

AMENDED IN SENATE MARCH 11, 2002
AMENDED IN ASSEMBLY JANUARY 28, 2002
AMENDED IN ASSEMBLY JANUARY 9, 2002

CALIFORNIA LEGISLATURE—2001–02 REGULAR SESSION

ASSEMBLY BILL

No. 886

Introduced by Assembly Members Simitian and Daucher

February 22, 2001

An act to add Section 2662 to the Probate Code, and to amend Sections 361 and 726 of the Welfare and Institutions Code, relating to minors.

LEGISLATIVE COUNSEL'S DIGEST

AB 886, as amended, Simitian. Parental authority: educational decisions.

Existing law authorizes a court to limit the control exercised over a minor by a parent or guardian in all cases where the minor is adjudged a ward or dependent child of the court. Existing law also provides that a guardian or conservator has charge of the education of the ward or conservatee.

This bill would provide that whenever the court specifically limits the right of the parent or guardian to make educational decisions for a child, the court shall appoint a responsible adult to make educational decisions for the child. The bill would provide that whenever the court grants a petition removing the guardian or conservator of a minor or tendering the resignation of the guardian or conservator of a minor, if the court does not immediately appoint a temporary or successor guardian or conservator, the court shall appoint a responsible adult to

make educational decisions for the minor until a successor or temporary guardian is appointed. The bill would also provide that whenever the court suspends or limits the powers of the guardian or conservator to make educational decisions for the minor, the court shall appoint a responsible adult to make educational decisions for the minor until the guardian or conservator is again authorized to make educational decisions for the child. The bill would further provide that an individual who would have a conflict in representing the child, as specified, may not be appointed to make educational decisions.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Section 2662 is added to the Probate Code, to
2 read:

3 2662. Whenever the court grants a petition removing the
4 guardian or conservator of a minor ward or conservatee or
5 tendering the resignation of the guardian or conservator of a minor
6 ward or conservatee, if the court does not immediately appoint a
7 temporary or successor guardian or conservator, the court shall at
8 the same time appoint a responsible adult to make educational
9 decisions for the minor until a successor or temporary guardian or
10 conservator is appointed. Whenever the court suspends or limits
11 the powers of the guardian or conservator to make educational
12 decisions for a minor ward or conservatee, the court shall at the
13 same time appoint a responsible adult to make educational
14 decisions for the minor ward or conservatee until the guardian or
15 conservator is again authorized to make educational decisions for
16 the minor ward or conservatee. An individual who would have a
17 conflict of interest in representing the child, as specified under
18 federal regulations, may not be appointed to make educational
19 decisions. For purposes of this section, “an individual who would
20 have a conflict of interest,” means a person having any interests
21 that might restrict or bias his or her ability to advocate for all of the
22 services required to ensure a free appropriate public education for
23 an individual with exceptional needs, as defined in Section 56026
24 of the Education Code.

25 SEC. 2. Section 361 of the Welfare and Institutions Code is
26 amended to read:



1 361. (a) In all cases in which a minor is adjudged a dependent
2 child of the court on the ground that the minor is a person described
3 by Section 300, the court may limit the control to be exercised over
4 the dependent child by any parent or guardian and shall by its order
5 clearly and specifically set forth all those limitations. Any
6 limitation on the right of the parent or guardian to make
7 educational decisions for the child shall be specifically addressed
8 in the court order. The limitations shall not exceed those necessary
9 to protect the child. Whenever the court specifically limits the right
10 of the parent or guardian to make educational decisions for the
11 child, the court shall at the same time appoint a responsible adult
12 to make educational decisions for the child until one of the
13 following occurs: (1) ~~a surrogate parent is appointed pursuant to~~
14 ~~Section 7579.5 of the Government Code,~~ (2) the minor reaches 18
15 years of age, ~~(3)~~ (2) another responsible adult is appointed to make
16 educational decisions for the minor pursuant to this section, or ~~(4)~~
17 (3) the right of the parent or guardian to make educational
18 decisions for the minor is fully restored. An individual who would
19 have a conflict of interest in representing the child, as specified
20 under federal regulations, may not be appointed to make
21 educational decisions. For purposes of this section, “an individual
22 who would have a conflict of interest,” means a person having any
23 interests that might restrict or bias his or her ability to advocate for
24 all of the services required to ensure a free appropriate public
25 education for an individual with exceptional needs, as defined in
26 Section 56026 of the Education Code.

27 (b) Nothing in subdivision (a) shall be construed to limit the
28 ability of a parent to voluntarily relinquish his or her child to the
29 State Department of Social Services or to a licensed county
30 adoption agency at any time while the child is a dependent child
31 of the juvenile court if the department or agency is willing to
32 accept the relinquishment.

33 (c) No dependent child shall be taken from the physical custody
34 of his or her parents or guardian or guardians with whom the child
35 resides at the time the petition was initiated unless the juvenile
36 court finds clear and convincing evidence of any of the following:

37 (1) There is a substantial danger to the physical health, safety,
38 protection, or physical or emotional well-being of the minor or
39 would be if the minor were returned home, and there are no
40 reasonable means by which the minor’s physical health can be



1 protected without removing the minor from the minor's parents'
2 or guardians' physical custody. The fact that a minor has been
3 adjudicated a dependent child of the court pursuant to subdivision
4 (e) of Section 300 shall constitute prima facie evidence that the
5 minor cannot be safely left in the custody of the parent or guardian
6 with whom the minor resided at the time of injury. The court shall
7 consider, as a reasonable means to protect the minor, the option of
8 removing an offending parent or guardian from the home. The
9 court shall also consider, as a reasonable means to protect the
10 minor, allowing a nonoffending parent or guardian to retain
11 custody as long as that parent or guardian presents a plan
12 acceptable to the court demonstrating that he or she will be able to
13 protect the child from future harm.

14 (2) The parent or guardian of the minor is unwilling to have
15 physical custody of the minor, and the parent or guardian has been
16 notified that if the minor remains out of their physical custody for
17 the period specified in Section 366.25 or 366.26, the minor may
18 be declared permanently free from their custody and control.

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

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

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



1 (d) The court shall make a determination as to whether
2 reasonable efforts were made to prevent or to eliminate the need
3 for removal of the minor from his or her home or, if the minor is
4 removed for one of the reasons stated in paragraph (5) of
5 subdivision (c), whether it was reasonable under the circumstances
6 not to make any of those efforts. The court shall state the facts on
7 which the decision to remove the minor is based.

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

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

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

16 SEC. 3. Section 726 of the Welfare and Institutions Code is
17 amended to read:

18 726. (a) In all cases wherein a minor is adjudged a ward or
19 dependent child of the court, the court may limit the control to be
20 exercised over the ward or dependent child by any parent or
21 guardian and shall by its order clearly and specifically set forth all
22 those limitations, but no ward or dependent child shall be taken
23 from the physical custody of a parent or guardian unless upon the
24 hearing the court finds one of the following facts:

25 (1) That the parent or guardian is incapable of providing or has
26 failed or neglected to provide proper maintenance, training, and
27 education for the minor.

28 (2) That the minor has been tried on probation in such custody
29 and has failed to reform.

30 (3) That the welfare of the minor requires that custody be taken
31 from the minor's parent or guardian.

32 (b) Whenever the court specifically limits the right of the
33 parent or guardian to make educational decisions for the minor, the
34 court shall at the same time appoint a responsible adult to make
35 educational decisions for the child until one of the following
36 occurs: (1) ~~a surrogate parent is appointed pursuant to Section~~
37 ~~7579.5 of the Government Code,~~ (2) the minor reaches 18 years
38 of age, ~~(3)~~ (2) another responsible adult is appointed to make
39 educational decisions for the minor pursuant to this section, or ~~(4)~~
40 (3) the right of the parent or guardian to make educational



1 decisions for the minor is fully restored. An individual who would
2 have a conflict of interest in representing the child, as specified
3 under federal regulations, may not be appointed to make
4 educational decisions. For purposes of this section, “an individual
5 who would have a conflict of interest,” means a person having any
6 interests that might restrict or bias his or her ability to advocate for
7 all of the services required to ensure a free appropriate public
8 education for an individual with exceptional needs, as defined in
9 Section 56026 of the Education Code.

10 (c) In any case in which the minor is removed from the physical
11 custody of his or her parent or guardian as the result of an order of
12 wardship made pursuant to Section 602, the order shall specify that
13 the minor may not be held in physical confinement for a period in
14 excess of the maximum term of imprisonment which could be
15 imposed upon an adult convicted of the offense or offenses which
16 brought or continued the minor under the jurisdiction of the
17 juvenile court.

18 As used in this section and in Section 731, “maximum term of
19 imprisonment” means the longest of the three time periods set
20 forth in paragraph (2) of subdivision (a) of Section 1170 of the
21 Penal Code, but without the need to follow the provisions of
22 subdivision (b) of Section 1170 of the Penal Code or to consider
23 time for good behavior or participation pursuant to Sections 2930,
24 2931, and 2932 of the Penal Code, plus enhancements which must
25 be proven if pled.

26 If the court elects to aggregate the period of physical
27 confinement on multiple counts, or multiple petitions, including
28 previously sustained petitions adjudging the minor a ward within
29 Section 602, the “maximum term of imprisonment” shall be the
30 aggregate term of imprisonment specified in subdivision (a) of
31 Section 1170.1 of the Penal Code, which includes any additional
32 term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1
33 of the Penal Code, and pursuant to Section 11370.2 of the Health
34 and Safety Code.

35 If the charged offense is a misdemeanor or a felony not included
36 within the scope of Section 1170 of the Penal Code, the
37 “maximum term of imprisonment” is the longest term of
38 imprisonment prescribed by law.



1 “Physical confinement” means placement in a juvenile hall,
2 ranch, camp, forestry camp or secure juvenile home pursuant to
3 Section 730, or in any institution operated by the Youth Authority.
4 Nothing in this section shall be construed to limit the power of
5 the court to retain jurisdiction over a minor and to make
6 appropriate orders pursuant to Section 727 for the period permitted
7 by Section 607.

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