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AB-1371 Juveniles: ward, dependent, and nonminor dependent parents. (2017-2018)

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Assembly Bill No. 1371

CHAPTER 666

An act to amend Sections 301 and 361.8 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 1371, Mark Stone. Juveniles: ward, dependent, and nonminor dependent parents.

Existing law establishes the jurisdiction of the juvenile court, which may adjudge a child to be a dependent of the court under certain circumstances, including when the child suffered or there is a substantial risk that the child will suffer serious physical harm, or a parent fails to provide the child with adequate food, clothing, shelter, or medical treatment. Existing law authorizes a social worker to commence proceedings in the juvenile court to declare a child to be a dependent child of the court by the filing of a petition with the court. In any case in which a social worker, after investigation of an application for petition or other investigation, determines that a child is within the jurisdiction of the juvenile court or will probably soon be within the jurisdiction, existing law authorizes the social worker, in lieu of filing a petition or subsequent to dismissal of a petition already filed, and with the consent of the child's parent or guardian, to undertake a program of supervision of the child. If the parent is a dependent of the juvenile court at the time that a social worker seeks to undertake a program of supervision, and if counsel has been appointed for the parent, existing law prohibits the program of supervision from being undertaken until the parent has consulted with his or her counsel.

This bill would make this prohibition applicable to a parent who is a nonminor dependent or ward of the juvenile court. The bill would require a ward, in cases when he or she is not represented by counsel appointed in a dependency proceeding, to be given the opportunity to confer with counsel appointed in the wardship proceeding or by counsel retained to represent the ward in the wardship proceeding.

Existing law, in the case of a child for whom one or both minor parents have been adjudged to be dependent children of the juvenile court, authorizes family reunification services to be provided to the family of the dependent child under circumstances in which ordinarily those services would be denied and requires a party seeking an involuntary foster care placement of, or termination of parental rights over, a child born to a parent or parents who were minors at the time of the child's birth to demonstrate to the court that reasonable efforts were made to provide remedial services designed to prevent the removal from the minor parent or parents, and that these efforts have proved unsuccessful.

This bill would extend the application of those services and requirements in the case of a child for whom one or both minor parents have been adjudged to be a ward of the court. The bill would also grant a parent who is a ward of the juvenile court or a dependent or nonminor dependent parent the right to consult with his or her legal counsel prior to a social worker or probation officer arranging any informal or formal custody agreement that includes a temporary or permanent voluntary relinquishment of custody by the parent or recommending that a nonparent seek legal guardianship of the child. The bill would require the social worker or probation officer to note in the case file whether the ward, dependent, or nonminor dependent parent consulted with

legal counsel, or if the opportunity for consultation was provided and the consultation did not occur, then the reason that the consultation did not occur.

By imposing additional duties on local entities under these circumstances, the bill would impose a state-mandated local program.

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 301 of the Welfare and Institutions Code is amended to read:

301. (a) In any case in which a social worker, after investigation of an application for petition or other investigation he or she is authorized to make, determines that a child is within the jurisdiction of the juvenile court or will probably soon be within that jurisdiction, the social worker may, in lieu of filing a petition or subsequent to dismissal of a petition already filed, and with consent of the child's parent or guardian, undertake a program of supervision of the child. If a program of supervision is undertaken, the social worker shall attempt to ameliorate the situation that brings the child within, or creates the probability that the child will be within, the jurisdiction of Section 300 by providing or arranging to contract for all appropriate child welfare services pursuant to Sections 16506 and 16507.3, within the time periods specified in those sections. No further child welfare services shall be provided subsequent to these time limits. If the family has refused to cooperate with the services being provided, the social worker may file a petition with the juvenile court pursuant to Section 332. Nothing in this section shall be construed to prevent the social worker from filing a petition pursuant to Section 332 when otherwise authorized by law.

(b) The program of supervision of the child undertaken pursuant to this section may call for the child to obtain care and treatment for the misuse of, or addiction to, controlled substances from a county mental health service or other appropriate community agency.

(c) If the parent is a dependent, nonminor dependent, or ward of the juvenile court at the time that a social worker seeks to undertake a program of supervision pursuant to subdivision (a), including a voluntary family reunification program or a voluntary family maintenance program, and if counsel has been appointed for the parent pursuant to subdivision (c) of Section 317, the program of supervision shall not be undertaken until the parent has consulted with his or her counsel. In cases when a ward is not represented by counsel appointed in a dependency proceeding pursuant to subdivision (c) of Section 317, he or she shall be given the opportunity to confer with counsel appointed in the wardship proceeding pursuant to Section 634 or by counsel retained to represent the ward in the wardship proceeding.

SEC. 2. Section 361.8 of the Welfare and Institutions Code is amended to read:

361.8. (a) The Legislature declares that a child of a minor parent or nonminor dependent parent shall not be considered to be at risk of abuse or neglect solely on the basis of information concerning the parent's or parents' placement history, past behaviors, or health or mental health diagnoses occurring prior to the pregnancy, although that information may be taken into account when considering whether other factors exist that place the child at risk of abuse or neglect.

(b) In the case of a child for whom one or both minor parents have been adjudged to be dependent children of the juvenile court pursuant to Section 300, or adjudged to be wards of the court pursuant to Section 601 or 602, all of the following shall apply:

(1) Paragraphs (10) and (11) of subdivision (b) of Section 361.5 shall not apply, unless one or more of the circumstances described in paragraphs (1) to (9), inclusive, and paragraphs (12) to (17), inclusive, of subdivision (b) of Section 361.5 apply.

(2) A party seeking an involuntary foster care placement of, or termination of parental rights over, a child born to a parent or parents who were minors at the time of the child's birth shall demonstrate to the court that reasonable efforts were made to provide remedial services designed to prevent the removal of the child from the minor parent or parents, and that these efforts have proved unsuccessful.

(3) The efforts made pursuant to paragraph (2) shall utilize the available resources of the child and his or her minor parent's or parents' extended family, social services agencies, caregivers, and other available service providers.

(c) Except as provided in Section 301, prior to a social worker or probation officer arranging any informal or formal custody agreement that includes a temporary or permanent voluntary relinquishment of custody by a parent who is a ward of the juvenile court or a dependent or nonminor dependent parent, or recommending that a nonparent seek legal guardianship of the child of a

ward, dependent, or nonminor dependent parent, the parent shall be advised of the right and have the opportunity to consult with his or her legal counsel. The social worker or probation officer shall note in the case file whether the dependent, nonminor dependent, or ward consulted with legal counsel, or if the opportunity for consultation was provided and the consultation did not occur, the reason that the consultation did not occur.

(d) For purposes of this section, "child" and "minor parent" shall have the same definitions as set forth in Section 16002.5.

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.