

AMENDED IN SENATE MAY 28, 2002
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 *with legal custody* 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 *with legal custody* 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 *with legal custody* 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 *with legal custody* to
 9 make educational decisions for the minor until a successor ~~or~~
 10 ~~temporary~~ guardian or conservator is appointed. Whenever the
 11 court suspends or limits the powers of the guardian or conservator
 12 to make educational decisions for a minor ward or conservatee, the
 13 court shall at the same time appoint a responsible adult *with legal*
 14 *custody* to make educational decisions for the minor ward or
 15 conservatee until the guardian or conservator is again authorized
 16 to make educational decisions for the minor ward or conservatee.
 17 An individual who would have a conflict of interest in representing
 18 the child, ~~as specified under federal regulations,~~ may not be
 19 appointed to make educational decisions. For purposes of this
 20 section, “an individual who would have a conflict of interest,”
 21 means a person having any interests that might restrict or bias his



1 or her ability to ~~advocate for all of the services required to ensure~~
2 ~~a free appropriate public education for an individual with~~
3 ~~exceptional needs, as defined in Section 56026 of the Education~~
4 ~~Code.~~ *make educational decisions, including, but not limited to,*
5 *those conflicts of interest prohibited by Section 1126 of the*
6 *Government Code, and the receipt of compensation or attorneys’*
7 *fees for the provision of services pursuant to this section.*

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

10 361. (a) In all cases in which a minor is adjudged a dependent
11 child of the court on the ground that the minor is a person described
12 by Section 300, the court may limit the control to be exercised over
13 the dependent child by any parent or guardian and shall by its order
14 clearly and specifically set forth all those limitations. Any
15 limitation on the right of the parent or guardian to make
16 educational decisions for the child shall be specifically addressed
17 in the court order. The limitations ~~shall~~ *may* not exceed those
18 necessary to protect the child. Whenever the court specifically
19 limits the right of the parent or guardian to make educational
20 decisions for the child, the court shall at the same time appoint a
21 responsible adult *with legal custody* to make educational decisions
22 for the child until one of the following occurs:

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

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

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

30 (4) *A guardian or conservator is appointed to make*
31 *educational decisions for the minor.*

32 An individual who would have a conflict of interest in
33 representing the child, ~~as specified under federal regulations,~~ may
34 not be appointed to make educational decisions. For purposes of
35 this section, “an individual who would have a conflict of interest,”
36 means a person having any interests that might restrict or bias his
37 ~~or her ability to advocate for all of the services required to ensure~~
38 ~~a free appropriate public education for an individual with~~
39 ~~exceptional needs, as defined in Section 56026 of the Education~~
40 ~~Code.~~



1 ~~(b) Nothing in subdivision (a) shall be construed to limit the or~~
 2 *her ability to make educational decisions, including, but not*
 3 *limited to, those conflicts of interest prohibited by Section 1126 of*
 4 *the Government Code, and the receipt of compensation or*
 5 *attorneys' fees for the provision of services pursuant to this*
 6 *section.*

7 (b) Subdivision (a) may not be construed to limit the ability of
 8 a parent to voluntarily relinquish his or her child to the State
 9 Department of Social Services or to a licensed county adoption
 10 agency at any time while the child is a dependent child of the
 11 juvenile court, if the department or agency is willing to accept the
 12 relinquishment.

13 (c) ~~No~~ A dependent child ~~shall~~ may not be taken from the
 14 physical custody of his or her parents or guardian or guardians with
 15 whom the child resides at the time the petition was initiated unless
 16 the juvenile court finds clear and convincing evidence of any of the
 17 following:

18 (1) There is a substantial danger to the physical health, safety,
 19 protection, or physical or emotional well-being of the minor or
 20 would be if the minor were returned home, and there are no
 21 reasonable means by which the minor's physical health can be
 22 protected without removing the minor from the minor's parents'
 23 or guardians' physical custody. The fact that a minor has been
 24 adjudicated a dependent child of the court pursuant to subdivision
 25 (e) of Section 300 shall constitute prima facie evidence that the
 26 minor cannot be safely left in the custody of the parent or guardian
 27 with whom the minor resided at the time of injury. The court shall
 28 consider, as a reasonable means to protect the minor, the option of
 29 removing an offending parent or guardian from the home. The
 30 court shall also consider, as a reasonable means to protect the
 31 minor, allowing a nonoffending parent or guardian to retain
 32 custody as long as that parent or guardian presents a plan
 33 acceptable to the court demonstrating that he or she will be able to
 34 protect the child from future harm.

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



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

7 (4) The minor or a sibling of the minor has been sexually
8 abused, or is deemed to be at substantial risk of being sexually
9 abused, by a parent, guardian, or member of his or her household,
10 or other person known to his or her parent, and there are no
11 reasonable means by which the minor can be protected from
12 further sexual abuse or a substantial risk of sexual abuse without
13 removing the minor from his or her parent or guardian, or the
14 minor does not wish to return to his or her parent or guardian.

15 (5) The minor has been left without any provision for his or her
16 support, or a parent who has been incarcerated or institutionalized
17 cannot arrange for the care of the minor, or a relative or other adult
18 custodian with whom the child has been left by the parent is
19 unwilling or unable to provide care or support for the child and the
20 whereabouts of the parent is unknown and reasonable efforts to
21 locate him or her have been unsuccessful.

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

29 (e) The court shall make all of the findings required by
30 subdivision (a) of Section 366 in either of the following
31 circumstances:

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

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

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

39 726. (a) In all cases in which a minor is adjudged a ward or
40 dependent child of the court, the court may limit the control to be



1 exercised over the ward or dependent child by any parent or
2 guardian and shall in its order, clearly and specifically set forth all
3 those limitations, but no ward or dependent child shall be taken
4 from the physical custody of a parent or guardian unless upon the
5 hearing the court finds one of the following facts:

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

9 (2) That the minor has been tried on probation while in custody
10 and has failed to reform.

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

13 (b) Whenever the court specifically limits the right of the
14 parent or guardian to make educational decisions for the minor, the
15 court shall at the same time appoint a responsible adult to make
16 educational decisions for the child until one of the following
17 occurs:

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

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

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

25 (4) *A guardian or conservator is appointed to make*
26 *educational decisions for the minor.*

27 An individual who would have a conflict of interest in
28 representing the child, as specified under federal regulations, may
29 not be appointed to make educational decisions. For purposes of
30 this section, "an individual who would have a conflict of interest,"
31 means a person having any interests that might restrict or bias his
32 ~~or her ability to advocate for all of the services required to ensure~~
33 ~~a free appropriate public education for an individual with~~
34 ~~exceptional needs, as defined in Section 56026 of the Education~~
35 ~~Code.~~ *or her ability to make educational decisions, including, but*
36 *not limited to, those conflicts of interest prohibited by Section 1126*
37 *of the Government Code, and the receipt of compensation or*
38 *attorneys' fees for the provision of services pursuant to this*
39 *section.*



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

9 As used in this section and in Section 731, “maximum term of
10 imprisonment” means the longest of the three time periods set
11 forth in paragraph (2) of subdivision (a) of Section 1170 of the
12 Penal Code, but without the need to follow the provisions of
13 subdivision (b) of Section 1170 of the Penal Code or to consider
14 time for good behavior or participation pursuant to Sections 2930,
15 2931, and 2932 of the Penal Code, plus enhancements which must
16 be proven if pled.

17 If the court elects to aggregate the period of physical
18 confinement on multiple counts, or multiple petitions, including
19 previously sustained petitions adjudging the minor a ward within
20 Section 602, the “maximum term of imprisonment” shall be the
21 aggregate term of imprisonment specified in subdivision (a) of
22 Section 1170.1 of the Penal Code, which includes any additional
23 term imposed pursuant to Section 667, 667.5, 667.6, or 12022.1
24 of the Penal Code, and pursuant to Section 11370.2 of the Health
25 and Safety Code.

26 If the charged offense is a misdemeanor or a felony not included
27 within the scope of Section 1170 of the Penal Code, the
28 “maximum term of imprisonment” is the longest term of
29 imprisonment prescribed by law.

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

33 Nothing in this section shall be construed to limit the power of
34 the court to retain jurisdiction over a minor and to make
35 appropriate orders pursuant to Section 727 for the period permitted
36 by Section 607.

