

RESOLUTION 05-03-2017 (AS AMENDED AT CONFERENCE)

DIGEST

Parental Rights: Termination in Cases of Severe Sexual Abuse

Amends Family Code sections 7822 and 7823 to add severe sexual abuse as grounds for termination of parental rights.

RESOLUTIONS COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

History:

No similar resolutions found.

Reasons:

This resolution amends Family Code sections 7822 and 7823 to add “severe sexual abuse” as grounds for termination of parental rights. This resolution should be approved in principle because it would allow an action to terminate parental rights in cases where a finding of “severe sexual abuse” has already been made.

This resolution would allow a termination of parental rights action to commence upon a finding of “severe sexual abuse”. Currently this cause of action does not exist. This resolution does not empower the family court to make this finding, rather, it allows the family court to consider a finding made pursuant to a separate dependency hearing under Welfare and Institutions Code sections 300 *et. seq.* A termination of parental rights allows the child to be adopted by another individual or individuals – often a step-parent. The parent whose rights have been terminated no longer has a legal right to information about the child nor any say in the health, education or religious practices of the child. Such a parent no longer has a legal obligation to support the child, and the child cannot inherit from that parent. The family court can suspend indefinitely a parent’s custody rights and ability to have a say in a child’s education, health and religious practices if the family court finds enough evidence that doing so would be in the child’s best interests, but the family court cannot terminate a parent’s rights upon such a showing. This resolution would allow such a termination.

The basis of a finding of “severe sexual abuse” is defined in Welfare and Institutions Code section 361.5, subdivision (b)(6) as “sexual intercourse, or stimulation involving genital-genital, oral-genital, anal-genital, or oral-anal contact, whether between the parent or guardian and the child or a sibling or half sibling of the child, or between the child or a sibling or half sibling of the child and another person or animal with the actual or implied consent of the parent or guardian; or the penetration or manipulation of the child's, sibling's, or half sibling's genital organs or rectum by any animate or inanimate object for the sexual gratification of the parent or guardian, or for the sexual gratification of another person with the actual or implied consent of the parent or guardian.” As such, a family court finding of such nefarious activities should be sufficient to allow a termination of parental rights. This resolution appears to resolve the disparity between protections allowed by dependency court and family court, and furthers the statewide policy of protecting children from abuse.

TEXT OF RESOLUTION

RESOLVED that the Conference of California Bar Associations recommends that legislation be sponsored to amend Family Code sections 7822 and 7823 to read as follows:

1 § 7822

2 (a) A proceeding under this part may be brought if any of the following occur:

3 (1) The child has been left without provision for the child's identification by the child's
4 parent or parents.

5 (2) The child has been left by both parents or the sole parent in the care and custody of
6 another person for a period of six months without any provision for the child's support, or
7 without communication from the parent or parents, with the intent on the part of the parent or
8 parents to abandon the child.

9 (3) One parent has left the child in the care and custody of the other parent for a period of
10 one year without any provision for the child's support, or without communication from the
11 parent, with the intent on the part of the parent to abandon the child.

12 (4) One parent who, while represented by counsel following an evidentiary hearing, has
13 been found to have inflicted severe sexual abuse against the child and/or the child's sibling
14 and/or half-sibling as defined within Welfare and Institutions Code section 361.5(b)(6).

15 (b) The failure to provide identification, failure to provide support, or failure to
16 communicate is presumptive evidence of the intent to abandon. If the parent or parents have
17 made only token efforts to support or communicate with the child, the court may declare the
18 child abandoned by the parent or parents. In the event that a guardian has been appointed for the
19 child, the court may still declare the child abandoned if the parent or parents have failed to
20 communicate with or support the child within the meaning of this section.

21 (c) If the child has been left without provision for the child's identification and the
22 whereabouts of the parents are unknown, a petition may be filed after the 120th day following
23 the discovery of the child and citation by publication may be commenced. The petition may not
24 be heard until after the 180th day following the discovery of the child.

25 (d) If the parent has agreed for the child to be in the physical custody of another person or
26 persons for adoption and has not signed an adoption placement agreement pursuant to Section
27 8801.3, a consent to adoption pursuant to Section 8814, or a relinquishment to a licensed
28 adoption agency pursuant to Section 8700, evidence of the adoptive placement shall not in itself
29 preclude the court from finding an intent on the part of that parent to abandon the child. If the
30 parent has placed the child for adoption pursuant to Section 8801.3, consented to adoption
31 pursuant to Section 8814, or relinquished the child to a licensed adoption agency pursuant to
32 Section 8700, and has then either revoked the consent or rescinded the relinquishment, but has
33 not taken reasonable action to obtain custody of the child, evidence of the adoptive placement
34 shall not in itself preclude the court from finding an intent on the part of that parent to abandon
35 the child.

36 (e) Notwithstanding subdivisions (a), (b), (c), and (d), if the parent of an Indian child has
37 transferred physical care, custody and control of the child to an Indian custodian, that action shall
38 not be deemed to constitute an abandonment of the child, unless the parent manifests the intent to
39 abandon the child by either of the following:

40 (1) Failing to resume physical care, custody, and control of the child upon the request of
41 the Indian custodian provided that if the Indian custodian is unable to make a request because the

42 parent has failed to keep the Indian custodian apprised of his or her whereabouts and the Indian
43 custodian has made reasonable efforts to determine the whereabouts of the parent without
44 success, there may be evidence of intent to abandon.

45 (2) Failing to substantially comply with any obligations assumed by the parent in his or
46 her agreement with the Indian custodian despite the Indian custodian's objection to the
47 noncompliance.

48
49 § 7823

50 (a) A proceeding under this part may be brought where all of the following requirements
51 are satisfied:

52 (1) The child has been neglected or cruelly treated by either or both parents. A finding of
53 severe sexual abuse as defined in Welf. and Insti. Code §361.5(b)(6) shall be a prima facie
54 showing that a child has been neglected or cruelly treated as defined within this subdivision.

55 (2) The child has been a dependent child of the juvenile court under any subdivision of
56 Section 300 of the Welfare and Institutions Code and the parent or parents have been deprived of
57 the child's custody for one year before the filing of a petition pursuant to this part.

58 (b) Physical custody by the parent or parents for insubstantial periods of time does not
59 interrupt the running of the one-year period.

(Proposed new language underlined; language to be deleted stricken)

PROPONENT: Sacramento County Bar Association

STATEMENT OF REASONS

The Problem: Family Code section 7822 does not permit a proceeding to terminate parental rights to occur when there has been a finding of severe sexual abuse as defined pursuant to Welfare and Institutions Code 361.5(b)(6) if the findings were made in a family law proceeding, after an evidentiary hearing where both sides were represented by counsel. Under the dependency system, a parent whom has been found to have severely sexually abused their child pursuant to the same statute may be bypassed and not offered reunification services and, in turn, become a basis for termination of parental rights. Thereafter, if all of the elements are met pursuant to Family Code 7823(a), a step-parent adoption may commence. The similarly situated abused child whom is protected by the family court is treated differently than in dependency court. We need to close the gap, as the current family code has the ability for the dependency child to have the parent-child relationship terminated to, in turn, permit a step parent adoption pursuant to Family Code 8606, however, the similarly situated child who has been protected in the family court does not, even after a full evidentiary hearing where both sides had counsel.

The Solution: First, it is proposed that Family Code section 7822 add a subdivision (a)(4) to state one parent that has been found to have inflicted severe sexual abuse against the child and/or child's sibling or half-sibling as defined in Welfare and Institutions Code section 361.5(b)(6).

Second, it is proposed that Family Code section 7823(a) add a second sentence to read "a finding of severe sexual abuse as defined in Welfare and Institutions Code section 361.5(b)(6) shall be a prima facie showing that a child has been "neglected or cruelly treated" by the offending parent.

Making these above amendments would then permit a child found to have been severely sexually abused by a parent in a family law court to be able to have parental rights over him/her terminated under the Fam. Code and then, in turn, pursuant to Family Code section 8606 to be adopted in a step parent adoption similar to a similarly situated child who was formerly in the dependency system.

IMPACT STATEMENT

This proposed resolution may affect Family Code sections 8606 and 8604, relating to the termination of parental rights.

CURRENT OR PRIOR RELATED LEGISLATION

None known.

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COUNTERARGUMENTS AND STATE BAR SECTION COMMENTS

FLEXCOM - Disapprove

Rationale:

The Executive Committee of the Family Law Section of the State Bar of California (FLEXCOM) disapproves Resolution 05-03-2017. The disapproval is based on the general concern that representation is not provided in Family Court to the parent accused of sexually abusing the child. Given that such a finding would (per this resolution) now be used to support a termination of parental rights, it appears that parent would not be given the same protection as in Juvenile Court.

Disclaimer:

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