

February 21, 2019

CALIFORNIA DEPARTMENT OF SOCIAL SERVICES

EXECUTIVE SUMMARY

ALL COUNTY LETTER NO. 19-16

Effective July 9, 2018, Family Code section 7823 was amended to establish that a finding that a parent committed severe sexual abuse against the child is prima facie evidence that the parent has neglected or cruelly treated the child for the purposes of terminating parental rights under these procedures.



PAT LEARY
ACTING DIRECTOR

STATE OF CALIFORNIA—HEALTH AND HUMAN SERVICES AGENCY
DEPARTMENT OF SOCIAL SERVICES
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GAVIN NEWSOM
GOVERNOR

February 21, 2019

ALL COUNTY LETTER (ACL) NO. 19-16

TO: ALL COUNTY WELFARE DIRECTORS
ALL CHIEF PROBATION OFFICERS
ALL TITLE IV-E AGREEMENT TRIBES
ALL CDSS ADOPTION REGIONAL OFFICES
ALL PUBLIC AND PRIVATE ADOPTION AGENCIES
ADOPTION SERVICE PROVIDERS
CALIFORNIA SUPERIOR COURT JUDGES

SUBJECT: USE OF FAMILY CODE (FC) 7823 FOR TERMINATION OF THE
PARENT AND CHILD RELATIONSHIP: SEVERE SEXUAL ABUSE

REFERENCE: [ASSEMBLY BILL \(AB\) 2792 \(CALDERON\) CHAPTER 83
STATUTES OF 2018; FC 7823; WELFARE AND INSTITUTION
CODE \(W&IC\) 300; W&IC 360; and W&IC 361.5](#)

PURPOSE

The purpose of this ACL is to inform county child welfare agencies, probation agencies, public and private adoption agencies, and Superior Court Judges of the provisions of AB 2792, which amended the circumstances under which a judge in family court can terminate parental rights based on Section 7823 of the FC. Proceedings brought under FC section 7823 may not be used to terminate parental rights of parents whose children are current dependents of the juvenile court. This statute does not apply to dependent children pursuant to W&IC section 300 or W&IC section 360.

BACKGROUND

Existing law specified the circumstances under which a proceeding may be brought to have a child declared free from the custody and control of a parent. A judge in family court could terminate the rights of a parent for circumstances of abandonment, neglect, or cruel treatment if the child had been a dependent of the juvenile court under W&IC section 300. The parent or parents must have been deprived of the child's custody for one year before the filing of the petition. Findings in a proceeding to terminate a parent-

child relationship under this provision must be supported by clear and convincing evidence. This standard of proof allows a parent to present evidence on issues that were determined against him or her in a prior juvenile court hearing. Termination of parental rights under this provision must rest on present circumstances as well as on past acts.

Under existing law, FC section 7823 identified previous findings of abandonment, neglect, and abuse as circumstances for a court to terminate parental rights in family court. However, a finding of severe sexual abuse was not specified in the language of the existing law.

CURRENT LAW

AB 2792 amends Section 7823 of the FC and adds a finding that a parent committed severe sexual abuse, as described in Section 361.5 of the W&IC shall be evidence that the parent has neglected or cruelly treated the child. This additional language clarifies that FC section 7823 can be used to terminate parental rights of a parent that has a finding of severe sexual abuse. New language added to FC section 7823 is written in italics below.

A proceeding to have a child declared free from custody and control of one or both parents may be brought under FC section 7823 if all of the following requirements are met per California FC section 7823:

- 1) The child has been neglected or cruelly treated by either or both parents. *A finding that a parent committed severe sexual abuse, as described in paragraph (6) of subdivision (b) of Section 361.5 of the W&IC, against the child shall be prima facie evidence that the parent has neglected or cruelly treated the child within the meaning of this subdivision.*
- 2) The child has been a dependent child of the juvenile court under any subdivision of Section 300 of the W&IC and the parent or parents have been deprived of the child's custody for one year before the filing of the petition pursuant to this part.
- 3) Physical custody by the parent or parents for insubstantial periods of time does not interrupt the running of the one-year period.

If you have any questions or need additional guidance regarding the information in this ACL, contact the Adoption Policy Unit at (916) 657-1858 or at apu@dss.ca.gov.

Sincerely,

Original Document Signed By:

GREGORY E. ROSE
Deputy Director
Children and Family Services Division