

ASSEMBLY BILL

No. 1688

Introduced by Assembly Member Rodriguez

January 21, 2016

An act to amend Section 361.2 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 1688, as introduced, Rodriguez. Dependent children: out-of-county placement: notice.

Existing law prohibits a social worker, when he or she must place a dependent child outside the county, from making the placement until he or she has served written notice on the parent or guardian at least 14 days prior to the placement, except as specified. Existing law authorizes the parent or guardian to object to the placement.

This bill would require that the notice also be served on the child's attorney and, if the child is 10 years of age or older, on the child, and would authorize the child to object to the placement. By imposing additional duties on county social workers, this bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Section 361.2 of the Welfare and Institutions
2 Code, as added by Section 48 of Chapter 773 of the Statutes of
3 2015, is amended to read:

4 361.2. (a) When a court orders removal of a child pursuant to
5 Section 361, the court shall first determine whether there is a parent
6 of the child, with whom the child was not residing at the time that
7 the events or conditions arose that brought the child within the
8 provisions of Section 300, who desires to assume custody of the
9 child. If that parent requests custody, the court shall place the child
10 with the parent unless it finds that placement with that parent would
11 be detrimental to the safety, protection, or physical or emotional
12 well-being of the child. The fact that the parent is enrolled in a
13 certified substance abuse treatment facility that allows a dependent
14 child to reside with his or her parent shall not be, for that reason
15 alone, prima facie evidence that placement with that parent would
16 be detrimental.

17 (b) If the court places the child with that parent it may do any
18 of the following:

19 (1) Order that the parent become legal and physical custodian
20 of the child. The court may also provide reasonable visitation by
21 the noncustodial parent. The court shall then terminate its
22 jurisdiction over the child. The custody order shall continue unless
23 modified by a subsequent order of the superior court. The order
24 of the juvenile court shall be filed in any domestic relation
25 proceeding between the parents.

26 (2) Order that the parent assume custody subject to the
27 jurisdiction of the juvenile court and require that a home visit be
28 conducted within three months. In determining whether to take
29 the action described in this paragraph, the court shall consider any
30 concerns that have been raised by the child's current caregiver
31 regarding the parent. After the social worker conducts the home
32 visit and files his or her report with the court, the court may then
33 take the action described in paragraph (1), (3), or this paragraph.
34 However, nothing in this paragraph shall be interpreted to imply
35 that the court is required to take the action described in this
36 paragraph as a prerequisite to the court taking the action described
37 in either paragraph (1) or (3).

1 (3) Order that the parent assume custody subject to the
2 supervision of the juvenile court. In that case the court may order
3 that reunification services be provided to the parent or guardian
4 from whom the child is being removed, or the court may order that
5 services be provided solely to the parent who is assuming physical
6 custody in order to allow that parent to retain later custody without
7 court supervision, or that services be provided to both parents, in
8 which case the court shall determine, at review hearings held
9 pursuant to Section 366, which parent, if either, shall have custody
10 of the child.

11 (c) The court shall make a finding either in writing or on the
12 record of the basis for its determination under subdivisions (a) and
13 (b).

14 (d) Part 6 (commencing with Section 7950) of Division 12 of
15 the Family Code shall apply to the placement of a child pursuant
16 to paragraphs (1) and (2) of subdivision (e).

17 (e) When the court orders removal pursuant to Section 361, the
18 court shall order the care, custody, control, and conduct of the
19 child to be under the supervision of the social worker who may
20 place the child in any of the following:

21 (1) The home of a noncustodial parent as described in
22 subdivision (a), regardless of the parent's immigration status.

23 (2) The approved home of a relative, regardless of the relative's
24 immigration status.

25 (3) The approved home of a nonrelative extended family
26 member as defined in Section 362.7.

27 (4) The approved home of a resource family as defined in
28 Section 16519.5.

29 (5) A foster home considering first a foster home in which the
30 child has been placed before an interruption in foster care, if that
31 placement is in the best interest of the child and space is available.

32 (6) A home or facility in accordance with the federal Indian
33 Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

34 (7) A suitable licensed community care facility, except a
35 runaway and homeless youth shelter licensed by the State
36 Department of Social Services pursuant to Section 1502.35 of the
37 Health and Safety Code.

38 (8) With a foster family agency, as defined in subdivision (g)
39 of Section 11400 and paragraph (4) of subdivision (a) of Section

1 1502 of the Health and Safety Code, to be placed in a suitable
2 family home certified or approved by the agency.

3 (9) A child of any age who is placed in a community care facility
4 licensed as a group home for children or a short-term residential
5 treatment center, as defined in subdivision (ad) of Section 11400
6 and paragraph (18) of subdivision (a) of Section 1502 of the Health
7 and Safety Code, shall have a case plan that indicates that
8 placement is for purposes of providing short term, specialized, and
9 intensive treatment for the child, the case plan specifies the need
10 for, nature of, and anticipated duration of this treatment, pursuant
11 to paragraph (2) of subdivision (c) of Section 16501.1, and the
12 case plan includes transitioning the child to a less restrictive
13 environment and the projected timeline by which the child will be
14 transitioned to a less restrictive environment. If the placement is
15 longer than six months, the placement shall be documented
16 consistent with paragraph (3) of subdivision (a) of Section 16501.1
17 and shall be approved by the deputy director or director of the
18 county child welfare department.

19 (A) A child under six years of age shall not be placed in a
20 community care facility licensed as a group home for children, or
21 a short-term residential treatment center, except under the following
22 circumstances:

23 (i) When the facility meets the applicable regulations adopted
24 under Section 1530.8 of the Health and Safety Code and standards
25 developed pursuant to Section 11467.1 of this code, and the deputy
26 director or director of the county child welfare department has
27 approved the case plan.

28 (ii) The short term, specialized, and intensive treatment period
29 shall not exceed 120 days, unless the county has made progress
30 toward or is actively working toward implementing the case plan
31 that identifies the services or supports necessary to transition the
32 child to a family setting, circumstances beyond the county's control
33 have prevented the county from obtaining those services or
34 supports within the timeline documented in the case plan, and the
35 need for additional time pursuant to the case plan is documented
36 by the caseworker and approved by a deputy director or director
37 of the county child welfare department.

38 (iii) To the extent that placements pursuant to this paragraph
39 are extended beyond an initial 120 days, the requirements of
40 clauses (i) and (ii) shall apply to each extension. In addition, the

1 deputy director or director of the county child welfare department
2 shall approve the continued placement no less frequently than
3 every 60 days.

4 (iv) In addition, when a case plan indicates that placement is
5 for purposes of providing family reunification services. The facility
6 shall offer family reunification services that meet the needs of the
7 individual child and his or her family, permit parents to have
8 reasonable access to their children 24 hours a day, encourage
9 extensive parental involvement in meeting the daily needs of their
10 children, and employ staff trained to provide family reunification
11 services. In addition, one of the following conditions exists:

12 (I) The child's parent is also under the jurisdiction of the court
13 and resides in the facility.

14 (II) The child's parent is participating in a treatment program
15 affiliated with the facility and the child's placement in the facility
16 facilitates the coordination and provision of reunification services.

17 (III) Placement in the facility is the only alternative that permits
18 the parent to have daily 24-hour access to the child in accordance
19 with the case plan, to participate fully in meeting all of the daily
20 needs of the child, including feeding and personal hygiene, and to
21 have access to necessary reunification services.

22 (B) A child who is 6 to 12 years of age, inclusive, may be placed
23 in a community care facility licensed as a group home for children
24 or a short-term residential treatment center under the following
25 conditions.

26 (i) The short-term, specialized, and intensive treatment period
27 shall not exceed six months, unless the county has made progress
28 or is actively working toward implementing the case plan that
29 identifies the services or supports necessary to transition the child
30 to a family setting, circumstances beyond the county's control
31 have prevented the county from obtaining those services or
32 supports within the timeline documented in the case plan, and the
33 need for additional time pursuant to the case plan is documented
34 by the caseworker and approved by a deputy director or director
35 of the county child welfare department.

36 (ii) To the extent that placements pursuant to this paragraph are
37 extended beyond an initial six months, the requirements of this
38 subparagraph shall apply to each extension. In addition, the deputy
39 director or director of the county child welfare department shall

1 approve the continued placement no less frequently than every 60
2 days.

3 (10) Any child placed in a short-term residential treatment center
4 shall be either of the following:

5 (A) A child who has been assessed as meeting one of the
6 placement requirements set forth in subdivisions (d) and (e) of
7 Section 11462.01.

8 (B) A child under 6 years of age who is placed with his or her
9 minor parent or for the purpose of reunification pursuant to clause
10 (iv) of subparagraph (A) of paragraph (9).

11 (11) Nothing in this subdivision shall be construed to allow a
12 social worker to place any dependent child outside the United
13 States, except as specified in subdivision (f).

14 (f) (1) A child under the supervision of a social worker pursuant
15 to subdivision (e) shall not be placed outside the United States
16 prior to a judicial finding that the placement is in the best interest
17 of the child, except as required by federal law or treaty.

18 (2) The party or agency requesting placement of the child outside
19 the United States shall carry the burden of proof and shall show,
20 by clear and convincing evidence, that placement outside the
21 United States is in the best interest of the child.

22 (3) In determining the best interest of the child, the court shall
23 consider, but not be limited to, the following factors:

24 (A) Placement with a relative.

25 (B) Placement of siblings in the same home.

26 (C) Amount and nature of any contact between the child and
27 the potential guardian or caretaker.

28 (D) Physical and medical needs of the dependent child.

29 (E) Psychological and emotional needs of the dependent child.

30 (F) Social, cultural, and educational needs of the dependent
31 child.

32 (G) Specific desires of any dependent child who is 12 years of
33 age or older.

34 (4) If the court finds that a placement outside the United States
35 is, by clear and convincing evidence, in the best interest of the
36 child, the court may issue an order authorizing the social worker
37 to make a placement outside the United States. A child subject to
38 this subdivision shall not leave the United States prior to the
39 issuance of the order described in this paragraph.

1 (5) For purposes of this subdivision, “outside the United States”
2 shall not include the lands of any federally recognized American
3 Indian tribe or Alaskan Natives.

4 (6) This subdivision shall not apply to the placement of a
5 dependent child with a parent pursuant to subdivision (a).

6 (g) (1) If the child is taken from the physical custody of the
7 child’s parent or guardian and unless the child is placed with
8 relatives, the child shall be placed in foster care in the county of
9 residence of the child’s parent or guardian in order to facilitate
10 reunification of the family.

11 (2) In the event that there are no appropriate placements
12 available in the parent’s or guardian’s county of residence, a
13 placement may be made in an appropriate place in another county,
14 preferably a county located adjacent to the parent’s or guardian’s
15 community of residence.

16 (3) Nothing in this section shall be interpreted as requiring
17 multiple disruptions of the child’s placement corresponding to
18 frequent changes of residence by the parent or guardian. In
19 determining whether the child should be moved, the social worker
20 shall take into consideration the potential harmful effects of
21 disrupting the placement of the child and the parent’s or guardian’s
22 reason for the move.

23 (4) When it has been determined that it is necessary for a child
24 to be placed in a county other than the child’s parent’s or guardian’s
25 county of residence, the specific reason the out-of-county
26 placement is necessary shall be documented in the child’s case
27 plan. If the reason the out-of-county placement is necessary is the
28 lack of resources in the sending county to meet the specific needs
29 of the child, those specific resource needs shall be documented in
30 the case plan.

31 (5) When it has been determined that a child is to be placed out
32 of county either in a group home or with a foster family agency
33 for subsequent placement in a certified foster family home, and
34 the sending county is to maintain responsibility for supervision
35 and visitation of the child, the sending county shall develop a plan
36 of supervision and visitation that specifies the supervision and
37 visitation activities to be performed and specifies that the sending
38 county is responsible for performing those activities. In addition
39 to the plan of supervision and visitation, the sending county shall
40 document information regarding any known or suspected dangerous

1 behavior of the child that indicates the child may pose a safety
2 concern in the receiving county. Upon implementation of the Child
3 Welfare Services Case Management System, the plan of
4 supervision and visitation, as well as information regarding any
5 known or suspected dangerous behavior of the child, shall be made
6 available to the receiving county upon placement of the child in
7 the receiving county. If placement occurs on a weekend or holiday,
8 the information shall be made available to the receiving county on
9 or before the end of the next business day.

10 (6) When it has been determined that a child is to be placed out
11 of county and the sending county plans that the receiving county
12 shall be responsible for the supervision and visitation of the child,
13 the sending county shall develop a formal agreement between the
14 sending and receiving counties. The formal agreement shall specify
15 the supervision and visitation to be provided the child, and shall
16 specify that the receiving county is responsible for providing the
17 supervision and visitation. The formal agreement shall be approved
18 and signed by the sending and receiving counties prior to placement
19 of the child in the receiving county. In addition, upon completion
20 of the case plan, the sending county shall provide a copy of the
21 completed case plan to the receiving county. The case plan shall
22 include information regarding any known or suspected dangerous
23 behavior of the child that indicates the child may pose a safety
24 concern to the receiving county.

25 (h) Whenever the social worker must change the placement of
26 the child and is unable to find a suitable placement within the
27 county and must place the child outside the county, the placement
28 shall not be made until he or she has served written notice on the
29 parent or ~~guardian~~ guardian, the child's attorney, and, if the child
30 is 10 years of age or older, on the child, at least 14 days prior to
31 the placement, unless the child's health or well-being is endangered
32 by delaying the action or would be endangered if prior notice were
33 given. The notice shall state the reasons that require placement
34 outside the county. The *child or* parent or guardian may object to
35 the placement not later than seven days after receipt of the notice
36 and, upon objection, the court shall hold a hearing not later than
37 five days after the objection and prior to the placement. The court
38 shall order out-of-county placement if it finds that the child's
39 particular needs require placement outside the county.

1 (i) If the court has ordered removal of the child from the physical
2 custody of his or her parents pursuant to Section 361, the court
3 shall consider whether the family ties and best interest of the child
4 will be served by granting visitation rights to the child's
5 grandparents. The court shall clearly specify those rights to the
6 social worker.

7 (j) If the court has ordered removal of the child from the physical
8 custody of his or her parents pursuant to Section 361, the court
9 shall consider whether there are any siblings under the court's
10 jurisdiction, or any nondependent siblings in the physical custody
11 of a parent subject to the court's jurisdiction, the nature of the
12 relationship between the child and his or her siblings, the
13 appropriateness of developing or maintaining the sibling
14 relationships pursuant to Section 16002, and the impact of the
15 sibling relationships on the child's placement and planning for
16 legal permanence.

17 (k) (1) An agency shall ensure placement of a child in a home
18 that, to the fullest extent possible, best meets the day-to-day needs
19 of the child. A home that best meets the day-to-day needs of the
20 child shall satisfy all of the following criteria:

21 (A) The child's caregiver is able to meet the day-to-day health,
22 safety, and well-being needs of the child.

23 (B) The child's caregiver is permitted to maintain the least
24 restrictive family setting that promotes normal childhood
25 experiences and that serves the day-to-day needs of the child.

26 (C) The child is permitted to engage in reasonable,
27 age-appropriate day-to-day activities that promote normal
28 childhood experiences for the foster child.

29 (2) The foster child's caregiver shall use a reasonable and
30 prudent parent standard, as defined in paragraph (2) of subdivision
31 (a) of Section 362.04, to determine day-to-day activities that are
32 age appropriate to meet the needs of the child. Nothing in this
33 section shall be construed to permit a child's caregiver to permit
34 the child to engage in day-to-day activities that carry an
35 unreasonable risk of harm, or subject the child to abuse or neglect.

36 (l) This section shall become operative on January 1, 2017.

37 SEC. 2. To the extent that this act has an overall effect of
38 increasing the costs already borne by a local agency for programs
39 or levels of service mandated by the 2011 Realignment Legislation
40 within the meaning of Section 36 of Article XIII of the California

1 Constitution, it shall apply to local agencies only to the extent that
2 the state provides annual funding for the cost increase. Any new
3 program or higher level of service provided by a local agency
4 pursuant to this act above the level for which funding has been
5 provided shall not require a subvention of funds by the state nor
6 otherwise be subject to Section 6 of Article XIII B of the California
7 Constitution.

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