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AB-1332 Juveniles: dependents: removal. (2017-2018)

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Date Published: 10/12/2017 02:00 PM

Assembly Bill No. 1332

CHAPTER 665

An act to amend Section 361 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor October 11, 2017. Filed with Secretary of State October 11, 2017.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1332, Bloom. Juveniles: dependents: removal.

Existing law authorizes the removal of a child from the physical custody of his or her parent or guardian with whom the child resides at the time the dependency petition was initiated if the court finds by clear and convincing evidence that one of several circumstances is present, including, among others, that there is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody.

This bill would prohibit the removal of a child from the physical custody of his or her parent with whom the child did not reside at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent to live with the child or otherwise exercise the parent's right to physical custody, and there are no reasonable means available by which the child's physical and emotional health can be protected without removing the child from the child's parent's physical custody. By increasing the number of children who may be removed from their parents and subsequently placed in out-of-home care under the supervision of the county, this bill would impose a state-mandated local program.

This bill would incorporate additional changes to Section 361 of the Welfare and Institutions Code proposed by SB 233 to be operative only if this bill and SB 233 are enacted and this bill is enacted last.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority Appropriation: no Fiscal Committee: yes Local Program: yes

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) (1) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational or developmental services decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational or developmental services decisions for the child, or, for the nonminor dependent, if the court finds the appointment of a developmental services decisionmaker to be in the best interests of the nonminor dependent, the court shall at the same time appoint a responsible adult to make educational or developmental services decisions for the child or nonminor dependent until one of the following occurs:

(A) The minor reaches 18 years of age, unless the child or nonminor dependent chooses not to make educational or developmental services decisions for himself or herself, or is deemed by the court to be incompetent.

(B) Another responsible adult is appointed to make educational or developmental services decisions for the minor pursuant to this section.

(C) The right of the parent or guardian to make educational or developmental services decisions for the minor is fully restored.

(D) A successor guardian or conservator is appointed.

(E) The child is placed into a planned permanent living arrangement pursuant to paragraph (5) of subdivision (g) of Section 366.21, Section 366.22, Section 366.26, or subdivision (i) of Section 366.3, at which time, for educational decisionmaking, the foster parent, relative caretaker, or nonrelative extended family member as defined in Section 362.7, has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code, and for decisions relating to developmental services, unless the court specifies otherwise, the foster parent, relative caregiver, or nonrelative extended family member of the planned permanent living arrangement has the right to represent the child or nonminor dependent in matters related to developmental services.

(2) An individual who would have a conflict of interest in representing the child or nonminor dependent shall not be appointed to make educational or developmental services decisions. For purposes of this section, "an individual who would have a conflict of interest" means a person having any interests that might restrict or bias his or her ability to make educational or developmental services decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorney's fees for the provision of services pursuant to this section. A foster parent shall not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

(3) If the court limits the parent's educational rights pursuant to this subdivision, the court shall determine whether there is a responsible adult who is a relative, nonrelative extended family member, or other adult known to the child who is available and willing to serve as the child's educational representative before appointing an educational representative or surrogate who is not known to the child.

If the court cannot identify a responsible adult who is known to the child and available to make educational decisions for the child, subparagraphs (A) to (E), inclusive, of paragraph (1) do not apply, and the child has either been referred to the local educational agency for special education and related services, or has a valid individualized education program, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the Government Code.

If the court cannot identify a responsible adult to make educational decisions for the child, the appointment of a surrogate parent as defined in subdivision (a) of Section 56050 of the Education Code is not warranted, and there is no foster parent to exercise the authority granted by Section 56055 of the Education Code, the court may, with the input of any interested person, make educational decisions for the child.

(4) If the court appoints a developmental services decisionmaker pursuant to this section, he or she shall have the authority to access the child's or nonminor dependent's information and records pursuant to subdivision (u) of Section 4514 and subdivision (y) of Section 5328, and to act on the child's or nonminor dependent's behalf for the purposes of the individual program plan process pursuant to Sections 4646, 4646.5, and 4648 and the fair hearing process pursuant to Chapter 7 (commencing with Section 4700) of Division 4.5, and as set forth in the court order.

If the court cannot identify a responsible adult to make developmental services decisions for the child or nonminor dependent, the court may, with the input of any interested person, make developmental services decisions for the child or nonminor dependent. If the child is receiving services from a regional center, the provision of any developmental services related to the court's decision must be consistent with the child's or nonminor dependent's individual program plan and pursuant to the provisions of the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(5) All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child. If an educational representative or surrogate is appointed for the child, the representative or surrogate shall meet with the child, shall investigate the child's educational needs and whether those needs are being met, and shall, prior to each review hearing held under this article, provide information and recommendations concerning the child's educational needs to the child's social worker, make written recommendations to the court, or attend the hearing and participate in those portions of the hearing that concern the child's education.

(6) Nothing in this section in any way removes the obligation to appoint surrogate parents for students with disabilities who are without parental representation in special education procedures as required by state and federal law, including Section 1415(b) (2) of Title 20 of the United States Code, Section 56050 of the Education Code, Section 7579.5 of the Government Code, and Rule 5.650 of the California Rules of Court.

(b) (1) Subdivision (a) does not limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services, to a county adoption agency, or to a licensed private adoption agency at any time while the child is the subject of a petition to declare him or her, or is, a dependent child of the juvenile court, if the department, county adoption agency, or licensed private adoption agency is willing to accept the relinquishment.

(2) When accepting the relinquishment of a child described in paragraph (1), the department or a county adoption agency shall comply with Section 8700 of the Family Code and, within five court days of accepting the relinquishment, shall file written notice of that fact with the court and all parties to the case and their counsel.

(3) When accepting the relinquishment of a child described in paragraph (1), a licensed private adoption agency shall comply with Section 8700 of the Family Code and, within 10 court days of accepting the relinquishment, shall file or allow another party or that party's counsel to file with the court one original and five copies of a request to approve the relinquishment. The clerk of the court shall file the request under seal, subject to examination only by the parties and their counsel or by others upon court approval. If the request is accompanied by the written agreement of all parties, the court may issue an ex parte order approving the relinquishment. Unless approved pursuant to that agreement, the court shall set the matter for hearing no later than 10 court days after filing, and shall provide notice of the hearing to all parties and their counsel, and to the licensed private adoption agency and its counsel. The licensed private adoption agency and any prospective adoptive parent or parents named in the relinquishment shall be permitted to attend the hearing and participate as parties regarding the strictly limited issue of whether the court should approve the relinquishment. The court shall issue an order approving or denying the relinquishment within 10 court days after the hearing.

(c) A dependent child shall not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed in paragraphs (1) to (5), inclusive, and, in an Indian child custody proceeding, paragraph (6):

(1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the physical custody of the parent or guardian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, each of the following:

(A) The option of removing an offending parent or guardian from the home.

(B) Allowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.26, the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or herself or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent or guardian.

(4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent or guardian, or the minor does not wish to return to his or her parent or guardian.

(5) The minor has been left without any provision for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

(6) In an Indian child custody proceeding, continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and that finding is supported by testimony of a "qualified expert witness" as described in Section 224.6.

(A) For purposes of this paragraph, stipulation by the parent, Indian custodian, or the Indian child's tribe, or failure to object, may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the party has been fully advised of the requirements of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), and has knowingly, intelligently, and voluntarily waived them.

(B) For purposes of this paragraph, failure to meet non-Indian family and child-rearing community standards, or the existence of other behavior or conditions that meet the removal standards of this section, will not support an order for placement in the absence of the finding in this paragraph.

(d) A dependent child shall not be taken from the physical custody of his or her parents with whom the child did not reside at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent to live with the child or otherwise exercise the parent's right to physical custody, and there are no reasonable means by which the child's physical and emotional health can be protected without removing the child from the child's parent's physical custody.

(e) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (c), whether it was reasonable under the circumstances not to make any of those efforts, or, in the case of an Indian child custody proceeding, whether active efforts as required in Section 361.7 were made and that these efforts have proved unsuccessful. The court shall state the facts on which the decision to remove the minor is based.

(f) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parent or guardian and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

SEC. 1.5. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) (1) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all those limitations. Any limitation on the right of the parent or guardian to make educational or developmental services decisions for the child shall be specifically addressed in the court order. The limitations may not exceed those necessary to protect the child. If the court specifically limits the right of the parent or guardian to make educational or developmental services decisions for the child, or, for the nonminor dependent, if the court finds the appointment of a developmental services decisionmaker to be in the best interests of the nonminor dependent, the court shall at the same time appoint a responsible adult to make educational or developmental services decisions for the child or nonminor dependent until one of the following occurs:

(A) The minor reaches 18 years of age, unless the child or nonminor dependent chooses not to make educational or developmental services decisions for himself or herself, or is deemed by the court to be incompetent.

(B) Another responsible adult is appointed to make educational or developmental services decisions for the minor pursuant to this section.

(C) The right of the parent or guardian to make educational or developmental services decisions for the minor is fully restored.

(D) A successor guardian or conservator is appointed.

(E) The child is placed into a planned permanent living arrangement pursuant to paragraph (5) of subdivision (g) of Section 366.21, Section 366.22, Section 366.26, or subdivision (i) of Section 366.3, at which time, for educational decisionmaking, the foster parent, relative caretaker, or nonrelative extended family member as defined in Section 362.7, has the right to represent the child in educational matters pursuant to Section 56055 of the Education Code, and for decisions relating to

developmental services, unless the court specifies otherwise, the foster parent, relative caregiver, or nonrelative extended family member of the planned permanent living arrangement has the right to represent the child or nonminor dependent in matters related to developmental services.

(2) An individual who would have a conflict of interest in representing the child or nonminor dependent shall not be appointed to make educational or developmental services decisions. For purposes of this section, "an individual who would have a conflict of interest" means a person having any interests that might restrict or bias his or her ability to make educational or developmental services decisions, including, but not limited to, those conflicts of interest prohibited by Section 1126 of the Government Code, and the receipt of compensation or attorney's fees for the provision of services pursuant to this section. A foster parent shall not be deemed to have a conflict of interest solely because he or she receives compensation for the provision of services pursuant to this section.

(3) Regardless of the person or persons currently holding the right to make educational decisions for the child, a foster parent, relative caregiver, nonrelated extended family member, or resource family shall retain rights and obligations regarding accessing and maintaining health and education information pursuant to Sections 49069.3 and 49076 of the Education Code and Section 16010 of this code.

(4) (A) If the court limits the parent's educational rights pursuant to this subdivision, the court shall determine whether there is a responsible adult who is a relative, nonrelative extended family member, or other adult known to the child who is available and willing to serve as the child's educational representative before appointing an educational representative or surrogate who is not known to the child.

(B) If the court cannot identify a responsible adult who is known to the child and available to make educational decisions for the child, subparagraphs (A) to (E), inclusive, of paragraph (1) do not apply, and the child has either been referred to the local educational agency for special education and related services, or has a valid individualized education program, the court shall refer the child to the local educational agency for appointment of a surrogate parent pursuant to Section 7579.5 of the Government Code.

(C) If the court cannot identify a responsible adult to make educational decisions for the child, the appointment of a surrogate parent as defined in subdivision (a) of Section 56050 of the Education Code is not warranted, and there is no foster parent to exercise the authority granted by Section 56055 of the Education Code, the court may, with the input of any interested person, make educational decisions for the child.

(5) (A) If the court appoints a developmental services decisionmaker pursuant to this section, he or she shall have the authority to access the child's or nonminor dependent's information and records pursuant to subdivision (u) of Section 4514 and subdivision (y) of Section 5328, and to act on the child's or nonminor dependent's behalf for the purposes of the individual program plan process pursuant to Sections 4646, 4646.5, and 4648 and the fair hearing process pursuant to Chapter 7 (commencing with Section 4700) of Division 4.5, and as set forth in the court order.

(B) If the court cannot identify a responsible adult to make developmental services decisions for the child or nonminor dependent, the court may, with the input of any interested person, make developmental services decisions for the child or nonminor dependent. If the child is receiving services from a regional center, the provision of any developmental services related to the court's decision must be consistent with the child's or nonminor dependent's individual program plan and pursuant to the provisions of the Lanterman Developmental Disabilities Services Act (Division 4.5 (commencing with Section 4500)).

(6) All educational and school placement decisions shall seek to ensure that the child is in the least restrictive educational programs and has access to the academic resources, services, and extracurricular and enrichment activities that are available to all pupils. In all instances, educational and school placement decisions shall be based on the best interests of the child. If an educational representative or surrogate is appointed for the child, the representative or surrogate shall meet with the child, shall investigate the child's educational needs and whether those needs are being met, and shall, prior to each review hearing held under this article, provide information and recommendations concerning the child's educational needs to the child's social worker, make written recommendations to the court, or attend the hearing and participate in those portions of the hearing that concern the child's education.

(7) Nothing in this section in any way removes the obligation to appoint surrogate parents for students with disabilities who are without parental representation in special education procedures as required by state and federal law, including Section 1415(b) (2) of Title 20 of the United States Code, Section 56050 of the Education Code, Section 7579.5 of the Government Code, and Rule 5.650 of the California Rules of Court.

(b) (1) Subdivision (a) does not limit the ability of a parent to voluntarily relinquish his or her child to the State Department of Social Services, to a county adoption agency, or to a licensed private adoption agency at any time while the child is the subject of

a petition to declare him or her, or is, a dependent child of the juvenile court, if the department, county adoption agency, or licensed private adoption agency is willing to accept the relinquishment.

(2) When accepting the relinquishment of a child described in paragraph (1), the department or a county adoption agency shall comply with Section 8700 of the Family Code and, within five court days of accepting the relinquishment, shall file written notice of that fact with the court and all parties to the case and their counsel.

(3) When accepting the relinquishment of a child described in paragraph (1), a licensed private adoption agency shall comply with Section 8700 of the Family Code and, within 10 court days of accepting the relinquishment, shall file or allow another party or that party's counsel to file with the court one original and five copies of a request to approve the relinquishment. The clerk of the court shall file the request under seal, subject to examination only by the parties and their counsel or by others upon court approval. If the request is accompanied by the written agreement of all parties, the court may issue an ex parte order approving the relinquishment. Unless approved pursuant to that agreement, the court shall set the matter for hearing no later than 10 court days after filing, and shall provide notice of the hearing to all parties and their counsel, and to the licensed private adoption agency and its counsel. The licensed private adoption agency and any prospective adoptive parent or parents named in the relinquishment shall be permitted to attend the hearing and participate as parties regarding the strictly limited issue of whether the court should approve the relinquishment. The court shall issue an order approving or denying the relinquishment within 10 court days after the hearing.

(c) A dependent child shall not be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence of any of the following circumstances listed in paragraphs (1) to (5), inclusive, and, in an Indian child custody proceeding, paragraph (6):

(1) There is or would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor if the minor were returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parent's or guardian's physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e) of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the physical custody of the parent or guardian with whom the minor resided at the time of injury. The court shall consider, as a reasonable means to protect the minor, each of the following:

(A) The option of removing an offending parent or guardian from the home.

(B) Allowing a nonoffending parent or guardian to retain physical custody as long as that parent or guardian presents a plan acceptable to the court demonstrating that he or she will be able to protect the child from future harm.

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.26, the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward himself or herself or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent or guardian.

(4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent or guardian, or the minor does not wish to return to his or her parent or guardian.

(5) The minor has been left without any provision for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

(6) In an Indian child custody proceeding, continued custody of the child by the parent or Indian custodian is likely to result in serious emotional or physical damage to the child, and that finding is supported by testimony of a "qualified expert witness" as described in Section 224.6.

(A) For purposes of this paragraph, stipulation by the parent, Indian custodian, or the Indian child's tribe, or failure to object, may waive the requirement of producing evidence of the likelihood of serious damage only if the court is satisfied that the party has been fully advised of the requirements of the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.), and has knowingly, intelligently, and voluntarily waived them.

(B) For purposes of this paragraph, failure to meet non-Indian family and child-rearing community standards, or the existence of other behavior or conditions that meet the removal standards of this section, will not support an order for placement in the absence of the finding in this paragraph.

(d) A dependent child shall not be taken from the physical custody of his or her parents with whom the child did not reside at the time the petition was initiated, unless the juvenile court finds clear and convincing evidence that there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent to live with the child or otherwise exercise the parent's right to physical custody, and there are no reasonable means by which the child's physical and emotional health can be protected without removing the child from the child's parent's physical custody.

(e) The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (c), whether it was reasonable under the circumstances not to make any of those efforts, or, in the case of an Indian child custody proceeding, whether active efforts as required in Section 361.7 were made and that these efforts have proved unsuccessful. The court shall state the facts on which the decision to remove the minor is based.

(f) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parent or guardian and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

SEC. 2. Section 1.5 of this bill incorporates amendments to Section 361 of the Welfare and Institutions Code proposed by both this bill and Senate Bill 233. That section shall only become operative if (1) both bills are enacted and become effective on or before January 1, 2018, (2) each bill amends Section 361 of the Welfare and Institutions Code, and (3) this bill is enacted after Senate Bill 233, in which case Section 1 of this bill shall not become operative.

SEC. 3. To the extent that this act has an overall effect of increasing the costs already borne by a local agency for programs or levels of service mandated by the 2011 Realignment Legislation within the meaning of Section 36 of Article XIII of the California Constitution, it shall apply to local agencies only to the extent that the state provides annual funding for the cost increase. Any new program or higher level of service provided by a local agency pursuant to this act above the level for which funding has been provided shall not require a subvention of funds by the state or otherwise be subject to Section 6 of Article XIII B of the California Constitution.