

RESOLUTION 5-09-2002

DIGEST

Child Dependency: Corroboration of Minor's Testimony

Amends Welfare and Institutions Code section 355 to prohibit a finding of jurisdiction based solely on the uncorroborated testimony of a disqualified witness.

RESOLUTION COMMITTEE RECOMMENDATION

APPROVE IN PRINCIPLE

Reasons:

This resolution amends Welfare and Institutions Code section 355 to prohibit a finding of jurisdiction based solely on the uncorroborated testimony of a disqualified witness. This resolution should be approved to clarify an uncertain area of law involving juvenile dependency matters.

Welfare and Institutions Code section 355 permits a finding of jurisdiction in a child dependency matter on legally admissible evidence. The section further determines that a "social study" by the petitioning agency is not made inadmissible by the fact that it contains hearsay evidence.

The Supreme Court has held that section 355 is constitutional even where the only evidence supporting a finding of jurisdiction is the hearsay statement of a child under the age of twelve found to be disqualified as a witness due to the child's inability to tell truth from falsity. (In re Lucero L. (2002) 20 Cal.4th 1227.) The Court found that, to be admitted, the child's hearsay statements must be found by the trial court to be reliable. The Court did not require that there be any corroborating evidence to support the child's hearsay statement.

This resolution would require that there be corroborating evidence. That evidence can include changes in the child's behavior, expert testimony that the child was abused, opportunity of the suspect to commit the act, or any number of other factors. (Myers, Evidence in Child Abuse and Neglect Cases (John Wiley, 3d ed. 1997) Vol. 2, Hearsay, § 7.53, Child Hearsay Exception, pp.361 -362.)

The consequences of a finding that a child is a dependent of the juvenile court are significant. Ultimately, parental rights may be terminated. Even where those rights are not terminated, the child may be placed in foster care for many months and a parent may be required to undergo extensive reunification services. Often the only evidence of abuse or neglect comes from the child. Where the child has been disqualified as a witness, the court should be required to make a finding that the child's statement is both reliable and corroborated.

This is a companion resolution to Resolution 5-10-02.

SECTION/COMMITTEE REPORT

FAMILY LAW SECTION EXECUTIVE COMMITTEE

Recommendation: Approve in Principle

Reasons: The Committee agrees with the reasoning set forth by the proponent.

TEXT OF RESOLUTION

RESOLVED, that the Conference of Delegates recommends that legislation be sponsored to amend Welfare and Institutions Code section 355 to read as follows:

- 1 § 355
- 2 (a) At the jurisdictional hearing, the court shall first consider only the question whether the minor is
- 3 a person described by Section 300. Any legally admissible evidence that is relevant to the circumstances or
- 4 acts that are alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be
- 5 received in evidence. Proof by a preponderance of evidence must be adduced to support a finding that the
- 6 minor is a person described by Section 300. Objections that could have been made to evidence introduced
- 7 shall be deemed to have been made by any parent or guardian who is present at the hearing and

8 unrepresented by counsel, unless the court finds that the parent or guardian has made a knowing and
9 intelligent waiver of the right to counsel. Objections that could have been made to evidence introduced shall
10 be deemed to have been made by any unrepresented child.

11 (b) A social study prepared by the petitioning agency, and hearsay evidence contained in it, is
12 admissible and constitutes competent evidence upon which a finding of jurisdiction pursuant to Section 300
13 may be based, to the extent allowed by subdivisions (c) and (d).

14 (1) For the purposes of this section, "social study" means any written report furnished to the juvenile
15 court and to all parties or their counsel by the county probation or welfare department in any matter involving
16 the custody, status, or welfare of a minor in a dependency proceeding pursuant to Article 6 (commencing
17 with Section 300) to 12 (commencing with Section 385), inclusive of Chapter 2 of Division 2.

18 (2) The preparer of the social study shall be made available for cross-examination upon a timely
19 request by any party. The court may deem the preparer available for cross-examination if it determines that
20 the preparer is on telephone standby and can be present in court within a reasonable time of the request.

21 (3) The court may grant a reasonable continuance not to exceed 10 days upon request by any party if
22 the social study is not provided to the parties or their counsel within a reasonable time before the hearing.

23 (c)(1) If any party to the jurisdictional hearing raises a timely objection to the admission of specific
24 hearsay evidence contained in a social study, the specific hearsay evidence shall not be sufficient by itself to
25 support a jurisdictional finding or any ultimate fact upon which a jurisdictional finding is based, unless the
26 petitioner establishes one or more of the following exceptions:

27 (A) The hearsay evidence would be admissible in any civil or criminal proceeding under any
28 statutory or decisional exception to the prohibition against hearsay.

29 (B) The hearsay declarant is a minor under the age of 12 years who is the subject of the
30 jurisdictional hearing. However, the hearsay statement of a minor under the age of 12 years shall not be
31 admissible if the objecting party establishes that the statement is unreliable because it was the product of
32 fraud, deceit, or undue influence.

33 (C) The hearsay declarant is a peace officer as defined by Chapter 4.5 (commencing with Section
34 830) of Part 2 of Title 3 of the Penal Code, a health practitioner as defined by Section 11165.8 of the Penal
35 Code, a social worker licensed pursuant to Chapter 14 (commencing with Section 4996) of Division 2 of the
36 Business and Professions Code, or a teacher who holds a credential pursuant to Chapter 2 (commencing with
37 Section 44200) of Part 24 of Division 3 of Title 2 of the Education Code. For the purpose of this subdivision,
38 evidence in a declaration is admissible only to the extent that it would otherwise be admissible under this
39 section or if the declarant were present and testifying in court.

40 (D) The hearsay declarant is available for cross-examination. For purposes of this section, the court
41 may deem a witness available for cross-examination if it determines that the witness is on telephone standby
42 and can be present in court within a reasonable time of a request to examine the witness.

43 (2) For purposes of this subdivision, an objection is timely if it identifies with reasonable specificity
44 the disputed hearsay evidence and it gives the petitioner a reasonable period of time to meet the objection
45 prior to a contested hearing.

46 (d) If any party to the jurisdictional hearing raises a timely objection to the admission of specific
47 hearsay evidence of a disqualified witness contained in the social study, the specific hearsay evidence shall
48 not be sufficient by itself to support a jurisdictional finding or any ultimate fact upon which a jurisdictional
49 finding is based, unless the petitioner establishes that the time, content, and circumstances of the statement
50 provide sufficient indicia of reliability and there is independent evidence of the child abuse or neglect that
51 corroborates the statement made by the child.

52 (e) This section shall not be construed to limit the right of any party to the jurisdictional hearing to
53 subpoena a witness whose statement is contained in the social study or to introduce admissible evidence
54 relevant to the weight of the hearsay evidence or the credibility of the hearsay declarant.

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

PROPONENT: Suzanne Evans, Eleanor Adams, Gina Dronet, Donna Kaiser, Diane Letarte, Robert Lynn, Kathleen Mallinger, Lily McCoy, Patricia Saucier, Alice C. Shotton, Joseph Tavano.

STATEMENT OF REASONS

Existing Law: Currently hearsay from children that is made part of the social worker's report can be admitted and is only excluded if it can be shown to be a product of fraud, deceit, or undue influence.

This Resolution: Would amend Welfare and Institutions Code section 355 to ensure that a court's decisions comply with due process when it considers whether to take dependency jurisdiction over a child.

The Problem: In a juvenile dependency proceeding, the court takes jurisdiction when it decides that the child has been abused or neglected. Under the current version of the law, hearsay from children who are too young to know the difference between truth and falsehood can be incorporated into the social worker's report. This hearsay can then be admitted into evidence and serve as the sole basis upon which the court takes jurisdiction of the child. Taking jurisdiction over the child is the first step on the path to termination of parental rights. It can be a gross violation of a parent's right to due process if a juvenile court takes jurisdiction over his or her child solely on the basis of hearsay from the child when the child does not know the difference between the truth and a lie. Hearsay from a truth incompetent child should not be legally admissible evidence unless the circumstances show that the hearsay is reliable, and it is corroborated.

The California Supreme Court addressed this issue directly in *In re Lucero L.* (2000) 22 Cal.4th 1227. In that case the Court had no majority opinion. There was a plurality and two separate concurrences. Although a plurality of the Supreme Court affirmed the Court of Appeal's determination that substantial evidence supported taking jurisdiction, it noted that the question was close. The concurrences agreed on the result, but not on how the law should be applied. This outcome illustrates the need for a clear rule which the proponent believes this proposal provides. Otherwise, a family's constitutional right to remain intact without unjust interference from the state is threatened.

IMPACT STATEMENT

This resolution affects California Rules of Court, rule 1450. See companion resolution seeking to amend that rule.

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COUNTERARGUMENT

WOMEN LAWYERS ASSOCIATION OF LOS ANGELES

Dependency jurisdictional hearings protect children from their abusers after children employ the only defense at their disposal — their voice. When there isn't evidence of the abuse other than the child's statements there is little else that would protect the child. If the child's hearsay statement could be excluded based on a simple objection, then there is little point to the child's making the allegation and risking the abuser's ire. Allowing this resolution would silence the child victim and deprive her/him from asserting an already limited body of protective rights in initiating these protections and could serve to exacerbate the psychological damage already inflicted by the alleged parent-abuser.

Moreover, California law already provides safeguards to prove the veracity of the child's testimony such as requiring corroborative evidence and verification by an independent neutral third party before the child is removed from the parent's home. (Welf. & Inst. Code § 358; Cal. Rule Ct. 1455). These safeguards serve to preserve the family unit and ultimately assure that parental due process rights are not violated.