

DEPARTMENT OF SOCIAL SERVICES

744 P Street, Sacramento, CA 95814
(916) 322-6333



January 23, 1987

ALL-COUNTY INFORMATION NOTICE NO. 1-04-87

TO: ALL COUNTY WELFARE DIRECTORS

SUBJECT: CHAPTER 1122 (SB 1195): STATUTES OF 1986

The purpose of this All-County Information Notice (ACIN) is to summarize statutory changes to Welfare and Institutions Code (W&IC) Section 300 et seq. enacted by Chapter 1122: Statutes of 1986 (SB 1195) which became effective January 1, 1987. These changes impact juvenile court dependency proceedings. In addition, numerous code sections have been reorganized. This ACIN will not address these latter changes.

The following is a description of the statutory changes:

- 1) Section 319 defines "relative" for purposes of this section and directs the court to determine whether or not there is a relative able and willing to care for the child. The court is also required to specify why removal was necessary.
- 2) A new Section 318 has been added by amending and renumbering former Section 351. The current Section 318 was not amended or renumbered and also remains in statute.
- 3) Section 352 restricts reasons for which continuances may be granted and sets specified time limits for continuances. References to continuances have been removed from Section 356. (Section 356 contained the provision that a continuance may be granted in order to allow the court to receive the social study of the probation officer.)
- 4) Section 358(a)(3) requires that when the probation officer recommends that reunification services not be provided, the probation officer must notify the parents that if the court does not order reunification services, a permanency planning hearing will be held and the court may order the filing of a petition under Civil Code Section 232 for termination of parental rights.
- 5) Section 361(b)(1) states that if a minor has been adjudicated a dependent pursuant to subdivision (e) of Section 300, severe physical abuse, this finding shall constitute prima facie evidence that the child cannot be safely left in the custody of that parent/guardian with whom the minor resided at the time of the injury/abuse.

- 6) Section 361.2(a) requires the court, when it orders the removal of a child, to determine if there is a parent with whom the child was not residing who is willing to assume custody. If so, the court shall place the child with that parent unless the court finds such a placement would be detrimental to the child. When the court places the child with such a parent the court may then either: terminate jurisdiction; order reunification services for the parent/guardian from whom the child was removed; order services only for the parent assuming custody; or order services to both parents. If services are ordered for both parents, the court shall determine at a subsequent review hearing pursuant to Section 366 which parent, if either, should have custody.

Subsection (b) adds a noncustodial parent and a foster home in which the child was previously placed to the list of placement alternatives available when the court orders removal pursuant to Section 361.

- 7) Section 361.5(b) states circumstances in which family reunification services need not be provided. Subsection (c) gives more specific instructions on how to decide whether or not to provide reunification services in certain circumstances. Subsection (d) requires the court to order reunification services to parents whose whereabouts were unknown if their whereabouts become known within six months. However, the time the parent's whereabouts was unknown is counted as part of the possible 18 months of service.

Subsection (e) requires the court to order the probation officer to provide family reunification services upon the parent's release from incarceration. However, the statute does not specifically address the circumstance of court dependency for a child who is removed as a result of the parent being incarcerated for reasons unrelated to child abuse, or whether family reunification services should be provided during the period of the parent's incarceration. It is suggested, therefore, in those cases where the reason for the parent's incarceration is unrelated to child abuse, and it is not possible for the parent to participate in such services during the incarceration period, that the probation officer recommend to the court at the disposition hearing that family reunification services not be ordered, and that the child be placed in long term foster care and be provided services under the permanent placement program until such time as the parent returns to the community and can participate in the statutorily required family reunification services.

Subsection (f) directs the court to consider only termination proceedings, guardianship or long term foster care as possible options for the child's permanent plan when reunification services are not provided. This subsection also mandates the court to consider the views of foster parents where the minor has been in their foster home 12 months or more.

- 8) Section 362.1 requires visitation between the child and parent or guardian in all cases in which reunification services have been ordered. Visitation shall be as frequent as possible consistent with the best interests of the child.

- 9) Section 364 has been changed to require the probation officer to file the report with the court at least 10 calendar days prior to the hearing rather than 16 calendar days prior to the hearing.
- 10) Section 366.2(b) has been amended by reference to Section 366.3 to clarify that parents must be notified regarding the six-month review hearings unless parental rights have been terminated. Subsection (c) has been changed to allow the probation officer to file a report with the court 10 calendar days prior to the hearing rather than 16 calendar days prior to the hearing.
- 11) Section 366.25(e) mandates that counsel for the county must file a written request with the clerk of the Probate Court for special notice of any petition to terminate or revoke a guardianship.
- 12) Section 366.3(a) mandates that when the permanent plan is adoption or guardianship, the court shall retain jurisdiction until the adoption is finalized or a guardianship is completed. The court may continue jurisdiction after guardianship if it is in the best interest of the minor. Following termination of parental rights pursuant to Civil Code Section 232 parents will not receive notice of or be party to any action regarding the child. Subsection (b) requires the County Welfare Department (CWD) to notify the court when a guardianship is terminated or revoked if the court terminated jurisdiction at the time of the guardianship. The court may then vacate the order terminating jurisdiction and order the CWD to develop a new plan. If parental rights have not been terminated, parents shall receive notice of and be entitled to participate in the hearing to develop a new permanent plan. If the parents prove by a preponderance of the evidence that return of the child to their home is in the best interest of the child, the court may order reunification services for the parents again.

Subdivision (c) requires six-month reviews according to federal criteria for all children not in a preadoptive home or in the home of a legal guardian. Parents may participate in and shall receive notice of the hearings unless parental rights have been terminated. Continued foster care is presumed to be in the best interest of the child unless the parents prove by a preponderance of evidence that further reunification is in the best interest of the child. The court may then order six months of reunification services.

Chapter 1122: Statutes of 1986 also amended sections of W&IC Section 16500 et seq. which affect child welfare services. The Department is processing changes to pertinent sections of MPP Division 30 to implement these amendments. In the meantime, an All-County Letter (ACL 87-05) was issued in January notifying the counties of the changes that directly impact delivery of CWS.

Questions regarding statutory changes enacted by Chapter 1122: Statutes of 1986 affecting juvenile court dependency proceedings should be directed to your county counsel.



LOREN D. SUTER
Deputy Director
Adult and Family Services

cc: CWDA