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AB-748 Nonminor dependents. (2019-2020)

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Assembly Bill No. 748

CHAPTER 682

An act to amend Section 358 of the Welfare and Institutions Code, relating to nonminor dependents.

[Approved by Governor October 09, 2019. Filed with Secretary of State October 09, 2019.]

LEGISLATIVE COUNSEL'S DIGEST

AB 748, Gipson. Nonminor dependents.

Existing law authorizes the juvenile court to retain jurisdiction over any person who is found to be a ward or a dependent child of the juvenile court until the ward or dependent child attains 21 years of age. Existing law also authorizes a nonminor who has not yet attained 21 years of age and who exited foster care at or after the age of majority, to petition the court to resume dependency jurisdiction or to assume transition jurisdiction, as described.

Existing law prescribes the circumstances upon which the court appoints counsel for a child, a nonminor dependent, or their parent or guardian in dependency proceedings. Under existing law, in the case of a nonminor dependent, representation by counsel is not provided for a parent, unless the parent is receiving court-ordered family reunification services.

This bill would require the court to hold a dispositional proceeding for a youth 18 years of age if the youth was found to be a minor within the jurisdiction of the juvenile court at a specified hearing prior to the youth attaining 18 years of age, and was continuously detained, as specified, and the youth has provided informed consent to the dispositional proceeding. For purposes of these provisions, the fact that a youth has attained 18 years of age would not be cause to relieve counsel appointed in dependency proceedings.

The bill would require the court, at the dispositional proceeding, to determine by clear and convincing evidence if at least one of certain conditions existed immediately prior to the youth attaining 18 years of age, including the existence of substantial danger to the safety or well-being of the person if they were returned home, as specified. The bill would set forth other procedural steps relating to the dispositional proceeding.

The bill would condition the implementation of these provisions on federal approval, as specified, and would require the Judicial Council, on or before July 1, 2020, to amend or adopt rules of court, and to develop or amend appropriate forms, as necessary to implement these provisions.

By imposing additional duties on county employees relating to the above-described dispositional proceeding, 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.

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

SECTION 1. Section 358 of the Welfare and Institutions Code is amended to read:

358. (a) After finding that a child is a person described in Section 300, the court shall hear evidence on the question of the proper disposition to be made of the child. Prior to making a finding required by this section, the court may continue the hearing on its own motion, the motion of the parent or guardian, or the motion of the child, as follows:

(1) If the child is detained during the continuance, and the social worker is not alleging that subdivision (b) of Section 361.5 is applicable, the continuance shall not exceed 10 judicial days. The court may make an order for detention of the child or for the child's release from detention, during the period of continuance, as is appropriate.

(2) If the child is not detained during the continuance, the continuance shall not exceed 30 days after the date of the finding pursuant to Section 356. However, the court may, for cause, continue the hearing for an additional 15 days.

(3) If the social worker is alleging that subdivision (b) of Section 361.5 is applicable, the court shall continue the proceedings for a period not to exceed 30 days. The social worker shall notify each parent of the content of subdivision (b) of Section 361.5 and shall inform each parent that if the court does not order reunification a permanency planning hearing will be held, and that their parental rights may be terminated within the timeframes specified by law.

(b) (1) Before determining the appropriate disposition, the court shall receive in evidence the social study of the child made by the social worker, any study or evaluation made by a child advocate appointed by the court, and other relevant and material evidence as may be offered, including, but not limited to, the willingness of the caregiver to provide legal permanency for the child if reunification is unsuccessful. In any judgment and order of disposition, the court shall specifically state that the social study made by the social worker and the study or evaluation made by the child advocate appointed by the court, if there be any, has been read and considered by the court in arriving at its judgment and order of disposition. Any social study or report submitted to the court by the social worker shall include the individual child's case plan developed pursuant to Section 16501.1.

(2) Whenever a child is removed from a parent's or guardian's custody, the court shall make a finding as to whether the social worker has exercised due diligence in conducting the investigation, as required pursuant to paragraph (1) of subdivision (e) of Section 309, to identify, locate, and notify the child's relatives, including both maternal and paternal relatives.

(3) When making the determination required pursuant to paragraph (2), the court may consider, among other examples of due diligence, the extent to which the social worker has complied with paragraph (1) of subdivision (e) of Section 309, and has done any of the following:

(A) Asked the child, in an age-appropriate manner and consistent with the child's best interest, about their relatives.

(B) Obtained information regarding the location of the child's relatives.

(C) Reviewed the child's case file for any information regarding the child's relatives.

(D) Telephoned, emailed, or visited all identified relatives.

(E) Asked located relatives for the names and locations of other relatives.

(F) Used internet search tools to locate relatives identified as supports.

(c) If the court finds that a child is described by subdivision (h) of Section 300 or that subdivision (b) of Section 361.5 may be applicable, the court shall conduct the dispositional proceeding pursuant to subdivision (c) of Section 361.5.

(d) (1) The court shall hold a dispositional proceeding for a youth 18 years of age if both of the following requirements are met:

(A) The youth was found to be a minor described in Section 300 at a hearing pursuant to Section 355 prior to the youth attaining 18 years of age, and was continuously detained pursuant to subdivision (c) of Section 319.

(B) The youth has provided informed consent to the dispositional proceeding.

(2) For purposes of this subdivision, the fact that a youth has attained 18 years of age shall not be cause to relieve counsel appointed pursuant to Section 317.

(3) A dispositional proceeding for a youth as described in paragraph (1) shall be held within 30 days of the date of the finding pursuant to Section 355.

(4) At the dispositional proceeding, the court shall determine by clear and convincing evidence if at least one of the conditions described in subdivision (c) of Section 361 existed immediately prior to the youth attaining 18 years of age.

(5) (A) If the youth does not provide informed consent to the dispositional proceeding, or the court does not find the criteria described in paragraph (4), the court shall vacate the temporary orders made under Section 319 and dependency or general jurisdiction shall not be retained.

(B) If the court finds that the youth meets the criteria described in paragraph (4) but chooses not to remain in foster care, the court shall set a hearing for termination of jurisdiction pursuant to Section 391 within 30 days.

(6) For purposes of the definition of "nonminor dependent" pursuant to subdivision (v) of Section 11400, an order for foster care placement made at disposition pursuant to this subdivision shall be treated as though the nonminor attained 18 years of age while under an order of foster care placement by the juvenile court.

(7) Implementation of this subdivision is subject to federal approval of the state plan amendment made under Title IV-E of the federal Social Security Act (42 U.S.C. Sec. 670 et seq.), and shall be operative as of the date of federal approval.

(8) On or before July 1, 2020, the Judicial Council shall amend or adopt rules of court, and shall develop or amend appropriate forms, as necessary to implement this subdivision.

SEC. 2. 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.