

AMENDED IN SENATE JUNE 14, 2013

CALIFORNIA LEGISLATURE—2013–14 REGULAR SESSION

**ASSEMBLY BILL**

**No. 868**

---

---

**Introduced by Assembly Member Ammiano**  
*(Principal coauthors: Senators Corbett and Leno)*

February 21, 2013

---

---

An act to amend Section 68553 of the Government Code, and to amend Sections ~~102~~ 102, 304.7, and 317 of the Welfare and Institutions Code, relating to courts.

LEGISLATIVE COUNSEL'S DIGEST

AB 868, as amended, Ammiano. Courts: training programs: gender identity and sexual orientation.

(1) Existing law requires the Judicial Council to perform various duties designed to assist the judiciary, including establishing judicial training programs for judges, referees, commissioners, mediators, and others who perform duties in family law matters. Existing law requires this training to include instruction in all aspects of family law, including the effects of gender on family law proceedings.

This bill would require that training to also include the effects of gender identity and sexual orientation on family law proceedings.

(2) Existing law establishes the jurisdiction of the juvenile court, which is authorized to adjudge certain children to be dependents of the court under certain circumstances, and prescribes various hearings and other procedures for these purposes. Existing law requires a court to appoint counsel for a child who is not represented by counsel in these dependency proceedings, except as specified. Under existing law, appointed counsel is required to have a caseload and training that ensures adequate representation, and Judicial Council is required to promulgate

rules of court that establish caseload standards, training requirements, and guidelines for counsel.

This bill would require that training to also include instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth.

(3) Existing law requires the Judicial Council to establish a planning and advisory group to recommend on the development of program guidelines and funding procedures for court-appointed special advocates (CASAs) and to establish a request-for-proposal process to establish, maintain, or expand local CASA programs, pursuant to which volunteer CASAs provide designated services and support to children under the jurisdiction of the juvenile court. The council is required to, among other things, require an initial and ongoing training program ~~to~~ for all persons acting as a CASA that covers various topics, including, but not limited to, child development.

This bill would require that training to also include cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender (LGBT) youth.

(4) Existing law requires the Judicial Council to develop and implement standards for the education and training of all judges who conduct dependency hearings.

*This bill would require that training to include instruction on cultural competency and sensitivity relating to, and best practices for, providing adequate care to lesbian, gay, bisexual, and transgender youth.*

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

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

- 1 SECTION 1. Section 68553 of the Government Code is  
2 amended to read:  
3 68553. (a) The Judicial Council shall establish judicial training  
4 programs for judges, referees, commissioners, mediators, and  
5 others who are deemed appropriate who perform duties in family  
6 law matters.  
7 (b) The training shall include a family law session in any  
8 orientation session conducted for newly appointed or elected judges  
9 and an annual training session in family law.  
10 (c) The training shall include instruction in all aspects of family  
11 law, including effects of gender, gender identity, and sexual

1 orientation on family law proceedings, the economic effects of  
2 dissolution on the involved parties, and, on and after July 1, 1994,  
3 the effects of allegations of child abuse or neglect made during  
4 family law proceedings.

5 SEC. 2. Section 102 of the Welfare and Institutions Code is  
6 amended to read:

7 102. (a) Each CASA program shall, if feasible, be staffed by  
8 a minimum of one paid administrator. The staff shall be directly  
9 accountable to the presiding juvenile court judge and the CASA  
10 program board of directors, as applicable.

11 (b) The program shall provide for volunteers to serve as CASAs.  
12 A CASA may be appointed in juvenile dependency proceedings  
13 under Section 300, including proceedings involving a nonminor  
14 dependent.

15 (c) Each CASA shall serve at the pleasure of the court having  
16 jurisdiction over the proceedings in which a CASA has been  
17 appointed and that appointment may continue after the child attains  
18 his or her age of majority, with the consent of the nonminor  
19 dependent. A CASA shall do all of the following:

20 (1) Provide independent, factual information to the court  
21 regarding the cases to which he or she is appointed.

22 (2) Represent the best interests of the child involved, and  
23 consider the best interests of the family, in the cases to which he  
24 or she is appointed.

25 (3) At the request of the judge, monitor cases to which he or  
26 she has been appointed to ensure that the court's orders have been  
27 fulfilled.

28 (d) The Judicial Council, through its rules and regulations, shall  
29 require an initial and ongoing training program consistent with  
30 this chapter ~~to~~ for all persons acting as a CASA, including, but not  
31 limited to, each of the following:

32 (1) Dynamics of child abuse and neglect.

33 (2) Court structure, including juvenile court laws regarding  
34 dependency.

35 (3) Social service systems.

36 (4) Child development.

37 (5) Cultural competency and sensitivity relating to, and best  
38 practices for, providing adequate care to lesbian, gay, bisexual,  
39 and transgender youth.

40 (6) Interviewing techniques.

- 1 (7) Report writing.
- 2 (8) Roles and responsibilities of a CASA.
- 3 (9) Rules of evidence and discovery procedures.
- 4 (10) Problems associated with verifying reports.
- 5 (e) The Judicial Council, through its CASA Advisory
- 6 Committee, shall adopt guidelines for the screening of CASA
- 7 volunteers, which shall include personal interviews, reference
- 8 checks, checks for records of sex offenses and other criminal
- 9 records, information from the Department of Motor Vehicles, and
- 10 other information that the Judicial Council deems appropriate.

11 *SEC. 3. Section 304.7 of the Welfare and Institutions Code is*  
 12 *amended to read:*

13 304.7. (a) ~~On or before July 31, 1997, the~~ *The* Judicial Council  
 14 shall develop and implement standards for the education and  
 15 training of all judges who conduct hearings pursuant to Section  
 16 300. The training shall include, but not be limited to, ~~a~~ *both of the*  
 17 *following:*

18 (1) A component relating to Section 300 proceedings for newly  
 19 appointed or elected judges and an annual training session in  
 20 Section 300 proceedings.

21 (2) *Cultural competency and sensitivity relating to, and best*  
 22 *practices for, providing adequate care to lesbian, gay, bisexual,*  
 23 *and transgender youth.*

24 (b) Any commissioner or referee who is assigned to conduct  
 25 hearings held pursuant to Section 300 shall meet the minimum  
 26 standards for education and training established pursuant to  
 27 subdivision (a), by July 31, 1998.

28 (c) The Judicial Council shall submit an annual report to the  
 29 Legislature on compliance by judges, commissioners and referees  
 30 with the education and training standards described in subdivisions  
 31 (a) and (b).

32 ~~SEC. 3:~~

33 *SEC. 4. Section 317 of the Welfare and Institutions Code is*  
 34 *amended to read:*

35 317. (a) (1) When it appears to the court that a parent or  
 36 guardian of the child desires counsel but is presently financially  
 37 unable to afford and cannot for that reason employ counsel, the  
 38 court may appoint counsel as provided in this section.

39 (2) When it appears to the court that a parent or Indian custodian  
 40 in an Indian child custody proceeding desires counsel but is

1 presently unable to afford and cannot for that reason employ  
2 counsel, the provisions of Section 1912(b) of Title 25 of the United  
3 States Code and Section 23.13 of Title 25 of the Code of Federal  
4 Regulations shall apply.

5 (b) When it appears to the court that a parent or guardian of the  
6 child is presently financially unable to afford and cannot for that  
7 reason employ counsel, and the child has been placed in  
8 out-of-home care, or the petitioning agency is recommending that  
9 the child be placed in out-of-home care, the court shall appoint  
10 counsel for the parent or guardian, unless the court finds that the  
11 parent or guardian has made a knowing and intelligent waiver of  
12 counsel as provided in this section.

13 (c) If a child or nonminor dependent is not represented by  
14 counsel, the court shall appoint counsel for the child or nonminor  
15 dependent, unless the court finds that the child or nonminor  
16 dependent would not benefit from the appointment of counsel. The  
17 court shall state on the record its reasons for that finding. A primary  
18 responsibility of counsel appointed to represent a child or nonminor  
19 dependent pursuant to this section shall be to advocate for the  
20 protection, safety, and physical and emotional well-being of the  
21 child or nonminor dependent. Counsel may be a district attorney,  
22 public defender, or other member of the bar, provided that he or  
23 she does not represent another party or county agency whose  
24 interests conflict with the child's or nonminor dependent's interests.  
25 The fact that the district attorney represents the child or nonminor  
26 dependent in a proceeding pursuant to Section 300 as well as  
27 conducts a criminal investigation or files a criminal complaint or  
28 information arising from the same or reasonably related set of facts  
29 as the proceeding pursuant to Section 300 is not in and of itself a  
30 conflict of interest. The court may fix the compensation for the  
31 services of appointed counsel. The appointed counsel shall have  
32 a caseload and training that ensures adequate representation of the  
33 child or nonminor dependent. The Judicial Council shall  
34 promulgate rules of court that establish caseload standards, training  
35 requirements, and guidelines for appointed counsel for children  
36 and shall adopt rules as required by Section 326.5 no later than  
37 July 1, 2001. On and after January 1, 2014, those training  
38 requirements shall include instruction on cultural competency and  
39 sensitivity relating to, and best practices for, providing adequate

1 care to lesbian, gay, bisexual, and transgender youth in out-of-home  
2 care.

3 (d) Counsel shall represent the parent, guardian, child, or  
4 nonminor dependent at the detention hearing and at all subsequent  
5 proceedings before the juvenile court. Counsel shall continue to  
6 represent the parent, guardian, child, or nonminor dependent unless  
7 relieved by the court upon the substitution of other counsel or for  
8 cause. The representation shall include representing the parent,  
9 guardian, or the child in termination proceedings and in those  
10 proceedings relating to the institution or setting aside of a legal  
11 guardianship. On and after January 1, 2012, in the case of a  
12 nonminor dependent, as described in subdivision (v) of Section  
13 11400, no representation by counsel shall be provided for a parent,  
14 unless the parent is receiving court-ordered family reunification  
15 services.

16 (e) (1) Counsel shall be charged in general with the  
17 representation of the child's interests. To that end, counsel shall  
18 make or cause to have made any further investigations that he or  
19 she deems in good faith to be reasonably necessary to ascertain  
20 the facts, including the interviewing of witnesses, and shall  
21 examine and cross-examine witnesses in both the adjudicatory and  
22 dispositional hearings. Counsel may also introduce and examine  
23 his or her own witnesses, make recommendations to the court  
24 concerning the child's welfare, and participate further in the  
25 proceedings to the degree necessary to adequately represent the  
26 child. When counsel is appointed to represent a nonminor  
27 dependent, counsel is charged with representing the wishes of the  
28 nonminor dependent except when advocating for those wishes  
29 conflicts with the protection or safety of the nonminor dependent.  
30 If the court finds that a nonminor dependent is not competent to  
31 direct counsel, the court shall appoint a guardian ad litem for the  
32 nonminor dependent.

33 (2) If the child is four years of age or older, counsel shall  
34 interview the child to determine the child's wishes and assess the  
35 child's well-being, and shall advise the court of the child's wishes.  
36 Counsel shall not advocate for the return of the child if, to the best  
37 of his or her knowledge, return of the child conflicts with the  
38 protection and safety of the child.

39 (3) Counsel shall investigate the interests of the child beyond  
40 the scope of the juvenile proceeding, and report to the court other

1 interests of the child that may need to be protected by the institution  
2 of other administrative or judicial proceedings. Counsel  
3 representing a child in a dependency proceeding is not required to  
4 assume the responsibilities of a social worker, and is not expected  
5 to provide nonlegal services to the child.

6 (4) (A) At least once every year, if the list of educational  
7 liaisons is available on the Internet Web site for the State  
8 Department of Education, both of the following shall apply:

9 (i) Counsel shall provide his or her contact information to the  
10 educational liaison, as described in subdivision (b) of Section  
11 48853.5 of the Education Code, of each local educational agency  
12 serving counsel's foster child clients in the county of jurisdiction.

13 (ii) If counsel is part of a firm or organization representing foster  
14 children, the firm or organization may provide its contact  
15 information in lieu of contact information for the individual  
16 counsel. The firm or organization may designate a person or  
17 persons within the firm or organization to receive communications  
18 from educational liaisons.

19 (B) The child's caregiver or other person holding the right to  
20 make educational decisions for the child may provide the contact  
21 information of the child's attorney to the child's local educational  
22 agency.

23 (C) Counsel for the child and counsel's agent may, but are not  
24 required to, disclose to an individual who is being assessed for the  
25 possibility of placement pursuant to Section 361.3 the fact that the  
26 child is in custody, the alleged reasons that the child is in custody,  
27 and the projected likely date for the child's return home, placement  
28 for adoption, or legal guardianship. Nothing in this paragraph shall  
29 be construed to prohibit counsel from making other disclosures  
30 pursuant to this subdivision, as appropriate.

31 (5) Nothing in this subdivision shall be construed to permit  
32 counsel to violate a child's attorney-client privilege.

33 (6) The changes made to this subdivision during the 2011-12  
34 Regular Session of the Legislature by the act adding subparagraph  
35 (C) of paragraph (4) and paragraph (5) are declaratory of existing  
36 law.

37 (7) The court shall take whatever appropriate action is necessary  
38 to fully protect the interests of the child.

39 (f) Either the child or counsel for the child, with the informed  
40 consent of the child if the child is found by the court to be of

1 sufficient age and maturity to consent, which shall be presumed,  
2 subject to rebuttal by clear and convincing evidence, if the child  
3 is over 12 years of age, may invoke the psychotherapist-client  
4 privilege, physician-patient privilege, and clergyman-penitent  
5 privilege. If the child invokes the privilege, counsel may not waive  
6 it, but if counsel invokes the privilege, the child may waive it.  
7 Counsel shall be the holder of these privileges if the child is found  
8 by the court not to be of sufficient age and maturity to consent.  
9 For the sole purpose of fulfilling his or her obligation to provide  
10 legal representation of the child, counsel shall have access to all  
11 records with regard to the child maintained by a health care facility,  
12 as defined in Section 1545 of the Penal Code, health care providers,  
13 as defined in Section 6146 of the Business and Professions Code,  
14 a physician and surgeon or other health practitioner, as defined in  
15 former Section 11165.8 of the Penal Code, as that section read on  
16 January 1, 2000, or a child care custodian, as defined in former  
17 Section 11165.7 of the Penal Code, as that section read on January  
18 1, 2000. Notwithstanding any other law, counsel shall be given  
19 access to all records relevant to the case that are maintained by  
20 state or local public agencies. All information requested from a  
21 child protective agency regarding a child who is in protective  
22 custody, or from a child's guardian ad litem, shall be provided to  
23 the child's counsel within 30 days of the request.

24 (g) In a county of the third class, if counsel is to be provided to  
25 a child at the county's expense other than by counsel for the  
26 agency, the court shall first use the services of the public defender  
27 before appointing private counsel. Nothing in this subdivision shall  
28 be construed to require the appointment of the public defender in  
29 any case in which the public defender has a conflict of interest. In  
30 the interest of justice, a court may depart from that portion of the  
31 procedure requiring appointment of the public defender after  
32 making a finding of good cause and stating the reasons therefor  
33 on the record.

34 (h) In a county of the third class, if counsel is to be appointed  
35 to provide legal counsel for a parent or guardian at the county's  
36 expense, the court shall first use the services of the alternate public  
37 defender before appointing private counsel. Nothing in this  
38 subdivision shall be construed to require the appointment of the  
39 alternate public defender in any case in which the public defender  
40 has a conflict of interest. In the interest of justice, a court may

- 1 depart from that portion of the procedure requiring appointment
- 2 of the alternate public defender after making a finding of good
- 3 cause and stating the reasons therefor on the record.

O