

ASSEMBLY BILL

No. 438

Introduced by Assembly Member Mitchell

February 15, 2013

An act to amend Section 241.1 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 438, as introduced, Mitchell. Juveniles: dual-status minors.

Existing law prohibits the entry of an order by a juvenile court, or the filing of a petition, to make a minor simultaneously both a dependent child and a ward of the court, unless a written protocol has been created in that county, as specified, to allow the county probation department and the child welfare services department to jointly assess and produce a recommendation that the child be designated as a dual status child.

This bill would delete the prohibition on the filing of a petition or the entry of an order to make a minor simultaneously both a dependent child and a ward of the court.

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 241.1 of the Welfare and Institutions
2 Code is amended to read:
3 241.1. (a) Whenever a minor appears to come within the
4 description of both Section 300 and Section 601 or 602, the county
5 probation department and the child welfare services department
6 shall, pursuant to a jointly developed written protocol described

1 in subdivision (b), initially determine which status will serve the
2 best interests of the minor and the protection of society. The
3 recommendations of both departments shall be presented to the
4 juvenile court with the petition that is filed on behalf of the minor,
5 and the court shall determine which status is appropriate for the
6 minor. Any other juvenile court having jurisdiction over the minor
7 shall receive notice from the court, within five calendar days, of
8 the presentation of the recommendations of the departments. The
9 notice shall include the name of the judge to whom, or the
10 courtroom to which, the recommendations were presented.

11 (b) (1) The probation department and the child welfare services
12 department in each county shall jointly develop a written protocol
13 to ensure appropriate local coordination in the assessment of a
14 minor described in subdivision (a), and the development of
15 recommendations by these departments for consideration by the
16 juvenile court.

17 (2) These protocols shall require, but not be limited to,
18 consideration of the nature of the referral, the age of the minor,
19 the prior record of the minor's parents for child abuse, the prior
20 record of the minor for out-of-control or delinquent behavior, the
21 parents' cooperation with the minor's school, the minor's
22 functioning at school, the nature of the minor's home environment,
23 and the records of other agencies that have been involved with the
24 minor and his or her family. The protocols also shall contain
25 provisions for resolution of disagreements between the probation
26 and child welfare services departments regarding the need for
27 dependency or ward status and provisions for determining the
28 circumstances under which filing a new petition is required to
29 change the minor's status.

30 (3) The protocols shall contain the following processes:

31 (A) A process for determining which agency and court shall
32 supervise a child whose jurisdiction is modified from delinquency
33 jurisdiction to dependency jurisdiction pursuant to paragraph (2)
34 of subdivision (b) of Section 607.2 or subdivision (i) of Section
35 727.2.

36 (B) A process for determining which agency and court shall
37 supervise a nonminor dependent under the transition jurisdiction
38 of the juvenile court.

1 (C) A process that specifically addresses the manner in which
2 supervision responsibility is determined when a nonminor
3 dependent becomes subject to adult probation supervision.

4 (c) Whenever a minor who is under the jurisdiction of the
5 juvenile court of a county pursuant to Section 300, 601, or 602 is
6 alleged to come within the description of Section 300, 601, or 602
7 by another county, the county probation department or child
8 welfare services department in the county that has jurisdiction
9 under Section 300, 601, or 602 and the county probation
10 department or child welfare services department of the county
11 alleging the minor to be within one of those sections shall initially
12 determine which status will best serve the best interests of the
13 minor and the protection of society. The recommendations of both
14 departments shall be presented to the juvenile court in which the
15 petition is filed on behalf of the minor, and the court shall
16 determine which status is appropriate for the minor. In making
17 their recommendation to the juvenile court, the departments shall
18 conduct an assessment consistent with the requirements of
19 subdivision (b). Any other juvenile court having jurisdiction over
20 the minor shall receive notice from the court in which the petition
21 is filed within five calendar days of the presentation of the
22 recommendations of the departments. The notice shall include the
23 name of the judge to whom, or the courtroom to which, the
24 recommendations were presented.

25 ~~(d) Except as provided in subdivision (e), nothing in this section~~
26 ~~shall be construed to authorize the filing of a petition or petitions;~~
27 ~~or the entry of an order by the juvenile court, to make a minor~~
28 ~~simultaneously both a dependent child and a ward of the court.~~

29 ~~(e) Notwithstanding subdivision (d), the~~

30 *(d) The* probation department and the child welfare services
31 department, in consultation with the presiding judge of the juvenile
32 court, in any county may create a jointly written protocol to allow
33 the county probation department and the child welfare services
34 department to jointly assess and produce a recommendation that
35 the child be designated as a dual status child, allowing the child
36 to be simultaneously a dependent child and a ward of the court.
37 This protocol shall be signed by the chief probation officer, the
38 director of the county social services agency, and the presiding
39 judge of the juvenile court prior to its implementation. ~~No juvenile~~
40 ~~court may order that a child is simultaneously a dependent child~~

1 ~~and a ward of the court pursuant to this subdivision unless and~~
2 ~~until the required protocol has been created and entered into. This~~
3 protocol shall include all of the following:

4 (1) A description of the process to be used to determine whether
5 the child is eligible to be designated as a dual status child.

6 (2) A description of the procedure by which the probation
7 department and the child welfare services department will assess
8 the necessity for dual status for specified children and the process
9 to make joint recommendations for the court's consideration prior
10 to making a determination under this section. These
11 recommendations shall ensure a seamless transition from wardship
12 to dependency jurisdiction, as appropriate, so that services to the
13 child are not disrupted upon termination of the wardship.

14 (3) A provision for ensuring communication between the judges
15 who hear petitions concerning children for whom dependency
16 jurisdiction has been suspended while they are within the
17 jurisdiction of the juvenile court pursuant to Section 601 or 602.
18 A judge may communicate by providing a copy of any reports
19 filed pursuant to Section 727.2 concerning a ward to a court that
20 has jurisdiction over dependency proceedings concerning the child.

21 (4) A plan to collect data in order to evaluate the protocol
22 pursuant to Section 241.2.

23 (5) Counties that exercise the option provided for in this
24 subdivision shall adopt either an "on-hold" system as described
25 in subparagraph (A) or a "lead court/lead agency" system as
26 described in subparagraph (B). In no case shall there be any
27 simultaneous or duplicative case management or services provided
28 by both the county probation department and the child welfare
29 services department. It is the intent of the Legislature that judges,
30 in cases in which more than one judge is involved, shall not issue
31 conflicting orders.

32 (A) In counties in which an on-hold system is adopted, the
33 dependency jurisdiction shall be suspended or put on hold while
34 the child is subject to jurisdiction as a ward of the court. When it
35 appears that termination of the court's jurisdiction, as established
36 pursuant to Section 601 or 602, is likely and that reunification of
37 the child with his or her parent or guardian would be detrimental
38 to the child, the county probation department and the child welfare
39 services department shall jointly assess and produce a

1 recommendation for the court regarding whether the court's
2 dependency jurisdiction shall be resumed.

3 (B) In counties in which a lead court/lead agency system is
4 adopted, the protocol shall include a method for identifying which
5 court or agency will be the lead court/lead agency. That court or
6 agency shall be responsible for case management, conducting
7 statutorily mandated court hearings, and submitting court reports.

8 ~~(f)~~

9 (e) Whenever the court determines pursuant to this section or
10 Section 607.2 or 727.2 that it is necessary to modify the court's
11 jurisdiction over a dependent or ward who was removed from his
12 or her parent or guardian and placed in foster care, the court shall
13 ensure that all of the following conditions are met:

14 (1) The petition under which jurisdiction was taken at the time
15 the dependent or ward was originally removed is not dismissed
16 until the new petition has been sustained.

17 (2) The order modifying the court's jurisdiction contains all of
18 the following provisions:

19 (A) Reference to the original removal findings and a statement
20 that findings that continuation in the home is contrary to the child's
21 welfare, and that reasonable efforts were made to prevent removal,
22 remain in effect.

23 (B) A statement that the child continues to be removed from
24 the parent or guardian from whom the child was removed under
25 the original petition.

26 (C) Identification of the agency that is responsible for placement
27 and care of the child based upon the modification of jurisdiction.

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