ASSEMBLY BILL No. 2154

Introduced by Assembly Member Kuehl

February 6, 1996

An act to amend Sections 213.5, 304, and 362.4 of the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

AB 2154, as introduced, Kuehl. Juveniles: dependent children: protective orders.

Existing law specifies the circumstances of abuse and neglect under which the juvenile court may adjudge a minor to be a dependent child of the court. Under existing law, the juvenile court is required to hear all issues relating to the custody of a minor who is a dependent child of the court. Existing law authorizes the juvenile court to issue certain restraining orders to any parent, guardian, or member of the minor child's household, and may issue certain protective orders directed to either of the parents of the minor.

This bill would revise and recast these provisions to, among other things, authorize the juvenile court to instead direct protective orders to any parent, guardian, or member of the minor child's household.

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

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

SECTION 1. Section 213.5 of the Welfare and Institutions Code is amended to read:

213.5. (a) ~~During the pendency of any proceeding~~ *After a petition has been filed pursuant to Section 300* to declare a minor child a dependent child of the juvenile court, upon application in the manner provided by Section 527 of the Code of Civil Procedure, the juvenile court may issue ex parte orders (1) enjoining any parent, guardian, or member of the minor child's household from molesting, attacking, striking, sexually assaulting, or battering the minor child or any other minor child in the household; (2) excluding any parent, guardian, or member of the minor child's household from the dwelling of the person who has care, custody, and control of the child upon the same showing as is necessary under the provisions of this chapter relating to dependent children to remove a minor from the custody and control of his or her parents or guardians; and (3) enjoining a parent, guardian, or member of the minor child's household from specified behavior including contacting, threatening, or disturbing the peace of the minor, which the court determines is necessary to effectuate orders under paragraph (1) or (2). In the case in which a temporary restraining order is granted without notice, the matter shall be made returnable on an order requiring cause to be shown why the order should not be granted, on the earliest day that the business of the court will permit, but not later than 15 days or, if good cause appears to the court, 20 days from the date the temporary restraining order is granted. The court may, on the motion of the person seeking the restraining order, or on its own motion, shorten the time for service on the person to be restrained of the order to show cause. Any hearing pursuant to this statute may be held simultaneously with the regularly scheduled hearings held in proceedings to declare a minor a dependent child of the juvenile court pursuant to Section 300.

(b) The juvenile court may issue, upon notice and a hearing, any of the orders set forth in subdivision (a). Any restraining order granted pursuant to this subdivision shall remain in effect, in the discretion of the court, not to exceed one year, unless otherwise terminated by the court, extended by mutual consent of all parties to the restraining order, or extended by further order of the court on the motion of any party to the restraining order.

(c) The juvenile court may issue an order made pursuant to subdivision (a) or (b) excluding a person from a residence or dwelling only when the evidence affirmatively shows facts sufficient for the court to ascertain that the person seeking the order has a right under color of law to possession of the premises.

In the case of the issuance of an ex parte order, the affidavit in support of the application for the order shall affirmatively show facts sufficient for the court to ascertain that the person seeking the order has a right under color of law to possession of the premises.

(d) Any order issued pursuant to subdivision (a) or (b) shall state on its face the date of expiration of the order.

(e) The juvenile court shall order any designated person or attorney to mail a copy of any order, or extension, modification, or termination thereof, granted pursuant to subdivision (a) or (b), by the close of the business day on which the order, extension, modification, or termination was granted, and any subsequent proof of service thereof, to each local law enforcement agency designated by the person seeking the restraining order or his or her attorney having jurisdiction over the residence of the person who has care, custody, and control of the minor child and such other locations where the court determines that acts of domestic violence or abuse against the minor child or children are likely to occur. Each appropriate law enforcement agency shall make available through an existing system for verification, information as to the existence, terms, and current status of any order issued pursuant to subdivision (a) or (b) to any law enforcement officer responding to the scene of reported domestic violence or abuse.

(f) Any willful and knowing violation of any order granted pursuant to subdivision (a) or (b) shall be a misdemeanor punishable under Section 273.6 of the Penal Code.

SEC. 2. Section 304 of the Welfare and Institutions Code is amended to read:

304. ~~When a minor has been adjudged a dependent child of the juvenile court pursuant to subdivision (c) of Section 360~~ *After a juvenile court has made a finding that a child is a person described in Section 300*, no other division of any superior court may hear proceedings pursuant to Part 2 (commencing with Section 3020) of Division 8 of the Family Code regarding the custody of the minor. While the ~~minor is a dependent~~ child *is under the jurisdiction* of the *juvenile* court all issues regarding his or her custody shall be heard by the juvenile court. In deciding issues between the parents or between a parent and a guardian regarding custody of a minor who has been adjudicated a dependent of the juvenile court, the juvenile court may review any records that would be available to the domestic relations division of a superior court hearing such a matter. The juvenile court, on its own motion, may issue an order directed to ~~either of the parents~~ *any parent, guardian, or member of the minor child's household* enjoining any action described in Section 6218 of the Family Code. The Judicial Council shall adopt forms for these restraining orders. These form orders shall not be confidential and shall be enforceable in the same manner as any other order issued pursuant to Division 10 (commencing with Section 6200) of the Family Code.

This section shall not be construed to divest the domestic relations division of a superior court from hearing any issues regarding the custody of a minor when that minor is no longer a dependent of the juvenile court.

SEC. 3. Section 362.4 of the Welfare and Institutions Code is amended to read:

362.4. When the juvenile court terminates its jurisdiction over a minor who has been adjudged a dependent child of the juvenile court prior to the minor's

attainment of the age of 18 years, and proceedings for dissolution of marriage, for nullity of marriage, or for legal separation, of the minor's parents, or proceedings to establish the paternity of the minor child brought under the Uniform Parentage Act, Part 3 (commencing with Section 7600) of Division 12 of the Family Code, are pending in the superior court of any county, or an order has been entered with regard to the custody of that minor, the juvenile court on its own motion, may issue a protective order, as defined in Section 6218, directed to ~~either of the parents~~ *any parent, guardian, or member of the minor child's household* and an order determining the custody of, or visitation with, the child.

Any order issued pursuant to this section shall continue until modified or terminated by a subsequent order of the superior court. The order of the juvenile court shall be filed in the proceeding for nullity, dissolution, or legal separation, or in the proceeding to establish paternity, at the time the juvenile court terminates its jurisdiction over the minor, and shall become a part thereof.

If no action is filed or pending relating to the custody of the minor in the superior court of any county, the juvenile court order may be used as the sole basis for opening a file in the superior court of the county in which the parent, who has been given custody, resides. The court may direct the parent or the clerk of the juvenile court to transmit the order to the clerk of the superior court of the county in which the order is to be filed. The clerk of the superior court shall, immediately upon receipt, open a file, without a filing fee, and assign a case number.

The clerk of the superior court shall, upon the filing of any juvenile court custody order, send by first-class mail a copy of the order with the case number to the juvenile court and to the parents at the address listed on the order.

The Judicial Council shall adopt forms for any custody or restraining order issued under this section. These form orders shall not be confidential.

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