

DEPARTMENT OF SOCIAL SERVICES

744 P Street, M.S. 19-31

Sacramento, CA 95814



October 9, 1985

ALL COUNTY LETTER NO. 85-102

TO: All County Welfare Directors  
All Public and Private Adoption Agencies  
All SDSS Adoption District Offices

SUBJECT: Provisions of Chaptered Legislation: SB 168, SB 425  
and SB 1096

The purpose of this letter is to inform you of recently chaptered legislation, which is summarized below, that could have an impact on the Adoptions Program. A copy of each chaptered bill is enclosed.

SB 168 (Stiern) Chapter 269, Statutes of 1985

This legislation amends Section 225p of the Civil Code (CC). Specifically, SB 168 provides statutory authority for county adoption agencies or the Department of Social Services (DSS) to defer, waive, or reduce the \$500 adoption fee if the adoptive parents have provided foster care to the potential adoptee for a minimum of one year.

SB 425 (McCorquodale) Chapter 302, Statutes of 1985

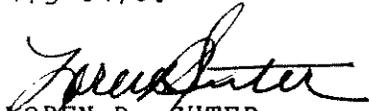
This legislation amends Sections 318 and 366.25 of the Welfare and Institutions Code (W&IC). Specifically, SB 425:

1. Authorizes the juvenile court to appoint county counsel to represent a minor alleged to be a person described by W&IC Section 300(d) if there is no conflict of interest between the county and the minor;
2. Revises Welfare and Institutions Code Section 366.25(d)(1) to delete the term "adoptable"; and
3. Clarifies that the court will authorize the county to proceed with CC 232 actions if the court finds that it is likely that the minor can or will be adopted.

SB 1096 (Seymour) Chapter 356, Statutes of 1985

This legislation amends Section 227p of the Civil Code; amends Sections 1822 and 1827.5 of the Probate Code; and adds Section 1461.4 to the Probate Code. Specifically, this legislation mandates the prospective adoptive parent(s) to notify regional centers, within 30 days of the hearing on the adoption petition, of the pending adoption of a developmentally disabled adult, if the adopting parent(s) provides services to the potential adoptee (as specified in law) or is the spouse or employee of such a provider.

If you have any questions regarding the chaptered legislation, please contact Ms. Hettie Brewer at (916) 323-0470 or ATSS 473-0470.



LOREN D. SUTER  
Deputy Director  
Adult and Family Services Division

Enclosures

cc: CWDA

Senate Bill No. 168

CHAPTER 269

An act to amend Section 225p of the Civil Code, relating to adoption.

[Approved by Governor July 26, 1985. Filed with  
Secretary of State July 26, 1985.]

LEGISLATIVE COUNSEL'S DIGEST

SB 168, Stiern. Adoption: fees.

Under existing law, persons petitioning for adoption in cases where the child has been placed for adoption by a licensed county adoption agency or the State Department of Social Services may be required to pay a fee of \$500 to the State Department of Social Services, as specified, which may be deferred, waived, or reduced in specified circumstances.

This bill would also authorize the deferment, waiver, or reduction of the fee when the child has been in the foster care of the adoptive parents for at least one year.

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

SECTION 1. Section 225p of the Civil Code is amended to read:  
225p. Whenever a petition is filed for the adoption of a child who has been placed for adoption by a licensed county adoption agency or the State Department of Social Services, the county adoption agency or the State Department of Social Services may, at the time of filing a favorable report in the superior court, require the persons petitioning to become adoptive parents to pay to the county agency, as agent of the state, or to the State Department of Social Services, a fee of five hundred dollars (\$500). The county adoption agency or the State Department of Social Services may defer, waive, or reduce the fee when its payment would cause economic hardship to the adoptive parents detrimental to the welfare of the adopted child, when the child has been in the foster care of the adoptive parents for at least one year, or if necessary for the placement of a hard-to-place child. A "hard-to-place" child is a child who because of his or her age, ethnic background, race, color, language, or physical, mental, emotional, or medical handicaps has become difficult to place in an adoptive home.

Nothing in this section shall be construed to require the payment of the fee to a county in the case of an adoption resulting from the independent placement of a child.

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Senate Bill No. 425

CHAPTER 302

An act to amend Sections 318 and 366.25 of the Welfare and Institutions Code, relating to juvenile court law.

[Approved by Governor July 26, 1985. Filed with  
Secretary of State July 29, 1985.]

LEGISLATIVE COUNSEL'S DIGEST

SB 425, McCorquodale. Juvenile court law.

Under existing law, counsel is required to be appointed for a minor alleged to be a person who may be declared a dependent child of the juvenile court on the basis that his or her home is an unfit place by reason of neglect, cruelty, depravity, or physical abuse by either of his or her parents or any other person in whose custody or care he or she is. The court is authorized to appoint the district attorney to represent the minor, as specified.

This bill would authorize the appointment of the county counsel, if there is no conflict of interest between the county and the minor, or the district attorney, as specified.

Existing law requires the development of a permanent plan for a minor taken from the physical custody of his or her parents or guardian with regard to whom there is not a substantive probability that he or she will be returned within 6 months. Certain determinations and orders are required to be made on the basis of whether the court finds that the minor is adoptable or unadoptable.

This bill would change the basis for the determinations and orders of the court to a finding of whether it is likely or not likely that the minor can or will be adopted.

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

SECTION 1. Section 318 of the Welfare and Institutions Code is amended to read:

318. (a) Notwithstanding the provisions of Section 317, when a minor who is alleged to be a person described in subdivision (d) of Section 300 appears before the juvenile court at a detention hearing, the court shall appoint counsel. The court may appoint the county counsel to represent the minor, if there is no conflict of interest between the county and the minor, or the district attorney pursuant to Section 351.

(b) The counsel appointed by the court shall represent the minor at the detention hearing and at all subsequent proceedings before the juvenile court.

(c) Any counsel upon entering an appearance on behalf of a minor shall continue to represent that minor unless relieved by the

court upon the substitution of other counsel or for cause.

(d) The counsel shall be charged in general with the representation of the child's interests. To that end, counsel shall make such further investigations as he or she deems necessary to ascertain the facts, including the interviewing of witnesses, and he or she shall examine and cross-examine witnesses in both the adjudicatory and dispositional hearings; he or she may also introduce and examine his or her own witnesses, make recommendations to the court concerning the child's welfare, and participate further in the proceedings to the degree necessary to adequately represent the child. In addition, the counsel shall investigate the interests of the child beyond the scope of the juvenile proceeding and report to the court other interests of the child that may be protected by other administrative or judicial proceedings, including but not limited to, a civil action pursuant to subdivision (b) of Section 11172 of the Penal Code. The court shall take whatever appropriate action is necessary to fully protect the interests of the child.

(e) 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. 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.

SEC. 2. 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 dispositional hearing in which the child was removed from the custody of his or her parent, parents, or guardians, and in no case later than 18 months from the time of the minor's original placement pursuant to Section 319 or Section 16507.4 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. In the case of a minor who has been removed from his or her parent or guardian pursuant to paragraph (5) of subdivision (b) of Section 361 because of severe physical abuse, and concerning whom the court has found, pursuant to subdivision (c) of Section 366, that return of the minor to his or her parent or guardian would be detrimental to the minor, a permanency planning hearing shall be held immediately upon the making of such a finding, or as soon thereafter as is reasonably feasible.

(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 those persons not earlier than 30 days, nor later than 15 days prior to the date the review is to be conducted.

(c) Except in cases where permanency planning is conducted pursuant to subdivision (c) of Section 366, the court shall first determine at the hearing 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. In the case of a minor who has been removed from the physical custody of his or her parent or guardian because of severe physical abuse pursuant to paragraph (5) of subdivision (b) of Section 361, and concerning whom the court has found pursuant to subdivision (c) of Section 366 that attempts at reunification with his or her parent or guardian would be detrimental, the court shall not continue proceedings for further review pursuant to this subdivision.

(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 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 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 it is not likely that the minor can or will be adopted or that one of the conditions in subparagraph (A), (B), or (C) of paragraph (1) 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. 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 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.

(3) (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 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 homefinding 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 homefinding 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 homefinding 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 support of the minor shall not in and of itself create liability on the part of the homefinding agency to third persons injured by the minor. Those minors whose care, custody, and control are transferred to a homefinding agency shall not be eligible for foster care maintenance payments or child welfare services, except for emergency response services pursuant to Section 16504.

(C) Notwithstanding the provisions of subdivision (j), subsequent reviews for these minors shall be conducted every six months by the court. The licensed homefinding 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.

(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 may 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) Subsequent permanency planning hearings need not be held if (1) the child has been freed for adoption and placed in the adoptive home identified in the previous permanency planning hearing and is awaiting finalization of the adoption or (2) the child is a ward of a guardian.

(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.

(k) Notwithstanding any other provision of law, the application of any person who, as a 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 foster parent and removal from the foster parent would be seriously detrimental to the child's well-being.

As used in this subdivision, "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.

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Senate Bill No. 1096

CHAPTER 356

An act to amend Section 227p of the Civil Code, and to amend Sections 1822 and 1827.5 of, and to add Section 1461.4 to, the Probate Code, relating to civil law.

[Approved by Governor July 29, 1985. Filed with Secretary of State July 30, 1985.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1096, Seymour. Civil law: adoption and conservatorship.

Existing law provides for the establishment of regional centers for the disabled. It provides for the assessment of a person with developmental disabilities with regard to whom a limited conservatorship is proposed by such a center, with his or her consent, as specified. The regional center is required to submit a written report of its findings and recommendations to the court in such a matter.

This bill would require notice to the director of the regional center of pending cases of proposed adoption of persons with developmental disabilities who are adults, in cases where the proposed adoptive parent is a provider of services to persons with developmental disabilities or a spouse or employee of such a provider, as specified. It would also require such a notice in cases where a wardship or limited conservatorship is proposed with regard to a person with developmental disabilities and the proposed guardian or conservator is such a provider of services or a spouse or employee of such a provider. The bill also would require the regional center for the disabled to file a written report regarding the suitability of such an adoption in meeting the needs of the proposed adoptee and a written report and recommendation regarding the suitability of a petitioner for such a wardship to meet the needs of the proposed ward. The bill also would require the making of such a recommendation in the report made pursuant to existing law with regard to a proposed limited conservatee.

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

SECTION 1. Section 227p of the Civil Code is amended to read:  
227p. (a) Any adult person may adopt any other adult person younger than himself or herself, except the spouse of the adopting person, by an agreement of adoption approved by a decree of adoption of the superior court of the county in which either the person adopting or the person adopted resides, as provided in this section. The agreement of adoption shall be in writing and shall be executed by the person adopting the person to be adopted, and shall

set forth that the parties agree to assume toward each other the legal relation of parent and child, and to have all of the rights and be subject to all of the duties and responsibilities of that relation.

A married person not lawfully separated from his or her spouse cannot adopt an adult person without the consent of the spouse of the adopting person, if the spouse, not consenting, is capable of giving the consent. A married person not lawfully separated from his or her spouse cannot be adopted without the consent of the spouse of the person to be adopted if the spouse, not consenting, is capable of giving that consent. Neither the consent of the natural parent or parents of the person to be adopted, nor of the State Department of Social Services, nor of any other person shall be required.

The adopting person and the person to be adopted may file in the superior court of the county in which either resides a petition praying for approval of the agreement of adoption by the issuance of a decree of adoption. The court shall fix a time and place for hearing on the petition, and both the person adopting and the person to be adopted shall appear at the hearing in person, unless an appearance is impossible, in which event an appearance may be made for either or both of the persons by counsel, empowered in writing to make the appearance. The court may require notice of the time and place of the hearing to be served on any other interested persons, and any such interested person may appear and object to the proposed adoption. No investigation or report to the court by any public officer or agency is required, but the court may require the county probation officer or the State Department of Social Services to investigate the circumstances of the proposed adoption and report thereon, with recommendations, to the court prior to the hearing.

At the hearing the court shall examine the parties, or the counsel of any party not present in person. If the court is satisfied that the adoption will be for the best interests of the parties and in the public interest, and that there is no reason why the petition should not be granted, the court shall approve the agreement of adoption, and make a decree of adoption declaring that the person adopted is the child of the person adopting him or her; otherwise, the court shall withhold approval of the agreement and deny the petition.

A married minor child may be adopted pursuant to the provisions of this section if he or she has the written consent of his or her spouse to the adoption.

(b) The person seeking to adopt shall mail or personally serve notice of the hearing and a copy of the petition to the director of the regional center for the developmentally disabled, established pursuant to Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code, and to any living parents or adult children of the proposed adoptee, at least 30 days before the day of the hearing on a petition for adoption in any case in which both of the following conditions exist:

(1) The proposed adoptee is an adult with developmental

disabilities.

(2) The person seeking to adopt is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or is a spouse or employee of a provider.

(c) (1) The petition for adoption shall state the length and nature of the relationship between the person seeking to adopt and the proposed adoptee; the degree of kinship, if any; the reason the adoption is sought, together with a statement as to why the adoption would be in the best interests of the person seeking to adopt, the proposed adoptee, and the public; the names and addresses of any living parents or adult children of the proposed adoptee; and whether the person seeking to adopt or his or her spouse has previously adopted any other adult person and, if so, the names of any such person, together with the date and place of the adoption.

(2) No person shall adopt more than one unrelated adult person within one year of his or her adoption of an unrelated adult unless the person to be adopted is the sibling by birth of a person previously adopted pursuant to this section, or unless the person to be adopted is disabled or physically handicapped. No person shall adopt an unrelated adult person within one year of any adoption of an unrelated adult by his or her spouse, unless the person to be adopted is the sibling by birth of a person previously adopted pursuant to this section.

(3) If the person seeking to adopt is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities, or is a spouse or employee of a provider, and seeks to adopt an unrelated adult with developmental disabilities, the regional center for the developmentally disabled notified pursuant to subdivision (b) shall file a written report with the court regarding the suitability of the proposed adoption in meeting the needs of the proposed adoptee, and regarding any known previous adoption by the petitioner.

(4) A hearing with regard to the adoption of a person or the termination of a parent and child relationship established pursuant to this section may, in the discretion of the court, be open and public.

(5) In determining whether or not the adoption of any person pursuant to this subdivision is in the public interest or the best interests of the persons seeking the adoption, the court may consider evidence, oral or written, whether or not it is in conformity with the Evidence Code.

(6) Any person who has been adopted under the provisions of this section may, upon written notice to the adoptive parent, file a petition to terminate the relationship of parent and child. The petition shall indicate the name and address of the petitioner, the name and address of the adoptive parent, the date and place of the adoption, and the circumstances upon which the petition is based. If the adoptive parent consents in writing to the termination, an order terminating the relationship of parent and child may be issued by the

court without further notice.

(7) If the adoptive parent does not consent to the termination, a verified, written response shall be filed within 30 days of the date of mailing of the notice, and the matter shall be set for hearing. The court may require an investigation by the county probation officer or the State Department of Social Services.

SEC. 2. Section 1461.4 is added to the Probate Code, to read:

1461.4. (a) The petitioner shall mail or personally serve a notice of the hearing and a copy of the petition to the director of the regional center for the developmentally disabled at least 30 days before the day of the hearing on a petition for appointment in any case in which all of the following conditions exist:

(1) The proposed ward or conservatee has developmental disabilities.

(2) The proposed guardian or conservator is not the natural parent of the proposed ward or conservatee.

(3) The proposed guardian or conservator is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or is a spouse or employee of a provider.

(4) The proposed guardian or conservator is not a public entity.

(b) The regional center shall file a written report and recommendation with the court regarding the suitability of the petitioners to meet the needs of the proposed ward or conservatee in any case described in subdivision (a).

SEC. 3. Section 1822 of the Probate Code is amended to read:

1822. (a) At least 15 days before the hearing on the petition for appointment of a conservator, notice of the time and place of the hearing shall be given as provided in subdivisions (b), (c), and (d). The notice shall be accompanied by a copy of the petition.

(b) Notice shall be mailed to the following persons (other than the petitioner or persons joining in the petition):

(1) The spouse, if any, of the proposed conservatee at the address stated in the petition.

(2) The relatives named in the petition at their addresses stated in the petition.

(c) If notice is required by Section 1461 to be given to the Director of Mental Health or the Director of Developmental Services, notice shall be mailed as so required.

(d) If the petition states that the proposed conservatee is receiving or is entitled to receive benefits from the Veterans Administration, notice shall be mailed to the office of the Veterans Administration referred to in Section 1461.5.

(e) If notice is required to be given to the director of the regional center for the developmentally disabled, pursuant to Section 1461.4, notice shall be mailed as so required.

(f) If the petition is for the appointment of a limited conservator, the notice or notices required by this section shall be accompanied by a copy of the petition.

(g) The court shall order that notice be given to the regional center identified in Section 1827.5.

SEC. 4. Section 1827.5 of the Probate Code is amended to read:

1827.5. (a) In the case of any proceeding to establish a limited conservatorship, within 30 days after the filing of a petition for limited conservatorship, a proposed limited conservatee, with his or her consent, shall be assessed at a regional center as provided in Chapter 5 (commencing with Section 4620) of Division 4.5 of the Welfare and Institutions Code. The regional center shall submit a written report of its findings and recommendations to the court. The report shall include a description of the proposed limited conservatee's specific areas, nature, and degree of disability, if any. The findings and recommendations of the regional center are not binding upon the court.

In a proceeding where the petitioner is a provider of board and care, treatment, habilitation, or other services to persons with developmental disabilities or a spouse or employee of a provider, is not the natural parent of the proposed limited conservatee, and is not a public entity, the regional center shall include a recommendation in its report concerning the suitability of the petitioners to meet the needs of the proposed limited conservatee.

(b) At least five days before the hearing on the petition, the regional center shall mail a copy of the report referred to in subdivision (a) to all of the following:

- (1) The proposed limited conservatee.
- (2) The attorney, if any, for the proposed limited conservatee.
- (3) If the petitioner is not the proposed limited conservatee, the attorney for the petitioner or the petitioner if the petitioner does not have an attorney.
- (4) Such other persons as the court orders.

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