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HOW THE STATE CAN REMOVE CUSTODY

Statute: Welf. & Inst. Code §§361; 361.5(b), (h), (i); 366.26(c)(1)¹

Grounds: Abandonment or extreme parental disinterest, abuse/neglect, mental illness or deficiency, alcohol or drug induced incapacity, felony conviction/incarceration, failure of reasonable efforts, sexual abuse, abuse/neglect or loss of rights of another child, failure to maintain contact, failure to provide support, child judged in need of services/dependent, *child's best interest*, felony assault of child or sibling, murder/manslaughter of sibling child, child suffering from extreme emotional damage, location of parent(s) unknown, voluntary relinquishment, parent has abducted the child, conception result of sexual abuse.

Exceptions: Exceptions to termination requirement in 366.26 hearings (discretion of court): 1) case plan documents a compelling reason why it is unlikely that the child will be adopted or that one of these conditions exists: child 12 or older objects to TPR; child is in a residential treatment facility, adoption unlikely or undesirable, and continuation of parental rights would not prevent finding a permanent family placement; child is living with a relative or foster parent who is unable or unwilling to adopt because of exceptional circumstances and removal of child would be detrimental to child (does not apply to child living with non-relative and who is either (i) under 6, or (ii) a member of a sibling group where at least one child is under 6 and the siblings are, or should be, permanently placed together); at each and every hearing at which court required to consider reasonable efforts, court determined that reasonable efforts were not made; 2) a hearing for TPR, guardianship or long-term foster care has already been set; 3) court has found that there is substantial probability that child will be returned within time permitted; 4) court has found that reasonable reunification services have not been offered or provided; 5) court has found that at each hearing at which court was required to consider reasonable efforts that reasonable efforts were not made.

¹ National Center for State Courts' Knowledge and Information Services.



WHAT THE LAW SAYS ABOUT SEPARATING A MOTHER FROM HER BABY

If your baby is not a foster child, DCFS must allow you and your baby to live together. If this does not happen, call your lawyer right away. Your foster parents will receive extra money (called an “infant supplement”) to pay for things your baby needs. If your baby becomes a foster child, DCFS will still try to keep you and your baby together, unless you are a danger to the baby. If your baby becomes a foster child, the foster parent makes decisions about the baby’s care. If your baby is not a foster child, DCFS is supposed to help you and the baby’s father meet and agree on a plan for custody and visitation of the baby. If your baby becomes a foster child, DCFS will notify the baby’s father, his family, and your family, to see if they can take care of the baby. DCFS must try to place the baby with relatives, if it is safe to do so. If there is no relative who can care for the baby, DCFS will place the baby with a non-relative foster parent.

De facto parents are entitled to the same procedural rights as natural parents. [Cal.Rules of Court, Rule 1412\(e\)](#).

The state may remove the newborn to temporary respite care without the mother. A party challenging the county department of social services' exercise of discretion as to placement of children in foster care must prove, by preponderance of evidence, that circumstances have changed so as to make change from challenged placement in children's best interests. [Cal.Welf. & Inst.Code § 388](#). In re Matthew P. 71 Cal.App.4th 841 (Cal.App. 4 Dist. 1999)

APPLICABLE STATE LAW

In the case of In re Aaliyah R. 136 Cal.App.4th 437 (Cal.App. 2 Dist.2006) the county department of children and family services (DCFS) filed a petition to declare as dependent the child of a mother who was herself a minor. At the permanency planning hearing the Superior Court of Los Angeles County denied the mother's petition for modification of an order terminating family reunification and it terminated her parental rights. On the minor mother’s ultimately unsuccessful appeal, the Court of Appeals affirmed the lower court, and held that: (1) the juvenile court's denial of the mother's modification petition was not an abuse of discretion, and (2) the statutory “parental relationship exception” was inapplicable. In light of such cautionary holdings, teen moms should realize that where a petition to involuntarily terminate parental rights has been initiated, this typically means that the petitioner (normally the child welfare agency that earlier was given temporary custody of the child) has at that point given up on any parental ability to accomplish reunification, and that termination (often followed by adoption or a guardianship)

now holds out the best prospect for a child in the petitioner's eyes.² The teen mom can decide to forgo a termination proceeding and, instead, voluntarily relinquish all her parental rights to the child, though, in open adoption states, an arrangement may be approved for ongoing visitation with the child in the adoptive home.³ Or the agency may be asked to postpone the hearing on being shown by parents' counsel there were deficiencies in the agency's efforts to arrange assistance for the parents or because adoption is improbable. But these proceedings often do proceed, and a great majority of contested termination proceedings do result in a ruling that approves termination.⁴

In contrast with a termination proceeding, appeals earlier on in the court process (such as to see if evidence exists to sustain an original petition) are much less dramatic and are typically made in conjunction with a court-approved plan of what needs to be accomplished to return a child to the parents and what needs to be accomplished to protect and promote the child's welfare. Compared to a termination case, there is far less motivation to appeal. Termination however is the formal end of the parent-child relationship. It is this that increases the appeal interest, though the waiting period until an appellate decision is ruled continues to leave a family situation in unresolved emotional tension.⁵

The teen mom's objections to termination should take into account successful precedents like In re Thomas R. 145 Cal.App.4th 726 (Cal.App. 1 Dist. 2006) where the parents wished to cross-examine the agency's witnesses on the issue of adoptability of the children during a termination hearing. The Superior Court of Napa County found the offer of proof inadequate, denied the request for a contested hearing, and terminated the parental rights. The parents fortunately appealed and the Court of Appeal ruled that: (1) as an issue of first impression, the parents had the due process right to conduct an examination and test the sufficiency of the agency's evidence on the issue of adoptability, and (2) the trial court's error in finding the parents' offer of proof on this issue inadequate was not harmless beyond a reasonable doubt, and thus required reversal. The appeal process involves a notice of appeal, the transmission of the trial court record to the appellate court, an appellant brief, an appellee brief, and oral arguments on occasion. Oral arguments are generally only heard when a significant legal question is at issue. Supporting evidence in TPR hearings is required to substantiate the claims and evidence that led a case to legally qualify for the TPR petition to be filed. Qualified expert witnesses may submit testimony on the diagnosis and prognosis of any physical and/or mental health concerns of the parents and the child, as well as on

² <http://www.ncsconline.org/WC/CourTopics/FAQs.asp?topic=TermPr>

³ Note that, according to the California Association of Adoption Agencies, a California 'open' adoption may be conducted strictly between adoptive parents and the birth parents and facilitated by licensed agencies rather than attorneys or unlicensed persons. <http://www.california-adoption.org/>

⁴ <http://www.ncsconline.org/WC/CourTopics/FAQs.asp?topic=TermPr>

⁵ Id.

the history of prior treatment. Testimony may be provided by family members or other individuals involved in the case regarding the behavior of the parents towards the child.⁶

The teen parent's rights can be terminated more than once. See In re Carl R. 128 Cal.App.4th 1051 (Cal.App. 4 Dist. 2005). It is with reluctance that the Court of Appeal reverses orders terminating parental rights and selecting adoption as permanent plan, because it assumes that "each delay in reaching a permanent plan can be a lifetime to a young child." West's Ann.Cal.Welf. & Inst.Code § 366.26. In re Lesly G. 162 Cal.App.4th 904 (Cal.App. 2 Dist.2008).

California Family Code § 3011 (Best interest of child; considerations)

In making a determination of the best interest of the child in a proceeding described in Section 3021, the court shall, among any other factors it finds relevant, consider all of the following:

- The health, safety, and welfare of the child.
- Any history of abuse by one parent or any other person seeking custody against any of the following:
- Any child to whom he or she is related by blood or affinity or with whom he or she has had a caretaking relationship, no matter how temporary.
- The other parent.
- A parent, current spouse, or cohabitant, of the parent or person seeking custody, or a person with whom the parent or person seeking custody has a dating or engagement relationship.

As a prerequisite to the consideration of allegations of abuse, the court may require substantial independent corroboration, including, but not limited to, written reports by law enforcement agencies, child protective services or other social welfare agencies, courts, medical facilities, or other public agencies or private nonprofit organizations providing services to victims of sexual assault or domestic violence. As used in this subdivision, "abuse against a child" means "child abuse" as defined in Section 11165.6 of the Penal Code and abuse against any of the other persons described in paragraph (2) or (3) means "abuse" as defined in Section 6203 of this code.

The nature and amount of contact with both parents, except as provided in Section 3046.

The habitual or continual illegal use of controlled substances or habitual or continual abuse of alcohol by either parent. Before considering these allegations, the court may first require independent corroboration, including, but not limited to, written reports from law enforcement agencies, courts, probation departments, social welfare agencies, medical facilities, rehabilitation facilities, or other public agencies

⁶ Id.



or nonprofit organizations providing drug and alcohol abuse services. As used in this subdivision, “controlled substances” has the same meaning as defined in the California Uniform Controlled Substances Act, Division 10 (commencing with Section 11000) of the Health and Safety Code.

(1) Where allegations about a parent pursuant to subdivision (b) or (d) have been brought to the attention of the court in the current proceeding, and the court makes an order for sole or joint custody to that parent, the court shall state its reasons in writing or on the record. In these circumstances, the court shall ensure that any order regarding custody or visitation is specific as to time, day, place, and manner of transfer of the child as set forth in subdivision (b) of Section 6323.

(2) The provisions of this subdivision shall not apply if the parties stipulate in writing or on the record regarding custody or visitation.

RESOURCES

CHILD WELFARE AGENCY: California Department of Social Services

744 P Street, MS-17-1, Sacramento, CA 95814

916-657-2598

<http://www.dss.cahwnet.gov/cdssweb/default.htm>

Counties' websites: <http://www.csac.counties.org/default.asp?id=7>

LEGAL SERVICES

Greater Bakersfield Legal Assistance Inc.

615 California Avenue Bakersfield, CA 93304

(805) 325-5943

www.gbla.org

Central California Legal Services

1401 Fulton Street, Suite 700 Fresno, CA 93721

(559) 441-1611

www.centralcallegal.org/

Neighborhood Legal Services of Los Angeles County

1102 E. Chevy Chase Drive Glendale, CA 91205

(818) 896-5211

www.nls-la.org

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Inland Counties Legal Services Inc.

1040 Iowa Avenue, Suite 109 Riverside, CA 92507

(909) 368-2555

www.inlandlegal.org

Legal Services of Northern California Inc.

517 12th Street Sacramento, CA 95814

(916) 551-2150

www.lsn.net

Legal Aid Society of Orange County Inc.

2101 N. Tustin Ave. Santa Ana, CA 92705

(800) 834-5001

www.legal-aid.com

California Indian Legal Services Inc.

609 S. Escondido Blvd. Escondido, CA 92025

(760) 746-8941

www.calindian.org

Bay Area Legal Aid

405 14th Street, 9th Floor Oakland, CA

(510) 663-4744

www.baylegal.org

Legal Aid Foundation of Los Angeles

1102 South Crenshaw Boulevard Los Angeles, CA 90019-3111

(800) 399-4529

www.lafla.org

Legal Aid Society of San Diego Inc.

110 South Euclid Avenue San Diego, CA 92114

(619) 262-0896

www.lassd.org

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California Rural Legal Assistance Inc.

631 Howard Street Suite 300 San Francisco, CA 94105-3907
(415) 777-2752
www.crla.org

Transitional or Independent Living Program

In addition to County Independent Living Programs, California also has the Community College Foundation, which has over 52 community colleges statewide that offer independent living programs.

Community College Foundation

Statewide ILP Program Manager
1901 Royal Oaks Drive
Sacramento, CA 95815
Phone: (916) 418-5154
www.communitycollege.org

SAN BERNARDINO COUNTY

(909) 891-3559
San Bernardino Co. Dept. of Social Services
412 W. Hospitality, 2nd Floor
San Bernardino, CA 92415-0913

SAN DIEGO COUNTY

(858) 616-5817
San Diego Co. Health & Human Services Agency
8965 Balboa Ave.
San Diego, CA 92123-5107

MONTEREY COUNTY

(831) 755-8596
Monterey Co. Dept. of Social Services
Family & Children
1000 South Main Street,
Suite 112
Salinas, CA 93901

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Action, A Parent & Teen Support Program

3959 Laurel Canyon Boulevard, Studio City, CA 91604
(818) 763-9556

Eoc-Economic Opportunity Commission - Health Education, EOC Teen Academic Parenting Program Tapp

1411 Marsh Street, San Luis Obispo, CA 93401
(805) 544-2484

Hill & Valley Teen Parent Program

2425 Jefferson Street, Napa, CA 94558
(707) 253-3451

Mother and Infant Health - Pregnant and Parenting Teens Program

Oxnard, CA 93030
(805) 385-9131

School Age Mothers Program - Education Programs for Teen Parents

Pleasanton, CA 94566
(925) 426-4275

Mother-baby Residential Facilities

Crittenton Services for Children & Families

801 E. Chapman Ave. Suite 230 Fullerton, CA 92831
(714) 680-9000
www.kidsmatter.org

Substance Abuse Health & Treatment Resources

Maternal, Child & Adolescent Health Program (Ca. Dept of Public Health) (MCAH)

1615 Capitol Ave. P.O. Box 997420, MS 8300 Sacramento, CA 95899-7420

Phone: 866-241-0395

Email: mchinet@cdph.ca.gov

MCAH's Perinatal Substance Use Prevention Program promotes screening, assessment, and referral to appropriate treatment for perinatal substance use among local MCAH programs and primary health care providers.

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MCAH's Adolescent Family Life Program (AFLP) seeks to insure that adolescents served by AFLP will use health care resources to achieve and maintain optimal physical and mental health, that pregnant and/or parenting adolescents will utilize available services for their children and partners; that adolescents and their parents will make healthy lifestyle decisions for themselves and their children. Program activities include assisting teens and their children to access appropriate substance abuse intervention, mental health services and nutritional counseling.

MCAH initiatives are all funded via Title V, XIX (Medicaid), and the State General Fund: <http://www.cdph.ca.gov/programs/AFLP/Pages/AFLPCoordinatorDirectory.aspx>

Childcare Assistance

The majority of childcare centers and family childcare homes are licensed by the California Department of Social Services (DSS) Community Care Licensing (CCL) to ensure that minimum health and safety standards are met. Licensing requirements cover admission policies, daily practices and procedures, emergency plans, facility design and structure, indoor and outdoor space, equipment, nutrition, background clearances, staff qualifications, and adult-staff ratios. Childcare centers are inspected by CCL annually, while family child care homes are inspected prior to being licensed and once every three years thereafter.

It is recommended that parents check the licensing history of the provider they select before placing their child in care by making an appointment to review the provider's record at Community Care Licensing, 7575 Metropolitan Dr. #110, San Diego, 92108. Call (619.767.2200) to make an appointment.

<http://www.chs-ca.org/ccca.html>

Children's Home Society of California has three Child Care Assistance Programs that provide subsidized child care services to eligible families, including Alternative Payment, CalWORKs, and Child Protective Services. Through these programs, in fiscal year 2006, CHS provided services to over 20,000 children and over 11,000 families. In all, more than 3,975,000 days of care were provided to children across California. The Alternative Payment Program pays for all or part of child care expenses while parents work, seek work, attend school, seek permanent housing, are deemed incapacitated and/or at risk by a legally qualified professional, and/or are receiving child protective services. Through this program, participating families select caregivers from a variety of licensed and license-exempt childcare providers throughout the community.

For the 2008 Program Directory for California School Age Families Education (Cal-SAFE) Program go to <http://www.cde.ca.gov/ls/cg/pp/calsafedirectory.asp>

TANF (Temporary Aid to Needy Families) Funds

TANF is time-limited public assistance payments made to poor families, based on Title IV-A of the Social Security Act. The program provides parents with job preparation, work, and support services to help them become self-sufficient.

CALWORKS (California Work Opportunity and Responsibility to Kids)

Welfare to Work Division
California Department of Social Services
744 P Street, Mail Stop 17-08
Sacramento, CA 95814
Phone: (916) 657-3546
FAX: (916) 653-1716

TANF/AFS (Adult and Family Services) or other

The new mother must meet TANF's living arrangements requirement and the school/training requirement in order to continue receiving benefits. In order to meet the school/training requirement some states have lately created comprehensive programs to address the needs of teen parents but California is one of just two states (Ohio being #2) that already had a highly specialized teen parent program before the new TANF rules came into effect. While at least 14 states have attempted to reproduce California's success by welcoming the school/training requirement as a tool for reinforcing the value of education, these states do not seem to have come close to allocating the resources for the full range of specialized services and administrative organizational tools that have been used in implementing California's school requirements.

Under California's much applauded program, Cal-Learn, the positive impact of the program has been the greatest among those teen parents who had dropped out of school and had not been held back a grade. California exempted only 0.33 percent of its teen parent caseload from the school/training requirement.

As of October of 1999, at least seven states including California (plus Arkansas, Delaware, North Dakota, Ohio, Utah, and Vermont) were providing some type of monetary bonus as an incentive for teen parents to attend school, progress to the next grade, and/or graduate. Both California's Cal-Learn and Ohio's LEAP have comparatively well-established and well-evaluated teen parent programs that utilize

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pre-TANF case management systems designed to enhance school completion by teen parents. In both states, bonuses, as well as sanctions, have been incorporated into the program design; bonuses can be structured to reward different measures.

California has designed its academic progress model bonus system to reward academic progress; bonuses are awarded to teen parents for graduation (a one-time bonus of \$500) and for “satisfactory progress” at school (\$100 bonus per report card for a 2.0 in a 4.0 GPA scale). Recently published evaluation data indicate that in March of 1999, Cal- Learn awarded bonuses to 8.8 percent of participating teen parents.⁷

Much less information appears to have been published regarding the second of the two TANF requirements (living arrangement).

For medical coverage info contact:

NAHIC (National Adolescent Health Information Center)

LHTS Suite 245, Box 0503 San Francisco, CA 94143-0503

Phone: (415) 502-4856

(415) 502-4858

Email: nahic@ucsf.edu

California’s Welfare and Health Program Guide For Teens⁸ advises that the teen mom may be able to keep Medi-Cal under a program for people who are not getting cash aid. Or, if she goes off CalWORKS because of earnings from a job, she should get free Medi-Cal for at least one more year. She should tell the caseworker that even if she can’t get CalWORKS, she still wants to get Medi-Cal. The teen mom may need to fill out forms to make sure her Medi-Cal continues. If she earns too much to get Medi-Cal for free, she should be able to get health insurance through another program, Healthy Families. Healthy Families covers people up to age 19. Health Families is not free, but is fairly low cost.

She can sign up for Medi-Cal or Healthy Families in the one application (the form is identical for both programs). She can call 1 (888) 747-1222 to get a copy and apply via mail. She can also get the form at the local welfare office and at some schools and clinics. The form has instructions on where to get free help to fill the form out. The foster parent may have to sign the form and fill out information about their income, etc. If she wasn’t living at home and her parents were not supporting her, or she was married,

⁷ While Ohio also offers bonuses for graduation, their bonuses are centered on attendance and enrollment.

⁸ For a copy of this publication go to <http://www.publiccounsel.org/publications/teengdla.pdf>

she could apply for regular Medi-Cal on her own. Either way she can get “Medi-Cal Minor Consent” services for free, without any parents getting involved. This covers family planning, birth control, abortion, pregnancy care, and treatment for drug or alcohol problems, mental health problems, sexually transmitted diseases, and sexual assault. She can apply for Medi-Cal Minor Consent at the welfare office and at some clinics. She can also get family planning services for free, without telling her parents from clinics and doctors that are part of the “Family PACT” program. She can apply for this program at the clinic or doctor’s office. She can call 1 (800) 942-1054 to find a clinic or doctor nearby. Teens and their children can also get free check-ups and vaccinations from Child Health and Disability Prevention (CHDP). Whether or not the teen mom receives CalWORKs, her child should be able to obtain either Medi-Cal or Healthy Families. The teen mom can apply for her child even if she doesn't qualify herself. Prenatal care clinics can help get both mom and baby registered for health care before the baby is even born.

California's AFLP (see above), funded by Federal Title V MCH Block Grant Funds and Federal Title XIX (Medicaid) Funds, also seeks to obtain available medical coverage for enrolled teens up through the age of 18 for females and age 20 for males as well as their children. Approximately 17,000 teens are served each year. The provision of case management services includes assisting teens and their children to access available healthcare (including for prenatal and postpartum care).

EFNEP (Expanded Food & Nutrition Education Program)'s mission is to improve the health of limited resource youth and families with young children through practical lessons on basic nutrition and healthy lifestyles, resource management, and food safety.

University of California - Cooperative Extension

EFNEP State Office
Department of Nutrition
Rm 3135 Meyer Hall 1 Shields Avenue Davis, CA 95616-5270
530-754-8698
FAX 530-752-7588
Youth Program
530-754-9222

City of Berkeley Public Health Clinic

830 University Avenue Berkeley, California 94710
Main Phone Number: (510) 981-5350
Fax: (510) 981-5385

The Vera Casey Teen Parenting Program (Medi-Cal/Healthy Family/Head Start Enrollment)

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(510) 644-6854 ext. 2

This free service helps pregnant and parenting teen mothers and fathers under age 19 who attend any Berkeley public school access health insurance coverage and medical services and assists with re-enrolling teen parents not attending school. 2 locations:

Berkeley High School Health Center

1980 Allston Way, Bldg. H, Room 105 Berkeley, CA 94704

Vera Casey Center

2246 Martin Luther King Jr. Way Berkeley, CA 94704

Law Note regarding Independent Living Programs

Cal.Welf. & Inst.Code § 10609.4 (Duties of State Department of Social Services with respect to Independent Living Program; reporting and contents; available transitional housing resources; methods and strategies to achieve standards and outcomes; emergency regulations)

On or before July 1, 2000, the State Department of Social Services, in consultation with county and state representatives, foster youth, and advocates, shall do both of the following:

- (1) Develop statewide standards for the implementation and administration of the Independent Living Program established pursuant to the federal Consolidated Omnibus Budget Reconciliation Act of 1985 (Public Law 99-272).
- (2) Define the outcomes for the Independent Living Program and the characteristics of foster youth enrolled in the program for data collection purposes.

Each county department of social services shall include in its annual Independent Living Program report both of the following:

- (1) An accounting of federal and state funds allocated for implementation of the program. Expenditures shall be related to the specific purposes of the program. Program purposes may include, but are not limited to, all of the following:
 - Enabling participants to seek a high school diploma or its equivalent or to take part in appropriate vocational training, and providing job readiness training and placement services, or building work experience and marketable skills, or both.
 - Providing training in daily living skills, budgeting, locating and maintaining housing, and career planning.
 - Providing for individual and group counseling.
 - Integrating and coordinating services otherwise available to participants.
 - Providing each participant with a written transitional independent living plan that will be based on an assessment of his or her needs, that includes information provided by persons who have been identified by the participant as important to the participant in cases in which the participant has been in out-of-

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home placement in a group home for six months or longer from the date the participant entered foster care, consistent with the participant's best interests, and that will be incorporated into his or her case plan.

Providing participants with other services and assistance designed to improve independent living.

Convening persons who have been identified by the participant as important to him or her for the purpose of providing information to be included in his or her written transitional independent living plan.

(2) A detail of the characteristics of foster youth enrolled in their independent living programs and the outcomes achieved based on the information developed by the department pursuant to subdivision (a).

The county department of social services in a county that provides transitional housing placement services pursuant to paragraph (2) of subdivision (a) of Section 11403.2 shall include in its annual Independent Living Program report a description of currently available transitional housing resources in relation to the number of emancipating pregnant or parenting foster youth in the county, and a plan for meeting any unmet transitional housing needs of the emancipating pregnant or parenting foster youth.

In consultation with the department, a county may use different methods and strategies to achieve the standards and outcomes of the Independent Living Program developed pursuant to subdivision (a).

In consultation with the County Welfare Directors Association, the California Youth Connection, and other stakeholders, the department shall develop and adopt emergency regulations in accordance with Section 11346.1 of the Government Code that counties shall be required to meet when administering the Independent Living Program and that are achievable within existing program resources. The initial adoption of emergency regulations and one readoption of the initial regulations shall be deemed to be an emergency and necessary for the immediate preservation of the public peace, health and safety, or general welfare. Initial emergency regulations and the first readoption of those regulations shall be exempt from review by the Office of Administrative Law. The initial emergency regulations and the first readoption of those regulations authorized by this subdivision shall be submitted to the Office of Administrative Law for filing with the Secretary of State and each shall remain in effect for no more than 180 days.