ASSEMBLY BILL No. 2647

Introduced by Assembly Member Kuehl

February 21, 1996

An act to amend Section 6380 of the Family Code, to amend Section 273.6 of the Penal Code, to amend Sections 202, 213.5, 245.5, 280, 300, 304, 361, 362, 362.1, and 362.4 of, and to add Sections 218.5, 16500.3, and 16500.4 to, the Welfare and Institutions Code, relating to domestic violence.

LEGISLATIVE COUNSEL'S DIGEST

AB 2647, as introduced, Kuehl. Domestic violence: custody: protective orders.

Existing law sets forth the purposes and intent of laws relating to dependent children of the juvenile court, including, among other things, the protection and safety of the public and of each minor under the jurisdiction of the juvenile court. Existing law requires that reunification of the minor with his or her family be a primary objective, and states the intent of the Legislature to provide maximum protection for abused children.

This bill would revise the reunification requirement to provide that the emphasis be on reunification of the nonviolent members of the family only. This bill would also state the intent that the protection for abused children shall also include protection of a victim-parent from domestic violence so that victim-parent can safeguard the child.

Existing law sets forth descriptions of children who come within the jurisdiction of the juvenile court and who may be

adjudged to be a dependent child of the court. These children include, among others, minors who have suffered, or for whom there is a substantial risk of suffering, serious physical harm or illness as a result of the parent or guardian's conduct, as described, and minors who have been left without any provision for support.

This bill would prohibit the removal of these minor children from a nonviolent parent or guardian on the basis of being left without provision for support, solely because that nonviolent parent or guardian fled from, or was abused by, an abusive household member; or on the basis of a danger to the physical health of the child, solely because the nonviolent parent failed to protect the minor from an abuser when the nonviolent parent was also a victim of the abuser; or on the basis of specified sexual or physical abuse, where the nonviolent parent or guardian has been a victim of abuse from that same household member, if the nonviolent parent or guardian presents a plan to keep the child from future harm.

Existing law authorizes the court to issue ex parte orders excluding a parent, guardian, or other member of the minor child's household from the residence or dwelling of the person who has the care, custody, and control of the child upon the same showing as is necessary to remove the minor from the custody and control of his or her parents or guardians, and only when the evidence shows the person seeking the order has a lawful right to possession of the premises.

This bill would delete the requirements that the same showing be made, and that the evidence show the petitioner has a lawful right to the premises, and would instead authorize the issuance of those orders for the period of time and on the conditions the court determines.

Existing law authorizes the juvenile court to issue orders to the parents or guardians of a child as the court deems necessary for the best interests of the minor child, including, among other things, orders concerning the care, supervision, and maintenance of the minor, and orders to appear before a county financial evaluation officer.

This bill would further authorize the court, in certain circumstances, to order a battering parent to participate in a

treatment program established under unspecified provisions of law.

Existing law requires any order placing a minor in foster care and ordering reunification services to include certain terms, including visitation between the parent or guardian and the minor, subject to certain limitations.

This bill would prohibit any visitation order from jeopardizing the safety of the minor child or either parent, and would require that the court follow certain procedures relating to protection of confidential addresses and provision of 3rd-party supervision.

Existing law requires the probation officer to be present in court to represent the interest of each person who is the subject of a petition to declare that person a ward or dependent child of the court, and to prepare a described social study for every hearing on the disposition of those cases.

This bill would require the State Department of Social Services to develop written procedures for screening each referral relating to the abuse or neglect of a child to assess whether abuse of another family or household member is occurring. This bill would further require that the above-described social study prepared by the probation officer include the assessment relating to whether abuse of other family or household members is also occurring.

This bill would require the State Department of Social Services to develop, no later than July 1, 1997, a 20-hour training program on domestic violence. This bill would require that certain workers who screen referrals for child abuse and all social workers assigned to provide child welfare services to receive this training within certain time periods. This bill would also require all counsel who perform duties relating to dependent children to participate in the training on domestic violence.

Existing law requires each county to develop a procedure, by July 1, 1996, to electronically transmit certain data relating to domestic violence protective orders to the Department of Justice.

This bill would include the issuance of certain restraining and protective orders relating to prevention of abuse of children under the jurisdiction of the juvenile court within

these electronic transmission requirements. By requiring counties to transmit this additional information to the Department of Justice, this bill would impose a state-mandated local program.

Under existing law intentional and knowing violation of certain protective orders is a misdemeanor.

This bill would include violation of restraining and protective orders relating to prevention of abuse of children under the jurisdiction of the juvenile court within the protective orders subject to that misdemeanor, thereby imposing a state-mandated local program by changing the definition of a crime.

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, for certain costs, no reimbursement is required by this act for specified reasons.

Moreover, this bill would provide that, if the Commission on State Mandates determines that this bill contains other costs mandated by the state, reimbursement for those costs shall be made pursuant to those statutory procedures and, if the statewide cost does not exceed $1,000,000, shall be made from the State Mandates Claims Fund.

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

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

SECTION 1. Section 6380 of the Family Code is amended to read:

6380. (a) Each county, with the approval of the Department of Justice, shall, by July 1, 1996, develop a procedure, using existing systems, for the electronic transmission of data, as described in subdivision (b), to the Department of Justice. The data shall be electronically transmitted through the California Law Enforcement Telecommunications System (CLETS) of the Department of Justice by law enforcement personnel, or with the approval of the Department of Justice, court

personnel or another appropriate agency capable of maintaining and preserving the integrity of both the CLETS and the Domestic Violence Protective Order Registry, as described in subdivision (e). Data entry is required to be entered only once under the requirements of this section, unless the order is served at a later time. A portion of all fees payable to the Department of Justice under subdivision (e) of Section 1203.097 of the Penal Code for the entry of the information required under this section, based upon the proportion of the costs incurred by the local agency and those incurred by the Department of Justice, shall be transferred to the local agency actually providing the data.

(b) Upon the issuance of a protective order to which this division applies pursuant to Section 6221, or the issuance of a temporary restraining order or injunction relating to domestic violence pursuant to Section 527.8 of the Code of Civil Procedure, or the issuance of a criminal court protective order under subdivision (g) of Section 136.2 of the Penal Code, *or the issuance of a juvenile court restraining order related to domestic violence pursuant to Sections 213.5, 304, or 362.4 of the Welfare and Institutions Code,* or upon registration with the court clerk of a domestic violence protective order issued by the court of another state, and including any of the foregoing orders issued in connection with an order for modification of a custody or visitation order issued pursuant to a dissolution, legal separation, nullity, or paternity proceeding the Department of Justice shall be immediately notified of the contents of the order and the following information:

(1) The name, race, date of birth, and other personal descriptive information of the respondent as required by a form prescribed by the Department of Justice.

(2) The names of the protected persons.

(3) The date of issuance of the order.

(4) The duration or expiration date of the order.

(5) The terms and conditions of the protective order, including stay-away, no-contact, residency exclusion, custody, and visitation provisions of the order.

(6) The department or division number and the address of the court.

(7) Whether or not the order was served upon the respondent.

All available information shall be included; however, the inability to provide all categories of information shall not delay the entry of the information available.

(c) The information conveyed to the Department of Justice shall also indicate whether the respondent was present in court to be informed of the contents of the court order. The respondent's presence in court shall provide proof of service of notice of the terms of the protective order. The respondent's failure to appear shall also be included in the information provided to the Department of Justice.

(d) Immediately upon receipt of proof of service the clerk of the court, and immediately after service any law enforcement officer who served the protective order, shall notify the Department of Justice, by electronic transmission, of the service of the protective order, including the name of the person who served the order and, if that person is a law enforcement officer, the law enforcement agency.

(e) The Department of Justice shall maintain a Domestic Violence Protective Order Registry and shall make available to court clerks and law enforcement personnel, through computer access, all information regarding the protective and restraining orders and injunctions described in subdivision (b), whether or not served upon the respondent.

(f) If a court issues a modification, extension, or termination of a protective order, the transmitting agency for the county shall immediately notify the Department of Justice, by electronic transmission, of the terms of the modification, extension, or termination.

(g) The Judicial Council shall assist local courts charged with the responsibility for issuing protective orders by developing informational packets describing the general procedures for obtaining a domestic violence restraining order and indicating the appropriate Judicial

Council forms, and shall include a design, which local courts shall complete, which describes local court procedures and maps to enable applicants to locate filing windows and appropriate courts. The court clerk shall provide a fee waiver form to all applicants for domestic violence protective orders. The court clerk shall provide all Judicial Council forms required by this chapter to applicants free of charge.

(h) For the purposes of this part, ‘‘electronic transmission’’ shall include computer access through the California Law Enforcement Telecommunications System (CLETS).

SEC. 2. Section 273.6 of the Penal Code is amended to read:

273.6. (a) Any intentional and knowing violation of a protective order, as defined in Section 6218 of the Family Code, or of an order issued pursuant to Section 527.6 or 527.8 of the Code of Civil Procedure*, or of an order issued pursuant to Section 213.5, 304, or 362.4 of the Welfare and Institutions Code* is a misdemeanor punishable by a fine of not more than one thousand dollars ($1,000), or by imprisonment in a county jail for not more than one year, or by both the fine and imprisonment.

(b) In the event of a violation of subdivision (a) which results in physical injury, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than 30 days nor more than one year, or by both the fine and imprisonment. However, if the person is imprisoned in a county jail for at least 48 hours, the court may, in the interests of justice and for reasons stated on the record, reduce or eliminate the 30-day minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether

the defendant has successfully completed or is making progress with counseling.

(c) Subdivisions (a) and (b) shall apply to the following court orders:

(1) An order enjoining any party from molesting, attacking, striking, threatening, sexually assaulting, battering, harassing, contacting repeatedly by mail with the intent to harass, or disturbing the peace of the other party, or other named family and household members.

(2) An order excluding one party from the family dwelling or from the dwelling of the other.

(3) An order enjoining a party from specified behavior which the court determined was necessary to effectuate the order under subdivision (a).

(d) A subsequent conviction for a violation of an order described in subdivision (a), occurring within seven years of a prior conviction for a violation of an order described in subdivision (a) and involving an act of violence or ‘‘a credible threat’’ of violence, as defined in subdivision (c) of Section 139, is punishable by imprisonment in a county jail not to exceed one year, or in the state prison.

(e) In the event of a subsequent conviction for a violation of an order described in subdivision (a) for an act occurring within one year of a prior conviction for a violation of an order described in subdivision (a) which results in physical injury to the same victim, the person shall be punished by a fine of not more than two thousand dollars ($2,000), or by imprisonment in a county jail for not less than six months nor more than one year, by both that fine and imprisonment, or by imprisonment in the state prison. However, if the person is imprisoned in a county jail for at least 30 days, the court may, in the interests of justice and for reasons stated in the record, reduce or eliminate the six-month minimum imprisonment required by this subdivision. In determining whether to reduce or eliminate the minimum imprisonment pursuant to this subdivision, the court shall consider the seriousness of the facts before the court, whether there are additional allegations of a

violation of the order during the pendency of the case before the court, the probability of future violations, the safety of the victim, and whether the defendant has successfully completed or is making progress with counseling.

(f) The prosecuting agency of each county shall have the primary responsibility for the enforcement of orders issued pursuant to subdivisions (a), (b), (d), and (e).

(g) The court may order a person convicted under this section to undergo counseling, and, if appropriate, to complete a batterer's treatment program.

(h) If probation is granted upon conviction of a violation of subdivision (a), (b), or (c), the conditions of probation may include, in lieu of a fine, one or both of the following requirements:

(1) That the defendant make payments to a battered women's shelter, up to a maximum of five thousand dollars ($5,000), pursuant to Section 1203.097.

(2) That the defendant reimburse the victim for reasonable costs of counseling and other reasonable expenses that the court finds are the direct result of the defendant's offense.

(i) For any order to pay a fine, make payments to a battered women's shelter, or pay restitution as a condition of probation under subdivision (e), the court shall make a determination of the defendant's ability to pay. In no event shall any order to make payments to a battered women's shelter be made if it would impair the ability of the defendant to pay direct restitution to the victim or court ordered child support. Where the injury to a married person is caused in whole or in part by the criminal acts of his or her spouse in violation of this section, the community property may not be used to discharge the liability of the offending spouse for restitution to the injured spouse, required by Section 1203.04, or to a shelter for costs with regard to the injured spouse and dependents, required by this section, until all separate property of the offending spouse is exhausted.

SEC. 3. Section 202 of the Welfare and Institutions Code is amended to read:

202. (a) The purpose of this chapter is to provide for the protection and safety of the public and each minor under the jurisdiction of the juvenile court and to preserve and strengthen the minor's family ties whenever possible, removing the minor from the custody of his or her parents only when necessary for his or her welfare or for the safety and protection of the public. When removal of a minor is determined by the juvenile court to be necessary, reunification of the minor with his or her family shall be a primary objective, *with an emphasis on reunification of the nonviolent members of the family only.* When the minor is removed from his or her own family, it is the purpose of this chapter to secure for the minor custody, care, and discipline as nearly as possible equivalent to that which should have been given by his or her parents. This chapter shall be liberally construed to carry out these purposes.

(b) Minors under the jurisdiction of the juvenile court who are in need of protective services shall receive care, treatment and guidance consistent with their best interest and the best interest of the public. Minors under the jurisdiction of the juvenile court as a consequence of delinquent conduct shall, in conformity with the interests of public safety and protection, receive care, treatment and guidance which is consistent with their best interest, which holds them accountable for their behavior, and which is appropriate for their circumstances. This guidance may include punishment that is consistent with the rehabilitative objectives of this chapter. If a minor has been removed from the custody of his or her parents, family preservation and family reunification, *with an emphasis on reunification of the nonviolent members of the family only,* are appropriate goals for the juvenile court to consider when determining the disposition of a minor under the jurisdiction of the juvenile court as a consequence of delinquent conduct when those goals are consistent with his or her best interests and the best interests of the public.

(c) It is also the purpose of this chapter to reaffirm that the duty of a parent to support and maintain a minor child

continues, subject to the financial ability of the parent to pay, during any period in which the minor may be declared a ward of the court and removed from the custody of the parent.

(d) Juvenile courts and other public agencies charged with enforcing, interpreting, and administering the juvenile court law shall consider the safety and protection of the public and the best interests of the minor in all deliberations pursuant to this chapter. Participants in the juvenile justice system shall hold themselves accountable for its results. They shall act in conformity with a comprehensive set of objectives established to improve system performance in a vigorous and ongoing manner.

(e) As used in this chapter, ‘‘punishment’’ means the imposition of sanctions which include the following:

(1) Payment of a fine by the minor.

(2) Rendering of compulsory service without compensation performed for the benefit of the community by the minor.

(3) Limitations on the minor’s liberty imposed as a condition of probation or parole.

(4) Commitment of the minor to a local detention or treatment facility, such as a juvenile hall, camp, or ranch.

(5) Commitment of the minor to the Department of the Youth Authority.

‘‘Punishment,’’ for the purposes of this chapter, does not include retribution.

SEC. 4. 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~~. *Such an order may be issued for the period of time and on the conditions the court determines, regardless of which party holds legal or equitable title or is the lessee of the residence or dwelling.*

(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. 5. Section 218.5 is added to the Welfare and Institutions Code, to read:

218.5. All counsel performing duties under this chapter, including, but not limited to, county counsel, court appointed counsel, or volunteer counsel, shall participate in mandatory training on domestic violence. The training shall meet the requirements of Section 16500.3.

SEC. 6. Section 245.5 of the Welfare and Institutions Code is amended to read:

245.5. In addition to all other powers granted by law, the juvenile court may direct all such orders to the parent, parents, or guardian of a minor who is subject to any proceedings under this chapter as the court deems necessary and proper for the best interests of or for the rehabilitation of the minor. These orders may concern the care, supervision, custody, conduct, maintenance, and support of the minor, including education and medical treatment. *When a finding has been made that a child is in need of services because the child is or has been in a violent home, the juvenile court shall order the battering parent, guardian, or other person living in the child's home to participate in a batterer's treatment program that meets the requirements of Section ____ of the Penal Code.*

SEC. 7. Section 280 of the Welfare and Institutions Code is amended to read:

280. Except where waived by the probation officer, judge, or referee and the minor, the probation officer shall be present in court to represent the interests of each person who is the subject of a petition to declare that person to be a ward or dependent child upon all hearings or rehearings of his or her case, and shall furnish to the court such information and assistance as the court may require. If so ordered, the probation officer shall take charge of that person before and after any hearing or rehearing.

It shall be the duty of the probation officer to prepare for every hearing on the disposition of a case as provided by Section 356, 358, 358.1, 361.5, 364, 366, 366.2, or 366.21 as is appropriate for the specific hearing, or, for a hearing as provided by Section 702, a social study of the minor, containing such matters as may be relevant to a proper disposition of the case. The social study shall include a recommendation for the disposition of the case.

In cases where the minor has allegedly been abused or neglected, the social study shall include an assessment of whether abuse of another family or household member is

also occurring. That assessment shall include, but not be limited to, the requirements set forth in Section 16500.4.

SEC. 8. Section 300 of the Welfare and Institutions Code is amended to read:

300. Any minor who comes within any of the following descriptions is within the jurisdiction of the juvenile court which may adjudge that person to be a dependent child of the court:

(a) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm inflicted nonaccidentally upon the minor by the minor's parent or guardian. For the purposes of this subdivision, a court may find there is a substantial risk of serious future injury based on the manner in which a less serious injury was inflicted, a history of repeated inflictions of injuries on the minor or the minor's siblings, or a combination of these and other actions by the parent or guardian which indicate the child is at risk of serious physical harm. For purposes of this subdivision, ''serious physical harm'' does not include reasonable and age-appropriate spanking to the buttocks where there is no evidence of serious physical injury.

(b) The minor has suffered, or there is a substantial risk that the minor will suffer, serious physical harm or illness, as a result of the failure or inability of his or her parent or guardian to adequately supervise or protect the minor, or the willful or negligent failure of the minor's parent or guardian to adequately supervise or protect the minor from the conduct of the custodian with whom the minor has been left, or by the willful or negligent failure of the parent or guardian to provide the minor with adequate food, clothing, shelter, or medical treatment, or by the inability of the parent or guardian to provide regular care for the minor due to the parent's or guardian's mental illness, developmental disability, or substance abuse. No minor shall be found to be a person described by this subdivision solely due to the lack of an emergency shelter for the family. *Whenever it is alleged that a minor comes within the jurisdiction of the court on the basis that a parent or guardian has failed to protect the*

minor from physical harm stemming from conduct of another household member, or pursuant to subdivisions (d), (e), (i), or (j), and where the nonviolent parent or guardian has been a victim of abuse by that same household member, the court shall not remove the minor from the custody of the nonviolent parent or guardian when that parent or guardian presents a plan to keep the child from future harm. Whenever it is alleged that a minor comes within the jurisdiction of the court on the basis of the parent's or guardian's willful failure to provide adequate medical treatment or specific decision to provide spiritual treatment through prayer, the court shall give deference to the parent's or guardian's medical treatment, nontreatment, or spiritual treatment through prayer alone in accordance with the tenets and practices of a recognized church or religious denomination, by an accredited practitioner thereof, and shall not assume jurisdiction unless necessary to protect the minor from suffering serious physical harm or illness. In making its determination, the court shall consider (1) the nature of the treatment proposed by the parent or guardian (2) the risks to the minor posed by the course of treatment or nontreatment proposed by the parent or guardian (3) the risk, if any, of the course of treatment being proposed by the petitioning agency, and (4) the likely success of the courses of treatment or nontreatment proposed by the parent or guardian and agency. The minor shall continue to be a dependent child pursuant to this subdivision only so long as is necessary to protect the minor from risk of suffering serious physical harm or illness.

(c) The minor is suffering serious emotional damage, or is at substantial risk of suffering serious emotional damage, evidenced by severe anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, as a result of the conduct of the parent or guardian or who has no parent or guardian capable of providing appropriate care. No minor shall be found to be a person described by this subdivision if the willful failure of the parent or guardian to provide adequate mental health treatment is based on a sincerely held religious

belief and if a less intrusive judicial intervention is available.

(d) The minor has been sexually abused, or there is a substantial risk that the minor will be sexually abused, as defined in Section 11165.1 of the Penal Code, by his or her parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from sexual abuse when the parent or guardian knew or reasonably should have known that the minor was in danger of sexual abuse.

(e) The minor is under the age of five and has suffered severe physical abuse by a parent, or by any person known by the parent, if the parent knew or reasonably should have known that the person was physically abusing the minor. For the purposes of this subdivision, ‘‘severe physical abuse’’ means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or more than one act of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness; or the willful, prolonged failure to provide adequate food. A minor may not be removed from the physical custody of his or her parent or guardian on the basis of a finding of severe physical abuse unless the probation officer has made an allegation of severe physical abuse pursuant to Section 332.

(f) The minor’s parent or guardian has been convicted of causing the death of another child through abuse or neglect.

(g) The minor has been left without any provision for support; the minor’s parent has been incarcerated or institutionalized and cannot arrange for the care of the minor; or a relative or other adult custodian with whom the child resides or has been left is unwilling or unable to provide care or support for the child, the whereabouts of the parent is unknown, and reasonable efforts to locate

the parent have been unsuccessful. *No minor shall be removed from the custody of a nonviolent parent or guardian solely because the nonviolent parent or guardian fled from, or was abused by, an abusive household member.*

(h) The minor has been freed for adoption from one or both parents for 12 months by either relinquishment or termination of parental rights or an adoption petition has not been granted.

(i) The minor has been subjected to an act or acts of cruelty by the parent or guardian or a member of his or her household, or the parent or guardian has failed to adequately protect the minor from an act or acts of cruelty when the parent or guardian knew or reasonably should have known that the minor was in danger of being subjected to an act or acts of cruelty.

(j) The minor's sibling has been abused or neglected, as defined in subdivision (a), (b), (d), (e), or (i), and there is a substantial risk that the minor will be abused or neglected, as defined in those subdivisions. The court shall consider the circumstances surrounding the abuse or neglect of the sibling, the age and gender of each child, the nature of the abuse or neglect of the sibling, the mental condition of the parent or guardian, and any other factors the court considers probative in determining whether there is a substantial risk to the minor.

It is the intent of the Legislature in enacting this section to provide maximum protection for children who are currently being physically, sexually, or emotionally abused, being neglected, or being exploited, and to protect children who are at risk of that harm. This protection includes provision of a full array of social and health services to help the child and family and to prevent reabuse of children. *That protection shall include protection of a victim-parent from domestic violence so that the victim-parent can better safeguard the child from violent acts and exposure to violent acts, violent threats, and conflict since children who witness domestic violence suffer lasting effects and continue the cycle of abuse.* That protection shall focus on the preservation of

the family whenever possible. Nothing in this section is intended to disrupt the family unnecessarily or to intrude inappropriately into family life, to prohibit the use of reasonable methods of parental discipline, or to prescribe a particular method of parenting. Further, nothing in this section is intended to limit the offering of voluntary services to those families in need of assistance but who do not come within the descriptions of this section. To the extent that savings accrue to the state from child welfare services funding obtained as a result of the enactment of the act that enacted this section, those savings shall be used to promote services which support family maintenance and family reunification plans, such as client transportation, out-of-home respite care, parenting training, and the provision of temporary or emergency in-home caretakers and persons teaching and demonstrating homemaking skills. The Legislature further declares that a physical disability, such as blindness or deafness, is no bar to the raising of happy and well-adjusted children and that a court's determination pursuant to this section shall center upon whether a parent's disability prevents him or her from exercising care and control.

As used in this section ''guardian'' means the legal guardian of the child.

SEC. 9. 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 of the court~~ *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. 10. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all such limitations. Any limitation on the right of the parent or guardian to make educational decisions for the child shall be specifically addressed in the court order. The limitations shall not exceed those necessary to protect the child.

(b) No dependent child shall be taken from the physical custody of his or her parents or guardian or guardians with whom the child resides at the time the petition was initiated unless the juvenile court finds clear and convincing evidence of any of the following:

(1) There is a substantial danger to the physical health of the minor or would be if the minor was returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody. The fact that a minor has been adjudicated a dependent child of the court pursuant to subdivision (e)

of Section 300 shall constitute prima facie evidence that the minor cannot be safely left in the custody of the parent or guardian with whom the minor resided at the time of injury. *However, no minor shall be removed from the custody of a nonviolent parent or guardian solely because the nonviolent parent or guardian failed to protect the minor from an abuser when the nonviolent parent or guardian was also a victim of the same abuser.*

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.25 or 366.26, the minor may be declared permanently free from their custody and control.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the physical custody of his or her parent or guardian.

(4) The minor or a sibling of the minor has been sexually abused, or is deemed to be at substantial risk of being sexually abused, by a parent, guardian, or member of his or her household, or other person known to his or her parent, and there are no reasonable means by which the minor can be protected from further sexual abuse or a substantial risk of sexual abuse without removing the minor from his or her parent or guardian, or the minor does not wish to return to his or her parent or guardian.

(5) The minor has been left without any provision for his or her support, or a parent who has been incarcerated or institutionalized cannot arrange for the care of the minor, or a relative or other adult custodian with whom the child has been left by the parent is unwilling or unable to provide care or support for the child and the whereabouts of the parent is unknown and reasonable efforts to locate him or her have been unsuccessful.

(c) The court shall make a determination as to whether reasonable efforts were made to prevent or to

eliminate the need for removal of the minor from his or her home or, if the minor is removed for one of the reasons stated in paragraph (5) of subdivision (b), whether it was reasonable under the circumstances not to make any such efforts. The court shall state the facts on which the decision to remove the minor is based.

(d) The court shall make all of the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parents or guardians and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

SEC. 11. Section 362 of the Welfare and Institutions Code is amended to read:

362. (a) When a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may make any and all reasonable orders for the care, supervision, custody, conduct, maintenance, and support of the minor, including medical treatment, subject to further order of the court. To facilitate coordination and cooperation among government agencies, the court may, after giving notice and an opportunity to be heard, join in the juvenile court proceedings any agency that the court determines has failed to meet a legal obligation to provide services to the minor. In any proceeding in which an agency is joined, the court shall not impose duties upon the agency beyond those mandated by law. Nothing in this section shall prohibit agencies which have received notice of the hearing on joinder from meeting prior to the hearing to coordinate services for the minor.

The court has no authority to order services unless it has been determined through the administrative process of an agency that has been joined as a party, that the minor is eligible for those services. With respect to mental health assessment, treatment, and case management services pursuant to Chapter 26.5 (commencing with Section 7570) of Division 7 of Title 1 of the Government

Code, the court's determination shall be limited to whether the agency has complied with that chapter.

(b) When a minor is adjudged a dependent child of the court, on the ground that the minor is a person described by Section 300 and the court orders that a parent or guardian shall retain custody of the minor subject to the supervision of the probation officer, the parents or guardians shall be required to participate in child welfare services or services provided by an appropriate agency designated by the court.

(c) The juvenile court may direct any and all reasonable orders to the parents or guardians of the minor who is the subject of any proceedings under this chapter as the court deems necessary and proper to carry out the provisions of this section, including orders to appear before a county financial evaluation officer*, or in cases of domestic or family violence, orders to require the perpetrator to successfully complete a batterer's treatment program as described in Section ____ of the Penal Code*. Such an order may include a direction to participate in a counseling or education program, including, but not limited to, a parent education and parenting program operated by a community college, school district, or other appropriate agency designated by the court. A foster parent or relative with whom the minor is placed may be directed to participate in such a program in cases in which the court deems participation is appropriate and in the child's best interest. The program in which a parent or guardian is required to participate shall be designed to eliminate those conditions that led to the court's finding that the minor is a person described by Section 300.

SEC. 12. Section 362.1 of the Welfare and Institutions Code is amended to read:

362.1. In order to maintain ties between the parent or guardian and any siblings and the minor, and to provide information relevant to deciding if, and when, to return a minor to the custody of his or her parent or guardian, or to encourage or suspend sibling interaction, any order

placing a minor in foster care, and ordering reunification services, shall provide as follows:

(a) For visitation between the parent or guardian and the minor. Visitation shall be as frequent as possible, consistent with the well-being of the minor. *No visitation order shall jeopardize the safety of the minor child or of either parent. To protect the safety of the minor or parent when one parent has abused the other parent, the court shall follow the procedures set forth in Section 6225 and subdivision (b) and (c) of Section 6323 of the Family Code to protect confidential addresses and to provide third-party supervision.*

(b) For visitation between the minor and any siblings, or for the suspension of interaction between the minor and any siblings, pursuant to subdivision (b) of Section 16002, if the court notes in the order the reasons for its determination that sibling interaction is detrimental to the minor.

SEC. 13. 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.

SEC. 14. Section 16500.3 is added to the Welfare and Institutions Code, to read:

16500.3. (a) Not later than July 1, 1997, the department shall develop a 20-hour training program on domestic violence for all workers who screen referrals for child abuse or neglect, and for all social workers assigned to provide child welfare services, family reunification services, or other services to a dependent child of the juvenile court. New workers shall receive this training within the first month of their employment. Current workers shall receive this training within six months of the development of the training program by the department.

(b) The training program shall be developed in consultation with domestic violence victims' advocates, and other public and private agencies that provide programs for victims of domestic violence or programs of intervention for perpetrators.

(c) The training program shall include, but is not limited to, all of the following topics:

(1) The nature, extent, and causes of domestic violence.

(2) Practices designed to promote safety of the victim and other family and household members, including safety plans, and the procedures for obtaining restraining orders through the local court.

(3) Resources available for victims and perpetrators of domestic violence.

(4) Sensitivity to cultural, racial, gender, and sexual issues.

(5) The lethality of domestic violence.

(6) Effects of domestic violence on children.

(7) The propensity of domestic violence batterers to turn abuse towards the child of the household.

SEC. 15. Section 16500.4 is added to the Welfare and Institutions Code, to read:

16500.4. (a) The department shall develop written procedures for screening each referral relating to the abuse or neglect of a child to assess whether abuse of another family or household member is also occurring. The assessment shall include, but not be limited to:

(1) Inquiry concerning the criminal record of the parents, and of the alleged abusive or neglectful person or the alleged perpetrator of domestic or family violence if that person is not a parent of the child. For purposes of this paragraph ‘‘criminal record’’ shall include probation and parole reports.

(2) Inquiry concerning the existence of orders for protection issued to either parent, domestic violence incident reports, emergency protective orders, temporary restraining orders, and all orders listed in the Domestic Violence Protective Order Registry.

(3) Separate assessment interviews with each parent, if assessment interviews are conducted.

(b) If it is determined in an investigation of abuse or neglect that the child or another family or household member is in danger of domestic or family violence, and that removal of one of the parties is necessary to prevent

the abuse or neglect of the child, the administrator shall seek the removal of the alleged perpetrator of domestic or family violence whenever possible.

(c) If it is determined in an investigation of abuse or neglect of a child that a parent of the child is a victim of domestic or family violence, appropriate domestic violence services shall be offered to the victimized parent, and the provision of those services shall not be contingent upon a finding that either parent is at fault or has failed to protect the child.

SEC. 16. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution as a result of costs that may be incurred by a local agency or school district because this act creates a new crime or infraction, changes the penalty for a crime or infraction, or eliminates a crime or infraction.

Moreover, notwithstanding Section 17610 of the Government Code, if the Commission on State Mandates determines that this act contains other costs mandated by the state, reimbursement to local agencies and school districts for those costs shall be made pursuant to Part 7 (commencing with Section 17500) of Division 4 of Title 2 of the Government Code. If the statewide cost of the claim for reimbursement does not exceed one million dollars ($1,000,000), reimbursement shall be made from the State Mandates Claims Fund.

Also, notwithstanding Section 17580 of the Government Code, unless otherwise specified in this act, the provisions of this act shall become operative on the same date that the act takes effect pursuant to the California Constitution.

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