

Senate Bill No. 1425

CHAPTER 179

An act to amend Section 388 of the Welfare and Institutions Code, relating to dependent children, and declaring the urgency thereof, to take effect immediately.

[Approved by Governor August 17, 2012. Filed with
Secretary of State August 17, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

SB 1425, Negrete McLeod. Juveniles: dependent children.

Existing law provides that after a child is declared a dependent child of the court, any parent or other person having an interest in the child, including the dependent child, may petition the court to change, modify, or set aside an order in the dependency proceedings or to terminate the court's jurisdiction. Existing law further permits any party, including the dependent child, to petition the court to terminate reunification services before the dependency review hearing. A court may terminate reunification services under this provision only after finding by a preponderance of the evidence that reasonable services have been offered and after finding by clear and convincing evidence either that a change in circumstances justifies termination of reunification services or that the parent's action or inaction makes reunification unlikely.

This bill would require a court to order a hearing on a proposed modification of reunification services, custody, or visitation orders concerning a child for whom reunification services were not ordered if the court finds that the best interests of the child would be met by the proposed change. Additionally, this bill would require a court to modify an order finding that reunification services were not necessary when a party has petitioned the court prior to the issuance of an order terminating parental rights only if the court finds, by clear and convincing evidence, that the proposed change is in the child's best interests. The bill would apply the same requirements to petitions to modify an order relating to custody or visitation of the dependent child.

This bill would declare that it is to take effect immediately as an urgency statute.

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

SECTION 1. Section 388 of the Welfare and Institutions Code is amended to read:

388. (a) (1) Any parent or other person having an interest in a child who is a dependent child of the juvenile court or the child himself or herself through a properly appointed guardian may, upon grounds of change of circumstance or new evidence, petition the court in the same action in which the child was found to be a dependent child of the juvenile court or in which a guardianship was ordered pursuant to Section 360 for a hearing to change, modify, or set aside any order of court previously made or to terminate the jurisdiction of the court. The petition shall be verified and, if made by a person other than the child, shall state the petitioner's relationship to or interest in the child and shall set forth in concise language any change of circumstance or new evidence that is alleged to require the change of order or termination of jurisdiction.

(2) When any party, including a child who is a dependent of the juvenile court, petitions the court prior to an order terminating parental rights, to modify the order that reunification services were not needed pursuant to paragraphs (4), (5), and (6) of subdivision (b) of Section 361.5, or to modify any orders related to custody or visitation of the subject child, and the court orders a hearing pursuant to subdivision (d), the court shall modify the order that reunification services were not needed pursuant to paragraphs (4), (5), and (6) of subdivision (b) of Section 361.5, or any orders related to the custody or visitation of the child for whom reunification services were not ordered pursuant to paragraphs (4), (5), and (6) of subdivision (b) of Section 361.5, only if the court finds by clear and convincing evidence that the proposed change is in the best interests of the child.

(b) Any person, including a child who is a dependent of the juvenile court, may petition the court to assert a relationship as a sibling related by blood, adoption, or affinity through a common legal or biological parent to a child who is, or is the subject of a petition for adjudication as, a dependent of the juvenile court, and may request visitation with the dependent child, placement with or near the dependent child, or consideration when determining or implementing a case plan or permanent plan for the dependent child or make any other request for an order which may be shown to be in the best interest of the dependent child. The court may appoint a guardian ad litem to file the petition for the dependent child asserting the sibling relationship if the court determines that the appointment is necessary for the best interests of the dependent child. The petition shall be verified and shall set forth the following:

- (1) Through which parent he or she is related to the dependent child.
- (2) Whether he or she is related to the dependent child by blood, adoption, or affinity.
- (3) The request or order that the petitioner is seeking.
- (4) Why that request or order is in the best interest of the dependent child.

(c) (1) Any party, including a child who is a dependent of the juvenile court, may petition the court, prior to the hearing set pursuant to subdivision (f) of Section 366.21 for a child described by subparagraph (A) of paragraph (1) of subdivision (a) of Section 361.5, or prior to the hearing set pursuant to subdivision (e) of Section 366.21 for a child described by subparagraph

(B) or (C) of paragraph (1) of subdivision (a) of Section 361.5, to terminate court-ordered reunification services provided under subdivision (a) of Section 361.5 only if one of the following conditions exists:

(A) It appears that a change of circumstance or new evidence exists that satisfies a condition set forth in subdivision (b) or (e) of Section 361.5 justifying termination of court-ordered reunification services.

(B) The action or inaction of the parent or guardian creates a substantial likelihood that reunification will not occur, including, but not limited to, the parent or guardian's failure to visit the child, or the failure of the parent or guardian to participate regularly and make substantive progress in a court-ordered treatment plan.

(2) In determining whether the parent or guardian has failed to visit the child or participate regularly or make progress in the treatment plan, the court shall consider factors including, but not limited to, the parent or guardian's incarceration, institutionalization, or participation in a court-ordered residential substance abuse treatment program.

(3) The court shall terminate reunification services during the above-described time periods only upon a finding by a preponderance of evidence that reasonable services have been offered or provided, and upon a finding of clear and convincing evidence that one of the conditions in subparagraph (A) or (B) of paragraph (1) exists.

(4) If the court terminates reunification services, it shall order that a hearing pursuant to Section 366.26 be held within 120 days.

(d) If it appears that the best interests of the child may be promoted by the proposed change of order, modification of reunification services, custody, or visitation orders concerning a child for whom reunification services were not ordered pursuant to paragraphs (4), (5), and (6) of subdivision (b) of Section 361.5, recognition of a sibling relationship, termination of jurisdiction, or clear and convincing evidence supports revocation or termination of court-ordered reunification services, the court shall order that a hearing be held and shall give prior notice, or cause prior notice to be given, to the persons and by the means prescribed by Section 386, and, in those instances in which the means of giving notice is not prescribed by those sections, then by means the court prescribes.

(e) (1) On and after January 1, 2012, a nonminor who attained 18 years of age while subject to an order for foster care placement and, commencing January 1, 2012, who has not attained 19 years of age, or, commencing January 1, 2013, 20 years of age, or, commencing January 1, 2014, 21 years of age, for whom the court has dismissed dependency jurisdiction pursuant to Section 391, or delinquency jurisdiction pursuant to Section 607.2 or transition jurisdiction pursuant to Section 452, but has retained general jurisdiction under subdivision (b) of Section 303, or the county child welfare services, probation department, or tribal placing agency on behalf of the nonminor, may petition the court in the same action in which the child was found to be a dependent or delinquent child of the juvenile court, for a hearing to resume the dependency jurisdiction over a former dependent or to assume or resume transition jurisdiction over a former delinquent ward

pursuant to Section 450. The petition shall be filed within the period that the nonminor is of the age described in this paragraph. If the nonminor has completed the voluntary reentry agreement, as described in subdivision (z) of Section 11400, with the placing agency, the agency shall file the petition on behalf of the nonminor within 15 judicial days of the date the agreement was signed unless the nonminor elects to file the petition at an earlier date.

(2) (A) The petition to resume jurisdiction may be filed in the juvenile court that retains general jurisdiction under subdivision (b) of Section 303, or the petition may be submitted to the juvenile court in the county where the youth resides and forwarded to the juvenile court that retained general jurisdiction and filed with that court. The juvenile court having general jurisdiction under Section 303 shall receive the petition from the court where the petition was submitted within five court days of its submission, if the petition is filed in the county of residence. The juvenile court that retained general jurisdiction shall order that a hearing be held within 15 judicial days of the date the petition was filed if there is a prima facie showing that the nonminor satisfies the following criteria:

(i) He or she was previously under juvenile court jurisdiction, subject to an order for foster care placement when he or she attained 18 years of age, and has not attained the age limits described in paragraph (1).

(ii) He or she intends to satisfy at least one of the conditions set forth in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 11403.

(iii) He or she wants assistance either in maintaining or securing appropriate supervised placement, or is in need of immediate placement and agrees to supervised placement pursuant to the voluntary reentry agreement as described in subdivision (z) of Section 11400.

(B) Upon ordering a hearing, the court shall give prior notice, or cause prior notice to be given, to the persons and by the means prescribed by Section 386, except that notice to parents or former guardians shall not be provided unless the nonminor requests, in writing on the face of the petition, notice to the parents or former guardians.

(3) The Judicial Council, by January 1, 2012, shall adopt rules of court to allow for telephonic appearances by nonminor former dependents or delinquents in these proceedings, and for telephonic appearances by nonminor dependents in any proceeding in which the nonminor dependent is a party, and he or she declines to appear and elects a telephonic appearance.

(4) Prior to the hearing on a petition to resume dependency jurisdiction or to assume or resume transition jurisdiction, the court shall order the county child welfare or probation department or Indian tribe that has entered into an agreement pursuant to Section 10553.1 to prepare a report for the court addressing whether the nonminor intends to satisfy at least one of the criteria set forth in subdivision (b) of Section 11403. When the recommendation is for the nonminor dependent to be placed in a setting where minor dependents also reside, the results of a background check of the petitioning nonminor conducted pursuant to Section 16504.5, used by the placing agency to determine appropriate placement options for the

nonminor. The existence of a criminal conviction is not a bar to eligibility for reentry or resumption of dependency jurisdiction or the assumption or resumption of transition jurisdiction over a nonminor.

(5) (A) The court shall resume dependency jurisdiction over a former dependent or assume or resume transition jurisdiction over a former delinquent ward pursuant to Section 450, and order that the nonminor's placement and care be under the responsibility of the county child welfare services department, the probation department, or tribe, if the court finds all of the following:

(i) The nonminor was previously under juvenile court jurisdiction subject to an order for foster care placement when he or she attained 18 years of age.

(ii) The nonminor has not attained the age limits described in paragraph (1).

(iii) Reentry and remaining in foster care are in the nonminor's best interests.

(iv) The nonminor intends to satisfy, and agrees to satisfy, at least one of the criteria set forth in paragraphs (1) to (5), inclusive, of subdivision (b) of Section 11403, or demonstrates his or her agreement to satisfy the criteria by signing the voluntary reentry agreement as described in subdivision (z) of Section 11400.

(B) The agency made responsible for the nonminor's placement and care pursuant to subparagraph (A) shall prepare a new transitional independent living case plan and submit it to the court within 60 days of the resumption of dependency jurisdiction or assumption or resumption of transition jurisdiction.

(C) In no event shall the court grant a continuance that would cause the hearing to resume dependency jurisdiction or to assume or resume transition jurisdiction to be completed more than 120 days after the date the petition was submitted.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to ensure that parents of children who are in dependency proceedings due to a parent's sexual abuse or severe physical harm to that child or siblings of that child are only given reunification services in modification proceedings in limited circumstances, it is necessary for this act to take effect immediately.