

DEPARTMENT OF SOCIAL SERVICES

744 P Street, M.S. 19-31

Sacramento, CA 95814



February 27, 1984

ALL-COUNTY INFORMATION NOTICE I-21-84

- TO: All Public and Private Adoption Agencies
All County Welfare Departments
All SDSS Adoptions District Offices

SUBJECT: Adoptions Program Changes-Chapter 309, Statutes of 1983
(Senate Bill 304)

REFERENCE:

Chapter 309, Statutes of 1983 (Senate Bill 304, Presley) was signed into law by the Governor on July 18, 1983, and was effective on January 1, 1984. This letter summarizes the effect of this legislation on the adoptions program.

Civil Code Section 226.5:

- a. The time limit for interviews in independent adoption cases is changed from 45 calendar days to 45 working days. The time limit now only applies to California residents.
- b. The reference to those to be interviewed is made more specific by changing "parties to the adoption" to "petitioners and all persons from whom consent is required and whose addresses are known".
- c. A requirement is added that a petitioner file a copy of the petition with the district office of the State Department of Social Services or the licensed adoption agency responsible for the investigation of the adoption when the petition is filed with the court. The names, addresses and phone numbers, if known, of all parties to be interviewed must be provided to the investigating agency along with the petition.

Civil Code Section 232:

- a. Language has been added to Civil Code Sections 232(a)(2) and 232(a)(3) stating that physical custody by the parent or parents for insubstantial periods of time shall not interrupt the running of the one year period necessary to declare the child free from custody and control of the child's parents.

- b. Civil Code Section 232(a)(6) has been amended to delete the requirement that, when the parent resides in another state or foreign country, the court finds that a physician certified by that state or country to practice psychiatry and neurology who testifies as to the parent's mental deficiency or illness meets certification requirements comparable to those of the American Board of Psychiatry and Neurology.
- c. Civil Code Section 232(a)(7) was substantially revised. The principal changes affect trial placements and parents convicted of felonies. The paragraph referring to the impact of brief returns of the child to the home during the year's placement in foster care has been clarified to refer specifically to trial placements and visitations which do not result in permanent placement of the child with the parent. The paragraph which stated that Section 232(a)(7) did not affect the parent who was unable to receive reasonable services due to a felony conviction was deleted.
- d. Civil Code Section 232(c) has been added. This section applies the clear and convincing evidence standard to all of Section 232. Previously only Section 232(a)(7) contained reference to this standard. This new section also requires that if the child is a dependent of the juvenile court, the court shall "review and consider the contents of the juvenile court file in determining if the services offered were reasonable under the circumstances".

Civil Code Section 232.5:

A sentence requiring the court to consider the wishes of the child and to act in the best interests of the child is added to this section.

This bill also amended several Welfare and Institutions Code Sections concerning juvenile court dependency procedures. These amendments will be discussed in a separate letter.

If you have any questions regarding this letter, please contact the Adoptions Policy Unit at (916) 445-9124 (ATSS: 485-9124).



LOREN D. SUTER
Deputy Director
Adult and Family Services Division

Enclosure

cc: CWDA

a parent or guardian may file an affidavit setting forth those facts, and the matter shall be set for rehearing within 24 hours.

This bill would provide that in lieu of a requested rehearing the court may set the matter for trial within 10 days.

The people of the State of California do enact as follows:

SECTION 1. Section 226.5 of the Civil Code is amended to read:

226.5. The State Department of Social Services or licensed county adoption agency shall interview the petitioners and all persons from whom consent is required and whose addresses are known as soon as possible and in the case of residents of California within 45 working days, excluding legal holidays, after the filing of the adoption petition. In order to facilitate these interviews, at the same time the petition is filed, the petitioner shall file with the district office of the State Department of Social Services or the licensed county adoption agency responsible for the investigation of the adoption, a copy of the petition together with the names, addresses, and phone numbers of all parties to be interviewed, if known.

SEC. 2. Section 232 of the Civil Code is amended to read:

232. (a) An action may be brought for the purpose of having any child under the age of 18 years declared free from the custody and control of either or both of his or her parents when the child comes within any of the following descriptions:

(1) The child has been left without provision for the child's identification by his or her parent or parents or by others or has been left by both of his or her parents or his or her sole parent in the care and custody of another for a period of six months or by one parent in the care and custody of the other parent for a period of one year without any provision for the child's support, or without communication from the parent or parents, with the intent on the part of the parent or parents to abandon the child. The failure to provide identification, failure to provide support, or failure to communicate shall be presumptive evidence of the intent to abandon. If the parent or parents have made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent or parents. In those cases in which the child has been left without provision for the child's identification and the whereabouts of the parents are unknown, a petition may be filed after the 120th day following the discovery of the child and citation by publication may be commenced. The petition may not be heard until after the 180th day following the discovery of the child.

The fact that a child is in a foster care home, licensed under Chapter 3 (commencing with Section 1500) of Division 2 of the Health and Safety Code, shall not prevent a licensed adoption agency which is planning adoption placement for the child, from instituting, under this subdivision, an action to declare the child free from the custody and control of the child's parents. When the requesting

Senate Bill No. 304

CHAPTER 309

An act to amend Sections 226.5, 232, and 232.5 of the Civil Code, and to amend Sections 319, 321, 366.2,, 366.25, and 11401 of the Welfare and Institutions Code, relating to parent and child.

[Approved by Governor July 18, 1983. Filed with Secretary of State July 18, 1983.]

LEGISLATIVE COUNSEL'S DIGEST

SB 304, Presley. Parent and child.

Existing law provides that parties to an adoption shall be interviewed by the State Department of Social Services or licensed county adoption agency within 45 days after the filing of the adoption petition.

This bill would provide that the petitioners and all persons from whom consent is required and whose addresses are known shall be so interviewed as soon as possible and in the case of residents of California within 45 working days after the filing of the adoption petition. The bill would, in addition, provide, in order to facilitate these interviews, that the petitioner, at the same time the petition is filed, shall file with the district office of the State Department of Social Services or the licensed county adoption agency responsible for the investigation of the adoption, a copy of the petition together with the names, addresses, and phone numbers of all parties to be interviewed, if known.

Existing law authorizes an action to be brought for the purpose of having any minor declared free from the custody and control of either or both of his or her parents under specified circumstances.

This bill would make various changes as to the circumstances under which such an action may be brought, including deleting a provision making one ground for such an action inapplicable to a parent who has been convicted of a felony.

Existing law relating to the removal of a minor from his or her parent's custody to the custody of the court under specified circumstances provides that the court shall order the release of the minor from the custody of the court unless it finds any of several specified circumstances to exist.

This bill would add to the list of circumstances with respect to which the court need not order the release of the minor from the custody of the court that of an indication by the minor of an unwillingness to return home, if the minor has been sexually molested by a person residing in the home.

Existing law relating to the removal of a minor from his or her parent's custody provides that when a hearing is held and no parent or guardian is present and no parent or guardian has actual notice,

agency is a licensed county adoption agency, the county counsel, and if there is no county counsel, the district attorney shall institute such action.

(2) Who has been neglected or cruelly treated by either or both parents, if the child has been a dependent child of the juvenile court under any subdivision of Section 300 of the Welfare and Institutions Code and the parent or parents have been deprived of the child's custody for one year prior to the filing of a petition pursuant to this section. Physical custody by the parent or parents for insubstantial periods of time shall not serve to interrupt the running of the one year period.

(3) Whose parent or parents suffer a disability because of the habitual use of alcohol, or any of the controlled substances specified in Schedules I to V, inclusive, of Division 10 (commencing with Section 11000) of the Health and Safety Code, except when these controlled substances are used as part of a medically prescribed plan, or are morally depraved, if the child has been a dependent child of the juvenile court, and the parent or parents have been deprived of the child's custody continuously for one year immediately prior to the filing of a petition pursuant to this section. As used in this subdivision, "disability" means any physical or mental incapacity which renders the parent or parents unable to adequately care for and control the child. Physical custody by the parent or parents for insubstantial periods of time shall not interrupt the running of the one year period.

(4) Whose parent or parents are convicted of a felony, if the facts of the crime of which the parent or parents were convicted are of a nature so as to prove the unfitness of the parent or parents to have the future custody and control of the child.

(5) Whose parent or parents have been declared by a court of competent jurisdiction wherever situated to be developmentally disabled or mentally ill, if, in the state or country in which the parent or parents reside or are hospitalized, the Director of Mental Health or the Director of Developmental Services, or their equivalent, if any, and the superintendent of the hospital of which, if any, the parent or parents are inmates or patients certify that the parent or parents so declared to be developmentally disabled or mentally ill will not be capable of supporting or controlling the child in a proper manner.

(6) Whose parent or parents are mentally disabled and are likely to remain so in the foreseeable future. As used in this subdivision "mentally disabled" means that a parent or parents suffer any mental incapacity or disorder which renders the parent or parents unable to adequately care for and control the child. The evidence of any two experts, each of whom shall be either a physician and surgeon, certified either by the American Board of Psychiatry and Neurology or under Section 6750 of the Welfare and Institutions Code, or a licensed psychologist who has a doctoral degree in psychology and

at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders, shall be required to support a finding under this subdivision. If, however, the parent or parents reside in another state or in a foreign country, the evidence required by this subdivision may be supplied by the affidavits of two experts each of whom shall be either a physician and surgeon who is a resident of that state or foreign country, and who has been certified by a medical organization or society of that state or foreign country to practice psychiatric or neurological medicine, or by a licensed psychologist who has a doctoral degree in psychology and at least five years of postgraduate experience in the diagnosis and treatment of emotional and mental disorders and who is licensed in that state or authorized to practice in that country. If the rights of any parent are sought to be terminated pursuant to this subdivision, and the parent has no attorney, the court shall appoint an attorney for the parent pursuant to Section 237.5 whether or not a request for the appointment is made by the parent.

(7) Who has been in out-of-home placement under the supervision of the juvenile court, the county welfare department or other public or private licensed child-placing agency for a one-year period, if the court finds that return of the child to the child's parent or parents would be detrimental to the child and that the parent or parents have failed during that period, and are likely to fail in the future, to maintain an adequate parental relationship with the child, which includes providing both a home and care and control for the child.

The court shall make a determination that reasonable services have been provided or offered to the parents which were designed to aid the parents to overcome the problems which led to the deprivation or continued loss of custody and that despite the availability of these services, return of the child to the parents would be detrimental to the child. The probation officer or social worker currently assigned to the case of the child shall appear at the termination proceedings.

Trial placement of the child in the physical custody of the parent or visitation of the child with the parent during the one-year period, when the trial placement or visitation does not result in permanent placement of the child with the parent, shall not serve to interrupt the running of the one year period.

(b) At all termination proceedings, the court shall consider the wishes of the child and shall act in the best interests of the child.

(c) A finding pursuant to this section shall be supported by clear and convincing evidence.

If the minor has been adjudged to be a dependent child of the court pursuant to Section 300 of the Welfare and Institutions Code, the court shall review and consider the contents of the juvenile court file in determining if the services offered were reasonable under the circumstances.

SEC. 3. Section 232.5 of the Civil Code is amended to read:

232.5. The provisions of this chapter shall be liberally construed to serve and protect the interests and welfare of the child. At all proceedings to declare a child free from parental custody and control, the court shall consider the wishes of the child, bearing in mind the age of the child, and shall act in the best interests of the child.

SEC. 4. Section 319 of the Welfare and Institutions Code is amended to read:

319. At the initial petition hearing the court shall examine such minor, 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 or their counsel desires to present.

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, and on the available services and the referral methods to be used which would facilitate the return of the minor to the custody of the minor's parents or guardians. The court shall order the release of such minor from custody unless it finds any of the following:

(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) The minor has violated an order of the juvenile court or has escaped from the commitment of the juvenile court.

(c) The minor is a threat to the person or property of another or his or her parent or guardian or responsible relative is likely to flee the jurisdiction of the court.

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

Whenever a court orders a minor detained, the court shall state the facts on which the decision is based.

When the minor is not released from custody the court may order that such minor be placed in an emergency shelter or other suitable licensed place or a place exempt from licensure designated by the juvenile court for a period not to exceed 15 judicial days.

SEC. 5. Section 321 of the Welfare and Institutions Code is amended to read:

321. When a hearing is held under the provisions of this article and no parent or guardian of such 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 such 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. Upon the rehearing, the court shall proceed in the same manner as upon the

original hearing.

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

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

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.

SEC. 6. Section 366.2 of the Welfare and Institutions Code is amended to read:

366.2. (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) Notice of the hearing shall be mailed by the probation officer to the same persons as in the original proceeding, to the minor's custodian, and to counsel of record, by certified mail addressed to the last known address of the person to be notified, or shall be personally served on such persons, not earlier than 30 days nor later than 15 days preceding the date to which the hearing was continued.

(c) At least 16 days prior to 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 his or her parent or guardian, and make his or her recommendation for disposition. The probation officer shall provide the parent or parents with a copy of the report, including his or her recommendation for disposition, at least 14 days before the hearing.

(d) At the review hearing, the court shall order the return of the minor to the physical custody of his or her parents or guardians 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 shall have the burden of establishing such detriment. The failure of the parent or guardian to participate in any court-ordered treatment programs shall constitute prima facie evidence that return would be detrimental. 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 he or she cooperated and availed himself or herself of services provided; shall make appropriate findings; and where relevant, shall order any additional services reasonably believed to facilitate the

return of the minor to the custody of his or her parent or guardian. 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 Section 232 of the Civil Code may be instituted.

SEC. 7. Section 366.25 of the Welfare and Institutions Code is amended to read:

366.25. (a) In order to provide stable, permanent homes for children, a court shall, if the minor cannot be returned home pursuant to subdivision (e) of Section 366.2, conduct a permanency planning hearing to make a determination regarding the future status of the minor no later than 12 months after the original placement and periodically, but no less frequently than once each 18 months, thereafter during the continuation of foster care. The permanency planning hearing may be combined with the six months' review as provided for in Section 366.

(b) Notice of the proceeding to conduct the review 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 such persons not earlier than 30 days, nor later than 15 days prior to the date the review is to be conducted.

(c) At the hearing the court shall first determine whether the minor should be returned to his or her parent or guardian, pursuant to subdivision (e) of Section 366.2. If the minor is not returned to the custody of his or her parent or guardian the court shall determine whether there is a substantial probability that the minor will be returned to the physical custody of his or her 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 permanency planning hearing.

(d) If the court determines that the minor cannot be returned to the physical custody of his or her 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 following determinations and orders:

(1) If the court finds that the minor is adoptable, according to the provisions of this article, the court shall order the county counsel, or if there is no county counsel, the district attorney, to initiate an action to declare the minor permanently free from the custody and control of his or her parents or guardians pursuant to Section 232 of the Civil Code 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 12 years of age or older objects to termination of parental rights.

(C) The minor's foster parents 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 his or her foster parents would be seriously detrimental to the emotional well-being of the minor.

(2) If the court finds that the minor is not adoptable or that one of the conditions in subparagraph (A), (B), or (C) of paragraph (1) apply, but that one or more adults are available and eligible to become legal guardians for the minor, the court shall order the appropriate county department to initiate or facilitate guardianship proceedings, unless the minor's foster parents are unable to become legal guardians of 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 his or her foster parents would be seriously detrimental to the emotional well-being of the minor.

(3) If the court finds that the minor is not adoptable and that there is not a suitable adult available to become the legal guardian of the child, the court shall order the county welfare department or probation department to facilitate the placement of the minor in a home environment that can reasonably be expected to be stable and permanent. When the minor is in a foster home and the foster parents 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.

(e) Notwithstanding Section 1510 of the Probate Code, the proceeding for the appointment for a guardian for a minor under this section shall be in the juvenile court. In such a case, the juvenile court shall have the power to appoint a guardian pursuant to the standards and procedures otherwise specified by the Probate Code.

(f) When an adoption of the minor has been granted, the court shall terminate its jurisdiction over the minor.

(g) Periodic reviews conducted by the court subsequent to the initial permanency planning hearing shall determine the appropriateness of the placement, the continuing appropriateness and extent of compliance with the permanent plan for the child, the extent of compliance with the case plan, and adequacy of services provided to the child.

(h) Physical custody of a minor by his or her 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 such periods.

(i) Permanency planning hearings need not be held if (1) an

action under Section 232 of the Civil Code has been commenced or (2) an action to establish a legal guardianship or appoint a legal guardian under the Probate Code has been commenced.

(j) Subsequent reviews shall be conducted every six months and be conducted by an administrative review board except when the court requires a court review or a court review is requested by the minor's parents or guardian or by the minor.

SEC. 8. Section 11401 of the Welfare and Institutions Code is amended to read:

11401. Aid in the form of AFDC-FC shall be provided under this chapter on behalf of any child under the age of 18, except as provided in Section 11403, who meets the conditions of subdivision (a), (b), or (c):

(a) The child has been relinquished, for purposes of adoption, to a licensed adoption agency, or the department, or the child has been declared free from the care, custody, and control of either or both of his or her parents after an action under the Civil Code has been brought by a licensed adoption agency or the department, provided that the licensed adoption agency or the department, if responsible for placement and care, provides to those children all services as required by the department to children in foster care.

(b) The child has been deprived of parental support or care due to any of the reasons set out under Section 11250, provided:

(1) The child has been removed from the physical custody of his or her parent or guardian.

(A) Has been adjudged a dependent child of the court on the grounds that he or she is a person described by Section 300.

(B) Has been adjudged a ward of the court on the grounds that he or she is a person described by Sections 601 and 602.

(C) Has been detained under a court order pursuant to Section 319 or 636 which remains in effect.

(2) The child has been voluntarily placed by his or her parent or guardian pursuant to Section 11401.1 or in a demonstration county, pursuant to Chapter 5 (commencing with Section 16550) of Part 4 of this division.

(3) The child is living in the home of a nonrelated legal guardian.

(c) The child has been placed in foster care under the provisions of the federal Indian Child Welfare Act. The provisions of Sections 11402, 11404, and 11405 shall not be construed as limiting payments to Indian children, as defined in the federal Indian Child Welfare Act, placed in accordance with that act.