

AMENDED IN SENATE APRIL 30, 2002

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, *as specified*. 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.



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

361. (a) 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 decisions for the child shall be specifically addressed in the court order. The limitations shall not exceed those necessary to protect the child. Whenever the court specifically limits the right of the parent or guardian to make educational decisions for the child, the court shall at the same time appoint a responsible adult to make educational decisions for the child until one of the following occurs: ~~(1) the minor reaches 18 years of age, (2) another responsible adult is appointed to make educational decisions for the minor pursuant to this section, or (3) the right of the parent or guardian to make educational~~ *following occurs:*

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

(2) Another responsible adult is appointed to make educational decisions for the minor pursuant to this section.

(3) The right of the parent or guardian to make educational decisions for the minor is fully restored. An

An individual who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed to make educational 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 advocate for all of the services required to ensure a free appropriate public education for an individual with exceptional needs, as defined in Section 56026 of the Education Code.

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

(c) No dependent child shall 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:

(1) There is a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the minor or would be 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 parents' or guardians' 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 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, the option of removing an offending parent or guardian from the home. The court shall also consider, as a reasonable means to protect the minor, allowing a nonoffending parent or guardian to retain 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 366.25 or 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 self 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.

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

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

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

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

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

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

25 726. (a) In all cases ~~wherein~~ *in which* a minor is adjudged a
26 ward or dependent child of the court, the court may limit the
27 control to be exercised over the ward or dependent child by any
28 parent or guardian and shall ~~by its order~~ *in its order*, clearly and
29 specifically set forth all those limitations, but no ward or
30 dependent child shall be taken from the physical custody of a
31 parent or guardian unless upon the hearing the court finds one of
32 the following facts:

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

36 (2) That the minor has been tried on probation *while* in ~~such~~
37 custody and has failed to reform.

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

(b) Whenever the court specifically limits the right of the parent or guardian to make educational decisions for the minor, the court shall at the same time appoint a responsible adult to make educational decisions for the child until one of the following occurs: ~~(1) the minor reaches 18 years of age, (2) another responsible adult is appointed to make educational decisions for the minor pursuant to this section, or (3) the right of the parent or guardian to make educational~~ occurs:

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

(2) *Another responsible adult is appointed to make educational decisions for the minor pursuant to this section.*

(3) *The right of the parent or guardian to make educational decisions for the minor is fully restored.* ~~An~~

An individual who would have a conflict of interest in representing the child, as specified under federal regulations, may not be appointed to make educational 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 advocate for all of the services required to ensure a free appropriate public education for an individual with exceptional needs, as defined in Section 56026 of the Education Code.

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

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

1 If the court elects to aggregate the period of physical
2 confinement on multiple counts, or multiple petitions, including
3 previously sustained petitions adjudging the minor a ward within
4 Section 602, the “maximum term of imprisonment” shall be the
5 aggregate term of imprisonment specified in subdivision (a) of
6 Section 1170.1 of the Penal Code, which includes any additional
7 term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1
8 of the Penal Code, and pursuant to Section 11370.2 of the Health
9 and Safety Code.

10 If the charged offense is a misdemeanor or a felony not included
11 within the scope of Section 1170 of the Penal Code, the
12 “maximum term of imprisonment” is the longest term of
13 imprisonment prescribed by law.

14 “Physical confinement” means placement in a juvenile hall,
15 ranch, camp, forestry camp or secure juvenile home pursuant to
16 Section 730, or in any institution operated by the Youth Authority.

17 Nothing in this section shall be construed to limit the power of
18 the court to retain jurisdiction over a minor and to make
19 appropriate orders pursuant to Section 727 for the period permitted
20 by Section 607.

