

# **Freedom from Parental Custody and Control**

**I. Freedom from Parental Custody and Control (Fam. Code, § 7800, et seq.)**

**A. Circumstances Where Proceeding May be Brought.**

**1. Abandoned Children (§ 7822)**

*In re Amy A.* (2005) 132 Cal.App.4th 63, 68. A proceeding to have a child declared free from the custody and control of a parent may be brought pursuant to section 7822 “where the child has been left . . . by one parent in the care and custody of the other parent for a period of one year without any provision for the child’s support, or without communication from the parent . . . , with the intent on the part of the parent . . . to abandon the child.” (§ 7822, subd. (a).)

A parent’s “failure to provide support[] or failure to communicate” with the child for a period of one year or more “is presumptive evidence of the intent to abandon,” and “[i]f the parent [has] made only token efforts to support or communicate with the child, the court may declare the child abandoned by the parent . . .” (§ 7822, subd. (b).) The parent need not intend to abandon the child permanently; rather, it is sufficient that the parent had the intent to abandon the child during the statutory period. However, the fact that a parent has not communicated with a child or that the parent intended to abandon the child does not become material unless the parent has ‘left’ the child” within the meaning of section 7822.

A parent may be found to have “left” a child in another person’s care and custody within the meaning of section 7822 even when the child moves away with the other parent.

Although case law refers to the leaving of a child in another person’s care and custody as “*an actual desertion*” by the parent, case law also clarifies that a parent “leaves” a child by “*voluntarily surrender(ing)*” the child to another person’s care and custody.

Father abandons child where he suggests that mother take child and move away and thereafter resists mother’s overtures to involve father with child.

Also, under certain circumstances, it may be proper to conclude that a parent has “left” a child despite court intervention, i.e., an order granting the other parent physical custody of the child. Specifically, father’s failure to seek modification of custody order, exercise visitation rights, provide for child’s care, participate in her medical emergencies, or have any kind of a relationship with her constitute substantial evidence father voluntarily surrendered his parental role and thus “left” his child within the meaning of section 7822.

Undisputed fact that father has had no communication with child and has provided no child support for over one year gives rise to presumption that father intended to abandon. (Father's assertion to the contrary not supported by the evidence.)