.

Welf. & Inst. Code § 346 (repealed). Closed hearing  
Comment. Former Section 346 is continued in Family Code Section 10601 (closed hearing) without substantive change.

Welf. & Inst. Code § 347 (repealed). Report of proceedings  
Comment. Former Section 347 is continued in Family Code Section 10605 (report of proceedings) without substantive change.

Welf. & Inst. Code § 348 (repealed). Variance and amendment of pleadings  
Comment. Former Section 348 is continued in Family Code Section 10606 (variance and amendment of pleadings) without substantive change.

Welf. & Inst. Code § 349 (repealed). Presence of affected persons at hearing

Comment. Former Section 349 is continued in Family Code Section 10602 (presence of affected persons at hearing) without substantive change.

Welf. & Inst. Code § 350 (repealed). Conduct of hearing

Comment. Subdivision (a)(1) of former Section 350 is continued in Family Code Section 10607 (conduct of hearing by judge) without substantive change. Subdivision (a)(2) is continued in Family Code Section 10150-2 (dependency mediation program) without substantive change. Subdivision (b) is continued in Family Code Section 10608 (testimony of minor in chambers). Subdivision (c) is continued in Family Code Section 10609 (summary judgment).

Welf. & Inst. Code § 351.5 (repealed). Hearing in demonstration county

Comment. Former Section 351.5 is not continued because it is obsolete. See 1981 Cal. Stats. ch. 104 § 18.

Welf. & Inst. Code § 352 (repealed). Continuances

Comment. The first paragraph of subdivision (a) of former Section 352 is continued in Family Code Section 10620 (continuances authorized) without substantive change. The second paragraph is continued in Family Code Section 10621 (grounds for continuance) without substantive change. The third paragraph is continued in Family Code Section 10622 (motion for continuance) without substantive change.

Subdivision (b) is continued in Family Code Section 10623 (continuance where minor removed from custody) without substantive change.

Subdivision (c) is continued in Family Code Section 10624 (failure of counsel to object to continuance) without substantive change.

Welf. & Inst. Code § 353 (repealed). Conduct of hearing

Comment. The first sentence of former Section 353 is continued in Family Code Section 10603(a) (commencement of proceeding) without substantive change. The second sentence is continued in Family Code Section 10603(b) (commencement of proceeding) without substantive change. The third sentence is continued in Family Code Section 10604(a) (representation by counsel) without substantive change. The fourth sentence is continued in Family Code Section 10604(b) (representation by counsel) without substantive change. The fifth sentence is continued in Family Code Section 10604(c) (representation by counsel) without substantive change.

Welf. & Inst. Code § 353.5 (repealed). Commencement of proceeding

Comment. Former Section 353.5 is not continued because it is obsolete. See 1981 Cal. Stats. ch. 104 § 18.

Welf. & Inst. Code § 354 (repealed). Continuance for necessary witness

Comment. Former Section 354 is continued in Family Code Section 10625 (continuance for necessary witness) without substantive change.

Welf. & Inst. Code § 355 (repealed). Burden of proof

Comment. Former Section 355 is continued in Family Code Section 10630 (burden of proof) without substantive change.

Welf. & Inst. Code § 355.1 (repealed). Evidence

Comment. Former Section 355.1 is continued in Family Code Section 10631 (evidence) without substantive change.

Welf. & Inst. Code § 356 (repealed). Findings

Comment. Former Section 356 is continued in Family Code Section 10632 (findings) without substantive change.

Welf. & Inst. Code § 356.5 (repealed). Appointment of child advocate

Comment. Former Section 356.5 is continued in Family Code Section 10610 (appointment of child advocate) without substantive change.

Welf. & Inst. Code § 357 (repealed). Hospitalization of mentally ill minor

Comment. Former Section 357 is continued in Family Code Section 10552 (hospitalization of mentally ill minor) without substantive change.

Welf. & Inst. Code § 358 (repealed). Disposition considerations

Comment. The first sentence of subdivision (a) of former Section 358(a) is continued in Family Code Section 10640 (proceedings after jurisdictional finding) without substantive change. Paragraphs (1)-(3) are continued in Section 10641 (continuance) without substantive change.

Subdivision (b) is continued in Family Code Section 10642 (social study and other evidence) without substantive change.

Subdivision (c) is continued in Family Code Section 10640(b) (proceedings after jurisdictional finding) without substantive change.

Welf. & Inst. Code § 358.1 (repealed). Contents of social study

Comment. Former Section 358.1 is continued in Family Code Section 10643 (contents of social study) without substantive change.

Welf. & Inst. Code § 359 (repealed). Facility for 72-hour treatment and evaluation

Comment. Former Section 359 is continued in Article 2 (commencing with Section 10560) of Chapter 5 of Part 5 of Division 14 of the Family Code without substantive change.

Welf. & Inst. Code §§ 360-370 (repealed). Dependent children -- judgments and orders

SEC. . Article 10 (commencing with Section 360) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is repealed.

Comment. Former Article 10 (commencing with Section 360) is relocated to Part 7 (judgments and orders) of Division 14 of the Family Code. For disposition of individual provisions of the article see the Comment to the particular section.

Welf. & Inst. Code § 360 (repealed). Juvenile court judgment

Comment. Former Section 360 is continued in Family Code Section 10700 (juvenile court judgment) without substantive change.

Welf. & Inst. Code § 360.5 (repealed). Judgment in demonstration county  
Comment. Former Section 360.5 is not continued because it is obsolete. See 1981 Cal. Stats. ch. 104 § 18.

Welf. & Inst. Code § 361 (repealed). Limitation on parental control  
Comment. Subdivision (a) of former Section 361 is continued in Family Code Section 10701 without substantive change. Subdivisions (b) and (c) are continued in Family Code Section 10710 (grounds for removal) without substantive change. Subdivision (d) is continued in Family Code Section 10711 (court findings required) without substantive change.

Welf. & Inst. Code § 361.2 (repealed). Placement of minor  
Comment. Subdivision (a) of former Section 361.2 is continued in Family Code Section 10720 (placement with noncustodial parent) without substantive change. Subdivision (b) is continued in Family Code Section 10721 (authority of probation officer) without substantive change. Subdivision (c) is continued in Family Code Section 10722 (placement in county of parents' residence) without substantive change. Subdivision (d) is continued in Family Code Section 10723 (placement outside county of parents' residence) without substantive change. Subdivision (e) is continued in Family Code Section 10724 (placement with foster family home applicant) without substantive change. Subdivision (f) is continued in Family Code Section 10712 (grandparent visitation rights) without substantive change.

Welf. & Inst. Code § 361.3 (repealed). Placement with relative  
Comment. The first sentence of subdivision (a) of former Welfare and Institutions Code Section 361.3 is continued in Family Code Section 10731 (request by relative) without substantive change. The remainder of subdivision (a) is continued in Family Code Section 10732 (determination whether placement with relative is appropriate) without substantive change. Subdivision (b) is continued in Family Code Section 10733 (selection among relatives) without substantive change. Subdivision (c) is continued in Family Code Section 10730 (definitions) without substantive change.

Welf. & Inst. Code § 361.5 (repealed). Reunification services  
Comment. Subdivision (a) of former Section 361.5 is continued in Family Code Sections 10740 (reunification services required) and 10741 (order and notice to parents).

Subdivision (b) is continued in Family Code Section 10742 (when reunification services not required).

The first and second sentences of subdivision (c) is continued in Family Code Section 10743 (hearing) without substantive change. The third sentence is continued in Family Code Section 10744 (parent alleged to have mental disability) without substantive change. The second and third paragraphs of subdivision (c) are continued in Section 10745 (likelihood of success of reunification services) without substantive change.

Subdivision (d) is continued in Family Code Section 10746 (whereabouts of parent unknown) without substantive change.

Subdivision (e) is continued in Family Code Section 10747 (parent incarcerated) without substantive change.

Subdivisions (f) and (g) are continued in Family Code Section 10748 (subsequent hearing) without substantive change.

Welf. & Inst. Code § 362 (repealed). Court orders

Comment. Subdivision (a) of former Section 362 is continued in Family Code Section 10702 (orders for care of minor) without substantive change. Subdivision (b) is continued in Family Code Section 10703 (orders where parent retains custody) without substantive change. Subdivision (c) is continued in Family Code Section 10704 (order to participate in counseling or education program) without substantive change.

Welf. & Inst. Code § 362.1 (repealed). Visitation of parent

Comment. Former Section 362.1 is continued in Family Code Section 10705 (visitation of parent) without substantive change.

Welf. & Inst. Code § 362.3 (repealed). Citation to parent or guardian

Comment. Former Section 362.3 is continued in Family Code Section 10546 (citation to parent or guardian) without substantive change.

Welf. & Inst. Code § 362.4 (repealed). Orders after termination of jurisdiction

Comment. The first paragraph of former Section 362.4 is continued in Family Code Section 10750 (authority of court after termination of jurisdiction) without substantive change. The second paragraph is continued in Family Code Section 10751 (court order) without substantive change. The third paragraph is continued in Family Code Section 10752 (court order as basis for opening file) without substantive change. The fourth paragraph is continued in Family Code Section 10753 (notice of filing of custody order) without substantive change. The fifth paragraph is continued in Family Code Section 10754 (Judicial Council form orders) without substantive change.

Welf. & Inst. Code § 362.5 (repealed). Court orders in demonstration county

Comment. Former Section 362.5 is not continued because it is obsolete. See 1981 Cal. Stats. ch. 104 § 18.

Welf. & Inst. Code § 363 (repealed). Public assistance

Comment. Former Section 363 is continued in Family Code Section 10706 (public assistance) without substantive change.

Welf. & Inst. Code § 364 (repealed). Continued hearing

Comment. Subdivision (a) of former Section 364 is continued in Family Code Section 10760 (procedure applicable where minor not removed from custody) without substantive change. Subdivision (b) is continued in Family Code Section 10761 (supplemental report and recommendation) without substantive change. Subdivision (c) is continued in Family Code Section 10762 (court determination of need for continued supervision) without substantive change. Subdivision (d) is continued in Family Code Section 10763 (periodic review) without substantive change. Subdivision (e) is continued in Family Code Section 10764 (subsequent removal from parental custody) without substantive change.

Welf. & Inst. Code § 365 (repealed). Reports concerning minors

Comment. Former Section 365 is continued in Family Code Section 10707 (reports concerning minors) without substantive change.

Welf. & Inst. Code § 366 (repealed). Periodic review required

Comment. Former Section 366 is continued in Family Code Section 10770 (periodic review required) without substantive change.

Welf. & Inst. Code § 366.1 (repealed). Contents of supplemental report

Comment. Former Section 366.1 is continued in Family Code Section 10771 (contents of supplemental report) without substantive change.

Welf. & Inst. Code § 366.2 (repealed). Review of status of dependent minor

Comment. Subdivisions (a) and (b) of former Section 366.2 are continued in Family Code Section 10776 (notice of hearing) without substantive change. Subdivision (c) is continued in Family Code Section 10777 (supplemental report and recommendation) without substantive change. Subdivision (d) is continued in Family Code Section 10778 (reports containing recommendation for disposition) without substantive change. Subdivision (e) (with the exception of the last sentence) is continued in Family Code Section 10779 (procedure at review hearing) without substantive change. The last sentence of subdivision (e) is continued in Family Code Section 10775(b) without substantive change. Subdivision (f) is continued in Family Code Section 10775(a) (scope of article) without substantive change.

Welf. & Inst. Code § 366.21 (repealed). Review of status of dependent minor

Comment. Subdivisions (a) and (b) of former Section 366.21 are continued in Family Code Section 10781 (notice of hearing) without substantive change. Subdivision (c) is continued in Family Code Section 10782 (supplemental report and recommendation) without substantive change. Subdivision (d) is continued in Family Code Section 10783 (reports containing recommendation for disposition) without substantive change.

The first paragraph of subdivision (e) is continued in Family Code Section 10784 (procedure at review hearing) without substantive change. The last sentence of the first paragraph of subdivision (e) is continued in Family Code Section 10780(b) (scope of article) without substantive change. The second, third, and fourth paragraphs of subdivision (e) are continued in Family Code Section 10785 (disposition) without substantive change.

Subdivision (f) is continued in Family Code Section 10786 (procedure at 12 month review hearing) without substantive change. Subdivision (g) is continued in Family Code Section 10787 (disposition following 12 month review hearing) without substantive change. Subdivisions (h) and (i) are continued in Family Code Section 10788 (preparation for hearing to terminate parental rights) without substantive change. Subdivision (j) is continued in Family Code Section 10780(a) (scope of article) without substantive change.



Welf. & Inst. Code § 366.22 (repealed). Eighteen month review hearing

Comment. The first paragraph of subdivision (a) of former Section 366.22 is continued in Family Code Section 10789 (procedure at 18 month review hearing) without substantive change. The second paragraph is continued in Family Code Section 10790 (permanent plan) without substantive change. Subdivision (b) is continued in Family Code Section 10791 (assessment) without substantive change.

Welf. & Inst. Code § 366.23 (repealed). Notice of termination hearing

Comment. The first three sentences of former Section 366.23(a) are continued in Family Code Section 10820 (notice of termination hearing) without substantive change. The last two sentences are continued in Family Code Section 10821 (time for service) without substantive change.

Paragraphs (1)-(4) of subdivision (b) are continued in Family Code Section 10822 (manner of service on parent) without substantive change. Paragraph 5 is continued in Family Code Section 10823 (alternative service on parent) without substantive change. Paragraph 6 is continued in Family Code Section 10824 (notice where parent present at hearing) without substantive change. Paragraph 7 is continued in Family Code Section 10825 (notice where whereabouts of parent is unknown) without substantive change.

Subdivision (c) is continued in Family Code Section 10826 (manner of service on minor) without substantive change. Subdivision (d) is continued in Family Code Section 10827 (when service complete) without substantive change.

Welf. & Inst. Code § 366.25 (repealed). Permanency planning for minor adjudicated a dependent child before January 1, 1989

Comment. Subdivision (a) of former Section 366.25 is continued in Family Code Section 10851 (hearing to determine future status) without substantive change. Subdivision (b) is continued in Family Code Section 10852 (notice of hearing) without substantive change.

Subdivision (c) and the first paragraph of subdivision (d) are continued in Family Code Section 10853 (procedure at hearing) without substantive change. Subdivision (d)(1) is continued in Family Code Section 10854 (permanent plan where adoption likely) without substantive change. Subdivision (d)(2) is continued in Family Code Section 10856 (legal guardianship or long term foster care) without substantive change. Subdivision (d)(3) is continued in Family Code Section 10857 (transfer to licensed foster family agency) without substantive change.

Subdivision (e) is continued in Family Code Section 10858 (procedure for appointment of guardian) without substantive change. Subdivision (f) is continued in Family Code Section 10851 (hearing to determine future status) without substantive change. Subdivision (g) is continued in Family Code Section 10855 (preference for foster parent) without substantive change. Subdivision (h) is continued in Family Code Section 10851 (hearing to determine future status) without substantive change. Subdivision (i) is continued in Family Code Section 10850 (application of chapter) without substantive change. Subdivision (j) is continued in Family Code Section 10859 (court order non-appealable) without substantive change.

Welf. & Inst. Code § 366.26 (repealed). Hearings to terminate parental rights

Comment. Subdivision (a) of former Section 366.26 is continued in Family Code Section 10800 (application of chapter) without substantive change. The introductory clause of subdivision (b) is continued in Family Code Section 10830 (hearing in juvenile court) without substantive change. Paragraphs (1)-(4) of subdivision (b) are continued in Family Code Section 10840 (determinations by court).

Subdivision (c)(1)-(2) is continued in Family Code Section 10841 (termination of parental rights) without substantive change. Subdivision (c)(3) is continued in Family Code Section 10842 (minor difficult to place for adoption) without substantive change. Subdivision (c)(4) is continued in Family Code Section 10843 (legal guardianship or long term foster care) without substantive change. Subdivision (c)(5) is continued in Family Code Section 10844 (transfer to licensed foster family agency) without substantive change.

Subdivision (d) is continued in Family Code Section 10845 (appointment of guardian) without substantive change. Subdivisions (e) and (f) are continued in Family Code Section 10831 (representation by counsel) without substantive change. Subdivision (g) is continued in Family Code Section 10832 (testimony of minor) without substantive change.

Subdivision (h) is continued in Family Code Section 10802 (effect of order terminating parental rights) without substantive change. Subdivision (i) is continued in Family Code Section 10846 (adoption proceedings) without substantive change. Subdivision (j) is continued in Family Code Section 10847 (preference in adoption) without substantive change.

Welf. & Inst. Code § 366.3 (repealed). Implementation of permanent plan

Comment. Subdivision (a) of former Section 366.3 is continued in Family Code Section 10861 (adoption or legal guardianship) without substantive change. Subdivision (b) is continued in Family Code Section 10863 (termination of legal guardianship) without substantive change. Subdivision (c) is continued in Family Code Section 10864 (continuing review of status of minor) without substantive change.

Welf. & Inst. Code § 366.4 (repealed). Jurisdiction over legal guardianship

Comment. Former Section 366.4 is continued in Family Code Section 10862 (jurisdiction over legal guardianship) without substantive change.

Welf. & Inst. Code § 367 (repealed). Temporary detention until placement

Comment. Former Section 367 is continued in Family Code Section 10860 (temporary detention until placement) without substantive change.

Welf. & Inst. Code § 368 (repealed). Out of state placement

Comment. Former Section 368 is continued in Family Code Section 10865 (out of state placement) without substantive change.

Welf. & Inst. Code § 369 (repealed). Medical, surgical, dental, or other remedial care

Comment. Subdivision (a) of former Section 369 is continued in Family Code Section 10160 (remedial care for person in temporary custody) without substantive change. Subdivision (b) is continued in Family Code Section 10161 (remedial care for person subject of petition) without substantive change. Subdivision (c) is continued in Family Code Section 10162 (remedial care for dependent child under supervision of probation officer) without substantive change. Subdivision (d) is continued in Family Code Section 10163 (emergency care for minor) without substantive change. Subdivision (e) is continued in Family Code Section 10164 (release of information concerning remedial care) without substantive change. Subdivisions (f) and (g) are continued in Family Code Section 10165 (right of parent, guardian, or person in loco parentis) without substantive change.

Welf. & Inst. Code § 370 (repealed). Services of clinical experts

Comment. Former Section 369 is continued in Family Code Section 10305 (services of clinical experts) without substantive change.

Welf. & Inst. Code §§ 375-380 (repealed). Dependent children--transfer of cases between counties

SEC. . Article 11 (commencing with Section 375) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is repealed.

Comment. Former Article 11 (commencing with Section 375) is relocated to Part 8 (transfer of cases between counties) of Division 14 of the Family Code. For disposition of individual provisions of the article see the Comment to the particular section.

Welf. & Inst. Code § 375 (repealed). Transfer authorized

Comment. Former Section 375 is continued in Family Code Section 10900 (transfer authorized) without substantive change.

Welf. & Inst. Code § 376 (repealed). Expense of transfer

Comment. Former Section 376 is continued in Family Code Section 10901 (expense of transfer) without substantive change.

Welf. & Inst. Code § 377 (repealed). Transfer documentation

Comment. Former Section 377 is continued in Family Code Section 10902 (transfer documentation) without substantive change.

Welf. & Inst. Code § 378 (repealed). Proceedings in transferee court

Comment. Former Section 378 is continued in Family Code Section 10903 (proceedings in transferee court) without substantive change.

Welf. & Inst. Code § 379 (repealed). Counties involved in transfer as parties

Comment. Former Section 379 is continued in Family Code Section 10904 (counties involved in transfer as parties) without substantive change.

Welf. & Inst. Code § 380 (repealed). Minor residing outside county of legal residence

Comment. Former Section 380 is continued in Family Code Section 10905 (minor residing outside county of legal residence) without substantive change.

Welf. & Inst. Code §§ 385-390 (repealed). Dependent children--modification of juvenile court judgments and orders

SEC. . Article 12 (commencing with Section 385) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is repealed.

Comment. Former Article 12 (commencing with Section 385) is relocated to Part 9 (modification of juvenile court judgments and orders) of Division 14 of the Family Code. For disposition of individual provisions of the article see the Comment to the particular section.

Welf. & Inst. Code § 385 (repealed). Authority to modify order

Comment. Former Section 385 is continued in Family Code Section 10930 (transfer authorized) without substantive change.

Welf. & Inst. Code § 386 (repealed). Notice required

Comment. Former Section 386 is continued in Family Code Section 10931 (notice required) without substantive change.

Welf. & Inst. Code § 387 (repealed). Supplemental petition

Comment. Former Section 387 is continued in Family Code Section 10932 (supplemental petition) without substantive change.

Welf. & Inst. Code § 388 (repealed). Change of circumstance or new evidence

Comment. Former Section 388 is continued in Family Code Section 10933 (change of circumstance or new evidence) without substantive change.

Welf. & Inst. Code § 389 (repealed). Sealing of records

Comment. Former Section 389 is continued in Part 11 (commencing with Section 10990) of Division 14 of the Family Code (sealing of records) without substantive change.

Welf. & Inst. Code § 390 (repealed). Dismissal of petition

Comment. Former Section 390 is continued in Family Code Section 10934 (dismissal of petition) without substantive change.

Welf. & Inst. Code §§ 395 (repealed). Dependent children--appeals

SEC. . Article 13 (commencing with Section 395) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is repealed.

Comment. Former Article 13 (commencing with Section 395) is relocated to Part 10 (appeals) of Division 14 of the Family Code. For disposition of individual provisions of the article see the Comment to the particular section.

Welf. & Inst. Code § 395 (repealed). Appeals

Comment. The first paragraph of former Section 395 is continued in Family Code Section 10960 (appeal from judgment or order) without substantive change. The second paragraph is continued in Family Code Section 10961 (appeal from judgment or order of referee) without substantive change. The third and fourth paragraphs are continued in Family Code Section 10962 (record and fees) without substantive change.

Welf. & Inst. Code §§ 396-399 (repealed). Foster care of children

SEC. . Article 13.5 (commencing with Section 396) of Chapter 2 of Part 1 of Division 2 of the Welfare and Institutions Code is repealed.

Comment. Former Article 13.5 (commencing with Section 396) is relocated to Chapter 1 (foster care placement) of Part 4 of Division 9 of the Welfare and Institutions Code. For disposition of individual provisions of the article see the Comment to the particular section.

Welf. & Inst. Code § 396 (repealed). Legislative policy

Comment. Former Section 396 is continued in Section 16005 without substantive change.

Welf. & Inst. Code § 397 (repealed). Reports

Comment. Former Section 397 is continued in Section 16006 without substantive change.

Welf. & Inst. Code § 398 (repealed). Report to Legislature

Comment. Former Section 398 is not continued because it is obsolete.

Welf. & Inst. Code § 399 (repealed). Statement by minor

Comment. Former Section 399 is continued in Section 16007 without substantive change.

Welf. & Inst. Code § 607. (amended). Retention of jurisdiction

607. (a) The court may retain jurisdiction over any person who is found to be a ward ~~ex-dependent-child~~ of the juvenile court until the ward ~~ex-dependent-child~~ attains the age of 21 years, except as provided in subdivisions (b), (c), and (d).

(b) The court may retain jurisdiction over any person who is found to be a person described in Section 602 by reason of the commission of any of the offenses listed in subdivision (b) of Section 707 until that person attains the age of 25 years if the person was committed to the Department of the Youth Authority.

(c) The court shall not discharge any person from its jurisdiction who has been committed to the Department of the Youth Authority so long as the person remains under the jurisdiction of the Department of the Youth Authority, including periods of extended control ordered pursuant to Section 1800.

(d) The court may retain jurisdiction over any person described in Section 602 by reason of the commission of any of the offenses listed in subdivision (b) of Section 707 who has been confined in a state hospital or other appropriate public or private mental health facility pursuant to Section 702.3 until that person has attained the age of 25 years, unless the court which committed the person finds, after notice and hearing, that the person's sanity has been restored.

(e) The court may retain jurisdiction over any person while that person is the subject of a warrant for arrest issued pursuant to Section 663.

Comment. Section 607 is amended to delete a provision duplicated in the law relating to dependent children of the court. Family Code Section 10104 (retention of jurisdiction); see also former Welf & Inst. Code § 303.

Welf. & Inst. Code § 628 (amended). Investigation

628. (a) Upon delivery to the probation officer of a minor who has been taken into temporary custody under the provisions of this article, the probation officer shall immediately investigate the circumstances of the minor and the facts surrounding his being taken into custody and shall immediately release such minor to the custody of his parent, guardian, or responsible relative unless one or more of the following conditions exist:

(1) The minor is in need of proper and effective parental care or control and has no parent, guardian, or responsible relative; or has no parent, guardian, or responsible relative willing to exercise or capable of exercising such care or control; or has no parent, guardian, or responsible relative actually exercising such care or control.

(2) The minor is destitute or is not provided with the necessities of life or is not provided with a home or suitable place of abode.

(3) The minor is provided with a home which is an unfit place for him by reason of neglect, cruelty, depravity or physical abuse of either of his parents, or of his guardian or other person in whose custody or care he is.

(4) Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor or reasonable necessity for the protection of the person or property of another.

(5) The minor is likely to flee the jurisdiction of the court.

(6) The minor has violated an order of the juvenile court.

(7) The minor is physically dangerous to the public because of a mental or physical deficiency, disorder or abnormality.

(b) In any case in which there is reasonable cause for believing that a minor who is under the care of a physician or surgeon or a hospital, clinic, or other medical facility and cannot be immediately moved is a person described in ~~subdivision (d) of Section 300~~ \_\_\_\_\_, the minor shall be deemed to have been taken into temporary custody and delivered to the probation officer for the purposes of ~~this chapter~~ Division 14 (commencing with Section 10000) of the Family Code while he is at the office of the physician or surgeon or such medical facility.

Comment. Section 628 is amended to correct section references.

Welf. & Inst. Code § 632 (amended). Detention hearing

632. (a) Except as provided in subdivision (b), unless sooner released, a minor taken into custody under the provisions of this article shall, as soon as possible but in any event before the expiration of the next judicial day after a petition to declare the minor a ward ~~or dependent child~~ has been filed, be brought before a judge or referee of the juvenile court for a hearing to determine whether the minor shall be further detained. Such a hearing shall be referred to as a "detention hearing."

(b) Whenever a minor is taken into custody without a warrant on the belief that he or she has committed a misdemeanor not involving violence, a threat of violence, or possession or use of weapons, if the minor is not currently on probation or parole, he or she shall be brought before a judge or referee of the juvenile court for a detention hearing as soon as possible, but no later than 48 hours after having been taken into custody, excluding nonjudicial days, after a petition

to declare the minor a ward has been filed. In all cases involving the detention of a minor pursuant to this subdivision where the minor will not be brought before the judge or referee of the juvenile court within 24 hours, the decision not to bring the minor before the judge or referee within 24 hours shall be subject to written review and approval by a probation officer who is a supervisor as soon as possible after it is known that the minor will not be brought before the judge or referee within 24 hours. However, if the decision not to bring the minor before the judge or referee within 24 hours is made by a probation officer who is a supervisor, the decision shall not be subject to review and approval.

(c) If the minor is not brought before a judge or referee of the juvenile court within the period prescribed by this section, he or she shall be released from custody.

Comment. Section 632 is amended to delete an obsolete reference.

Staff Note. *Is this true? This needs to be researched.*

Welf. & Inst. Code § 654 (amended). Programs of supervision

654. In any case in which a probation officer, after investigation of an application for a petition or any other investigation he or she is authorized to make concludes that a minor is within the jurisdiction of the juvenile court or will probably soon be within that jurisdiction, the probation officer may, in lieu of filing a petition to declare a minor ~~a dependent child of the court or a minor~~ or a ward of the court under Section 601 or requesting that a petition be filed by the prosecuting attorney to declare a minor a ward of the court under Section 602 and with consent of the minor and the minor's parent or guardian, delineate specific programs of supervision for the minor, for not to exceed six months, and attempt thereby to adjust the situation which brings the minor within the jurisdiction of the court or creates the probability that the minor will soon be within that jurisdiction. Nothing in this section shall be construed to prevent the probation officer from filing a petition or requesting the prosecuting attorney to file a petition at any time within the six-month period or a 90-day period thereafter. If the probation officer determines that the minor has not involved himself or herself in the specific programs within 60 days, the probation officer shall



immediately file a petition or request that a petition be filed by the prosecuting attorney. However, when in the judgment of the probation officer the interest of the minor and the community can be protected, the probation officer shall make a diligent effort to proceed under this section.

The program of supervision of the minor undertaken pursuant to this section may call for the minor to obtain care and treatment for the misuse of or addiction to controlled substances from a county mental health service or other appropriate community agency.

The program of supervision shall require the parents or guardians of the minor to participate with the minor in counseling or education programs, including, but not limited to, parent education and parenting programs operated by community colleges, school districts, or other appropriate agencies designated by the court if the program of supervision is pursuant to the procedure prescribed in Section 654.2.

Further, this section shall authorize the probation officer with consent of the minor and the minor's parent or guardian to provide the following services in lieu of filing a petition:

(a) Maintain and operate sheltered-care facilities, or contract with private or public agencies to provide these services. The placement shall be limited to a maximum of 90 days. Counseling services shall be extended to the sheltered minor and his or her family during this period of diversion services. The minor and his or her parents may be required to make full or partial reimbursement for the services rendered the minor and his or her family during the diversion process. Referrals for sheltered-care diversion may be made by the minor, his or her family, schools, any law enforcement agency, or any other private or public social service agency.

(b) Maintain and operate crisis resolution homes, or contract with private or public agencies offering these services. Residence at these facilities shall be limited to 20 days during which period individual and family counseling shall be extended the minor and his or her family. Failure to resolve the crisis within the 20-day period may result in the minor's referral to a sheltered-care facility for a period not to exceed 90 days. Referrals shall be accepted from the minor, his or her family, schools, law enforcement or any other private

or public social service agency. The minor, his or her parents, or both, may be required to reimburse the county for the cost of services rendered at a rate to be determined by the county board of supervisors.

(c) Maintain and operate counseling and educational centers, or contract with private and public agencies, societies, or corporations whose purpose is to provide vocational training or skills. The centers may be operated separately or in conjunction with crisis resolution homes to be operated by the probation officer. The probation officer shall be authorized to make referrals to the appropriate existing private or public agencies offering similar services when available.

At the conclusion of the program of supervision undertaken pursuant to this section, the probation officer shall prepare and maintain a followup report of the actual program measures taken.

Comment. Section 654 is amended to delete an obsolete reference.

Staff Note. Further research required.

Welf. & Inst. § 655 (amended). Failure to commence proceedings

655. (a) When any person has applied to the probation officer, pursuant to Section 653, to request commencement of juvenile court proceedings to declare a minor a ward of the court under Section 602 and the probation officer does not cause the affidavit to be taken to the prosecuting attorney pursuant to Section 653 within 21 court days after such application, the applicant may, within 10 court days after receiving notice of the probation officer's decision not to file a petition, apply to the prosecuting attorney to review the decision of the probation officer, and the prosecuting attorney may either affirm the decision of the probation officer or commence juvenile court proceedings.

(b) When any person has applied to the probation officer, pursuant to Section 653, to commence juvenile court proceedings to declare a minor ~~a dependent child of the court~~ or a ward of the court under Section 601 and the probation officer fails to file a petition within 21 court days after making such application, the applicant may, within 10 court days after receiving notice of the probation officer's decision not to file a petition, apply to the juvenile court to review

the decision of the probation officer, and the court may either affirm the decision of the probation officer or order him or her to commence juvenile court proceedings.

Comment. Section 655 is amended to delete an obsolete reference.

Staff Note. Further research required.

Welf. & Inst. Code § 681 (amended). Prosecuting attorney

681. (a) In a juvenile court hearing which is based upon a petition that alleges that the minor upon whose behalf the petition is being brought is a person within the description of Section 602, the prosecuting attorney shall appear on behalf of the people of the State of California.

(b) In a juvenile court hearing which is based upon a petition that alleges that the minor upon whose behalf the petition is being brought is a person within the description of Section 601 and the minor who is the subject of the hearing is represented by counsel, the prosecuting attorney may, with the consent or at the request of the juvenile court judge, or at the request of the probation officer with the consent of the juvenile court judge, appear and participate in the hearing to assist in the ascertaining and presenting of the evidence. ~~Where the petition in a juvenile court proceeding alleges that a minor is a person described in subdivision (a), (b), or (d) of Section 300, and either of the parents, or the guardian, or other person having care or custody of the minor, or who resides in the home of the minor, is charged in a pending criminal prosecution based upon unlawful acts committed against the minor, the prosecuting attorney shall, with the consent or at the request of the juvenile court judge, represent the minor in the interest of the state at the juvenile court proceeding. The terms and conditions of such representation shall be with the consent or approval of the judge of the juvenile court.~~

Comment. Section 681 is amended to delete a provision duplicated in the law relating to dependent children of the court. Family Code Section 10128 (representation of minor); see also former Welf & Inst. Code § 351.

Welf. & Inst. Code § 701 (amended). Procedure at hearing

701. At the hearing, the court shall first consider only the question whether the minor is a person described by Section ~~300~~, ~~601~~, 601 or 602. The admission and exclusion of evidence shall be pursuant to the rules of evidence established by the Evidence Code and by judicial decision. Proof beyond a reasonable doubt supported by evidence, legally admissible in the trial of criminal cases, must be adduced to support a finding that the minor is a person described by Section 602, and a preponderance of evidence, legally admissible in the trial of civil cases must be adduced to support a finding that the minor is a person described by Section ~~300~~—or 601. When it appears that the minor has made an extrajudicial admission or confession and denies the same at the hearing, the court may continue the hearing for not to exceed seven days to enable the prosecuting attorney to subpoena witnesses to attend the hearing to prove the allegations of the petition. If the minor is not represented by counsel at the hearing, it shall be deemed that objections that could have been made to the evidence were made.

Comment. Section 701 is amended to delete a provision duplicated in the law relating to dependent children of the court. Family Code Section 10630 (burden of proof); see also former Welf & Inst. Code § 355.

Welf. & Inst. § 702 (amended). Court finding

702. After hearing the evidence, the court shall make a finding, noted in the minutes of the court, whether or not the minor is a person described by Section ~~300~~, ~~601~~, 601 or 602. If it finds that the minor is not such a person, it shall order that the petition be dismissed and the minor be discharged from any detention or restriction theretofore ordered. If the court finds that the minor is such a person, it shall make and enter its findings and order accordingly, and shall then proceed to hear evidence on the question of the proper disposition to be made of the minor. Prior to doing so, it may continue the hearing, if necessary, to receive the social study of the probation officer, to refer the minor to a juvenile justice community resource program as defined in Article 5.2 (commencing with Section 1784) of Chapter 1 of Division 2.5, or to receive other evidence on its own motion or the motion of a parent or guardian for not to exceed 10 judicial days if

the minor is detained during the continuance. If the minor is not detained, it may continue the hearing to a date not later than 30 days after the date of filing of the petition. The court may, for good cause shown continue the hearing for an additional 15 days, if the minor is not detained. The court may make such order for detention of the minor or his or her release from detention, during the period of the continuance, as is appropriate.

If the minor is found to have committed an offense which would in the case of an adult be punishable alternatively as a felony or a misdemeanor, the court shall declare the offense to be a misdemeanor or felony.

Comment. Section 702 is amended to delete a provision duplicated in the law relating to dependent children of the court. Family Code Section 10632 (finding); see also former Welf & Inst. Code § 356.

Welf. & Inst. Code § 726 (amended). Limitation on parental control

726. In all cases wherein a minor is adjudged a ward ~~or dependent child~~ of the court, the court may limit the control to be exercised over such ward or dependent child by any parent or guardian and shall by its order clearly and specifically set forth all such limitations, but no ward ~~or dependent child~~ shall be taken from the physical custody of a parent or guardian unless upon the hearing the court finds one of the following facts:

(a) That the parent or guardian is incapable of providing or has failed or neglected to provide proper maintenance, training, and education for the minor.

(b) That the minor has been tried on probation in such custody and has failed to reform.

(c) That the welfare of the minor requires that his custody be taken from his parent or guardian.

In any case in which the minor is removed from the physical custody of his parent or guardian as the result of an order of wardship made pursuant to Section 602, the order shall specify that the minor may not be held in physical confinement for a period in excess of the maximum term of imprisonment which could be imposed upon an adult convicted of the offense or offenses which brought or continued the minor under the jurisdiction of the juvenile court.

As used in this section and in Section 731, "maximum term of imprisonment" means the longest of the three time periods set forth in paragraph (2) of subdivision (a) of Section 1170 of the Penal Code, but without the need to follow the provisions of subdivision (b) of Section 1170 of the Penal Code or to consider time for good behavior or participation pursuant to Sections 2930, 2931, and 2932 of the Penal Code, plus enhancements which must be proven if pled.

If the court elects to aggregate the period of physical confinement on multiple counts, or multiple petitions, including previously sustained petitions adjudging the minor a ward within Section 602, the "maximum term of imprisonment" shall be specified in accordance with subdivision (a) of Section 1170.1 of the Penal Code.

If the charged offense is a misdemeanor or a felony not included within the scope of Section 1170 of the Penal Code, the "maximum term of imprisonment" is the longest term of imprisonment prescribed by law.

"Physical confinement" means placement in a juvenile hall, ranch, camp, forestry camp or secure juvenile home pursuant to Section 730, or in any institution operated by the Youth Authority.

Nothing in this section shall be construed to limit the power of the court to retain jurisdiction over a minor and to make appropriate orders pursuant to Section 727 for the period permitted by Section 607.

Comment. Section 726 is amended to delete a provision duplicated in the law relating to dependent children of the court. Family Code Section 10701 (limitation on parental control); see also former Welf & Inst. Code § 361.

Welf. & Inst. Code § 782 (amended). Dismissal of petition

782. A judge of the juvenile court in which a petition was filed, at any time before the minor reaches the age of 21 years, may dismiss the petition or may set aside the findings and dismiss the petition if the court finds that the interests of justice and the welfare of the minor require such dismissal, or if it finds that the minor is not in need of treatment or rehabilitation. The court shall have jurisdiction to order such dismissal or setting aside of the findings and dismissal regardless of whether the minor is, at the time of such order, a ward ~~or dependent-child~~ of the court.

Comment. Section 782 is amended to delete a provision duplicated in the law relating to dependent children of the court. Family Code Section 10934 (dismissal of petition); see also former Welf & Inst. Code § 390.

Welf. & Inst. Code § 825 (amended). Juvenile court record

825. The order and findings of the superior court in each case under the provisions of this chapter and Division 14 (commencing with Section 10000) of the Family Code shall be entered in a suitable book or other form of written record which shall be kept for that purpose and known as the "juvenile court record."

Comment. Section 825 is amended to recognize the relocation of the provisions governing dependent children of the court to the Family Code.

Welf. & Inst. Code § 16005 (added). Legislative policy

16005. It is the policy of the Legislature that foster care should be a temporary method of care for the children of this state, that children have a right to a normal home life, that reunification with the natural parent or parents or another alternate permanent living situation such as adoption or guardianship are more suitable to a child's well-being than is foster care, and that this state has a responsibility to attempt to ensure that children are given the chance to have a happy and healthy life, and that, to the extent possible, the current practice of moving children receiving foster care services from one foster home to another until they reach the age of majority should be discontinued.

Comment. Section 16005 continues former Section 396 without substantive change.

Welf. & Inst. Code § 16006 (added). Reports

16006. In order to carry out the policy stated in Section 16005, each county welfare department or probation department shall report to the State Department of Social Services, in the frequency and format determined by the department, foster care characteristic data and care information deemed essential by the department to establish a foster care information system. The report shall include, but not be limited to, elements that identify the factors necessitating foster care

placement, the appropriateness of the placement, and the case goal or objective such as reunification, adoption, guardianship, or long-term foster care placement.

Comment. Section 16006 continues former Section 397 without substantive change.

Welf. & Inst. Code § 16007 (added). Statement by minor

16007. Any minor being considered for placement in a foster home shall have the right to make a brief statement to the court making a decision on placement. The court may disregard any preferences expressed by the minor. The minor's right to make a statement shall not be limited to the initial placement, but shall continue for any proceedings concerning continued placement or a decision to return to parental custody.

Comment. Section 16007 continues former Section 399 without substantive change.