

**Introduced by Senator Runner**

February 18, 2011

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An act to amend Section 361 of the Welfare and Institutions Code, relating to dependent children.

LEGISLATIVE COUNSEL'S DIGEST

SB 882, as introduced, Runner. Dependent children: parental control.

Existing law authorizes a court to limit the control exercised over a minor by a parent or guardian in all cases in which the minor is adjudged a ward or dependent child of the court, including the parent's right to make educational decisions for the child. Existing law requires the court, if it specifically limits the right of the parent or guardian to make educational decisions for the child, to appoint a responsible adult to make those decisions for the child, as specified.

This bill would make a technical, nonsubstantive change to that provision.

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 361 of the Welfare and Institutions Code
- 2 is amended to read:
- 3 361. (a) In all cases in which a minor is adjudged a dependent
- 4 child of the court on the ground that the minor is a person described
- 5 by Section 300, the court may limit the control to be exercised
- 6 over the dependent child by any parent or guardian and shall by
- 7 its order clearly and specifically set forth all those limitations. Any
- 8 limitation on the right of the parent or guardian to make educational

1 decisions for the child shall be specifically addressed in the court  
2 order. The limitations may not exceed those necessary to protect  
3 the child. If the court specifically limits the right of the parent or  
4 guardian to make educational decisions for the child, the court  
5 shall at the same time appoint a responsible adult to make  
6 educational decisions for the child until *any* one of the following  
7 occurs:

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

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

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

15 (4) A successor guardian or conservator is appointed.

16 (5) The child is placed into a planned permanent living  
17 arrangement pursuant to paragraph (3) of subdivision (g) of Section  
18 366.21, Section 366.22, or Section 366.26, at which time the foster  
19 parent, relative caretaker, or nonrelative extended family member  
20 as defined in Section 362.7, has the right to represent the child in  
21 educational matters pursuant to Section 56055 of the Education  
22 Code.

23 An individual who would have a conflict of interest in  
24 representing the child may not be appointed to make educational  
25 decisions. For purposes of this section, “an individual who would  
26 have a conflict of interest,” means a person having any interests  
27 that might restrict or bias his or her ability to make educational  
28 decisions, including, but not limited to, those conflicts of interest  
29 prohibited by Section 1126 of the Government Code, and the  
30 receipt of compensation or attorneys’ fees for the provision of  
31 services pursuant to this section. A foster parent may not be deemed  
32 to have a conflict of interest solely because he or she receives  
33 compensation for the provision of services pursuant to this section.

34 If the court is unable to appoint a responsible adult to make  
35 educational decisions for the child and paragraphs (1) to (5),  
36 inclusive, do not apply, and the child has either been referred to  
37 the local educational agency for special education and related  
38 services, or has a valid individualized education program, the court  
39 shall refer the child to the local educational agency for appointment

1 of a surrogate parent pursuant to Section 7579.5 of the Government  
2 Code.

3 If the court cannot identify a responsible adult to make  
4 educational decisions for the child, the appointment of a surrogate  
5 parent as defined in subdivision (a) of Section 56050 of the  
6 Education Code is not warranted, and there is no foster parent to  
7 exercise the authority granted by Section 56055 of the Education  
8 Code, the court may, with the input of any interested person, make  
9 educational decisions for the child.

10 All educational and school placement decisions shall seek to  
11 ensure that the child is in the least restrictive educational programs  
12 and has access to the academic resources, services, and  
13 extracurricular and enrichment activities that are available to all  
14 pupils. In all instances, educational and school placement decisions  
15 shall be based on the best interests of the child.

16 (b) Subdivision (a) does not limit the ability of a parent to  
17 voluntarily relinquish his or her child to the State Department of  
18 Social Services or to a licensed county adoption agency at any  
19 time while the child is a dependent child of the juvenile court, if  
20 the department or agency is willing to accept the relinquishment.

21 (c) A dependent child may not be taken from the physical  
22 custody of his or her parents or guardian or guardians with whom  
23 the child resides at the time the petition was initiated, unless the  
24 juvenile court finds clear and convincing evidence of any of the  
25 following circumstances listed in paragraphs (1) to (5), inclusive,  
26 and, in an Indian child custody proceeding, paragraph (6):

27 (1) There is or would be a substantial danger to the physical  
28 health, safety, protection, or physical or emotional well-being of  
29 the minor if the minor were returned home, and there are no  
30 reasonable means by which the minor's physical health can be  
31 protected without removing the minor from the minor's parent's  
32 or guardian's physical custody. The fact that a minor has been  
33 adjudicated a dependent child of the court pursuant to subdivision  
34 (e) of Section 300 shall constitute prima facie evidence that the  
35 minor cannot be safely left in the physical custody of the parent  
36 or guardian with whom the minor resided at the time of injury.  
37 The court shall consider, as a reasonable means to protect the  
38 minor, the option of removing an offending parent or guardian  
39 from the home. The court shall also consider, as a reasonable means  
40 to protect the minor, allowing a nonoffending parent or guardian

1 to retain physical custody as long as that parent or guardian  
2 presents a plan acceptable to the court demonstrating that he or  
3 she will be able to protect the child from future harm.

4 (2) The parent or guardian of the minor is unwilling to have  
5 physical custody of the minor, and the parent or guardian has been  
6 notified that if the minor remains out of their physical custody for  
7 the period specified in Section 366.26, the minor may be declared  
8 permanently free from their custody and control.

9 (3) The minor is suffering severe emotional damage, as indicated  
10 by extreme anxiety, depression, withdrawal, or untoward aggressive  
11 behavior toward himself or herself or others, and there are no  
12 reasonable means by which the minor's emotional health may be  
13 protected without removing the minor from the physical custody  
14 of his or her parent or guardian.

15 (4) The minor or a sibling of the minor has been sexually abused,  
16 or is deemed to be at substantial risk of being sexually abused, by  
17 a parent, guardian, or member of his or her household, or other  
18 person known to his or her parent, and there are no reasonable  
19 means by which the minor can be protected from further sexual  
20 abuse or a substantial risk of sexual abuse without removing the  
21 minor from his or her parent or guardian, or the minor does not  
22 wish to return to his or her parent or guardian.

23 (5) The minor has been left without any provision for his or her  
24 support, or a parent who has been incarcerated or institutionalized  
25 cannot arrange for the care of the minor, or a relative or other adult  
26 custodian with whom the child has been left by the parent is  
27 unwilling or unable to provide care or support for the child and  
28 the whereabouts of the parent is unknown and reasonable efforts  
29 to locate him or her have been unsuccessful.

30 (6) In an Indian child custody proceeding, continued custody  
31 of the child by the parent or Indian custodian is likely to result in  
32 serious emotional or physical damage to the child, and that finding  
33 is supported by testimony of a "qualified expert witness" as  
34 described in Section 224.6.

35 (A) Stipulation by the parent, Indian custodian, or the Indian  
36 child's tribe, or failure to object, may waive the requirement of  
37 producing evidence of the likelihood of serious damage only if the  
38 court is satisfied that the party has been fully advised of the  
39 requirements of the Indian Child Welfare Act (25 U.S.C. Sec. 1901

1 et seq.), and has knowingly, intelligently, and voluntarily waived  
2 them.

3 (B) Failure to meet non-Indian family and child-rearing  
4 community standards, or the existence of other behavior or  
5 conditions that meet the removal standards of this section, will not  
6 support an order for placement in the absence of the finding in this  
7 paragraph.

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, or, in the case of an Indian child  
14 custody proceeding, whether active efforts as required in Section  
15 361.7 were made and that these efforts have proved unsuccessful.  
16 The court shall state the facts on which the decision to remove the  
17 minor is based.

18 (e) The court shall make all of the findings required by  
19 subdivision (a) of Section 366 in either of the following  
20 circumstances:

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

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