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SB-1085 Juveniles: dependency: jurisdiction of the juvenile court. (2021-2022)

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Date Published: 10/03/2022 09:00 PM

Senate Bill No. 1085

CHAPTER 832

An act to amend Sections 300 and 300.2 of the Welfare and Institutions Code, relating to juveniles.

[Approved by Governor September 29, 2022. Filed with Secretary of State September 29, 2022.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1085, Kamlager. Juveniles: dependency: jurisdiction of the juvenile court.

Existing law establishes the jurisdiction of the juvenile court, which may adjudge certain children to be dependents of the court under certain circumstances, including when the child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness as a result of various types of neglect. Existing law prohibits a child from being found to be within the jurisdiction of the juvenile court on that basis solely due to the lack of an emergency shelter for the family or the failure of the child's parent or alleged parent to seek court orders for custody of the child.

This bill would also prohibit a child from being found to be within the jurisdiction of the juvenile court on that basis solely due to indigence or other conditions of financial difficulty. The bill would state the intent of the Legislature that families should not be subject to the jurisdiction of the juvenile court nor should children be separated from their parents based on conditions of financial difficulty, as specified.

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

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

SECTION 1. Section 300 of the Welfare and Institutions Code is amended to read:

300. A child who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm inflicted nonaccidentally upon the child by the child's parent or guardian. For purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the child or the child's siblings, or a combination of these and other actions by the parent or guardian that indicate the child is at risk of serious physical harm. For purposes of this subdivision, "serious physical harm" does not include reasonable and age-appropriate spanking to the buttocks if there is no evidence of serious physical injury.

(b) (1) The child has suffered, or there is a substantial risk that the child will suffer, serious physical harm or illness, as a result of any of the following:

(A) The failure or inability of the child's parent or guardian to adequately supervise or protect the child.

(B) The willful or negligent failure of the child's parent or guardian to adequately supervise or protect the child from the conduct of the custodian with whom the child has been left.

(C) The willful or negligent failure of the parent or guardian to provide the child with adequate food, clothing, shelter, or medical treatment.

(D) The inability of the parent or guardian to provide regular care for the child due to the parent's or guardian's mental illness, developmental disability, or substance abuse.

(2) A child shall not be found to be a person described by this subdivision solely due to any of the following:

(A) Homelessness or the lack of an emergency shelter for the family.

(B) The failure of the child's parent or alleged parent to seek court orders for custody of the child.

(C) Indigence or other conditions of financial difficulty, including, but not limited to, poverty, the inability to provide or obtain clothing, home or property repair, or childcare.

(3) Whenever it is alleged that a child comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the child from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian, (2) the risks to the child posed by the course of treatment or nontreatment proposed by the parent or guardian, (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The child shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the child from risk of suffering serious physical harm or illness.

(4) The Legislature finds and declares that a child who is sexually trafficked, as described in Section 236.1 of the Penal Code, or who receives food or shelter in exchange for, or who is paid to perform, sexual acts described in Section 236.1 or 11165.1 of the Penal Code, and whose parent or guardian failed to, or was unable to, protect the child, is within the description of this subdivision, and that this finding is declaratory of existing law. These children shall be known as commercially sexually exploited children.

(c) The child is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. A child shall not be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious belief and if a less intrusive judicial intervention is available.

(d) The child has been sexually abused, or there is a substantial risk that the child will be sexually abused, as defined in Section 11165.1 of the Penal Code, by the child's parent or guardian or a member of the child's household, or the parent or guardian has failed to adequately protect the child from sexual abuse when the parent or guardian knew or reasonably should have known that the child was in danger of sexual abuse.

(e) The child is under five years of age and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the child. For the purposes of this subdivision, "severe physical abuse" means any of the following: any single act of abuse that causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse that causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A child shall not be removed from the physical custody of the child's parent or guardian on the basis of a finding of severe physical abuse unless the social worker has made an allegation of severe physical abuse pursuant to Section 332.

(f) The child's parent or guardian caused the death of another child through abuse or neglect.

(g) The child has been left without any provision for support; physical custody of the child has been voluntarily surrendered pursuant to Section 1255.7 of the Health and Safety Code and the child has not been reclaimed within the 14-day period specified in subdivision (g) of that section; the child's parent has been incarcerated or institutionalized and cannot arrange for the care of the child; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to

provide care or support for the child, the whereabouts of the parent are unknown, and reasonable efforts to locate the parent have been unsuccessful.

(h) The child has been freed for adoption by one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The child has been subjected to an act or acts of cruelty by the parent or guardian or a member of the child's household, or the parent or guardian has failed to adequately protect the child from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the child was in danger of being subjected to an act or acts of cruelty.

(j) The child's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the child will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the child.

It is the intent of the Legislature that this section not disrupt the family unnecessarily or intrude inappropriately into family life, prohibit the use of reasonable methods of parental discipline, or prescribe a particular method of parenting. Further, this section is not intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents the parent from exercising care and control. The Legislature further declares that a child whose parent has been adjudged a dependent child of the court pursuant to this section shall not be considered to be at risk of abuse or neglect solely because of the age, dependent status, or foster care status of the parent.

As used in this section, "guardian" means the legal guardian of the child.

SEC. 2. Section 300.2 of the Welfare and Institutions Code is amended to read:

300.2. (a) Notwithstanding any other provision of law, the purpose of the provisions of this chapter relating to dependent children is to provide maximum safety and protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to ensure the safety, protection, and physical and emotional well-being of children who are at risk of that harm. This safety, protection, and physical and emotional well-being may include provision of a full array of social and health services to help the child and family and to prevent reabuse of children. The focus shall be on the preservation of the family as well as the safety, protection, and physical and emotional well-being of the child. The provision of a home environment free from the negative effects of substance abuse is a necessary condition for the safety, protection and physical and emotional well-being of the child. Successful participation in a treatment program for substance abuse may be considered in evaluating the home environment. In addition, the provisions of this chapter ensuring the confidentiality of proceedings and records are intended to protect the privacy rights of the child.

(b) It is the intent of the Legislature that families should not be subject to the jurisdiction of the juvenile court nor should children be separated from their parents based on conditions of financial difficulty, including, but not limited to, a lack of food, clothing, shelter or childcare. Reasonable services to prevent juvenile court intervention or children being separated from their parents include services to alleviate a potential risk to a child based on conditions of financial difficulty, including, but not limited to, referrals to community-based organizations. Consistent with existing law, no family should be subject to the jurisdiction of the juvenile court nor should children be separated from their parents based on conditions of financial difficulty unless there is willful or negligent action or failure to act and a nexus to harm such that the child has suffered or there is a substantial risk the child will suffer serious physical harm or illness.