

AMENDED IN ASSEMBLY AUGUST 25, 1998

AMENDED IN ASSEMBLY AUGUST 19, 1998

AMENDED IN SENATE APRIL 21, 1997

SENATE BILL

No. 326

Introduced by Senator Leslie and Assembly Member
Hertzberg
(Principal coauthor: Assembly Member Kuehl)
(Coauthors: Assembly Members Bustamante and Frusetta)

February 12, 1997

An act to amend Section 372 of, and to add Sections 374 and 374.5 to, the Code of Civil Procedure, and to amend Section 602 of the Welfare and Institutions Code, relating to minors, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

SB 326, as amended, Leslie. Minors: protective orders.

Existing law authorizes a person who has been a victim of harassment, unlawful violence or threat of violence in the workplace, or domestic violence to obtain a restraining or protective order against the offending party and also authorizes the issuance of specified protective orders during proceedings under the Uniform Parentage Act. The rules of court provide that a minor, accompanied by a guardian, may appear in court without counsel to obtain or oppose any of these orders. Existing law also provides that a minor, 12 years of age or older, may appear in court without a guardian, counsel, or guardian ad litem to obtain a protective order

under the Domestic Violence Prevention Act against a person with whom the minor has or had a dating relationship; however, the court may, upon motion or in its discretion, appoint a guardian ad litem to assist the minor in obtaining the order.

This bill would (1) codify the above-described rule of court, with respect to minors under the age of 12; (2) provide that any minor, 12 years of age or older, may appear in court without a guardian, counsel, or guardian ad litem to obtain or oppose any of the above-described restraining or protective orders; (3) require the court to make a specified determination when appointing a particular guardian ad litem to assist the minor; and (4) specify the proper court to hear requests for those orders ~~against~~ *involving* minors. The bill would also require the Judicial Council to adopt forms by a specified date to facilitate the appointment of a guardian ad litem in this context.

Existing law declares that any minor who violates any ordinance or law defining crime, other than an ordinance establishing a curfew based solely on age, is within the jurisdiction of the juvenile court.

This bill would specify that any minor who violates any of the above-described restraining or protective orders is also within the jurisdiction of the juvenile court.

The bill would declare that it is to take effect immediately as an urgency statute.

Vote: ²/₃. 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 372 of the Code of Civil
 2 Procedure is amended to read:
 3 372. (a) When a minor, an incompetent person, or a
 4 person for whom a conservator has been appointed is a
 5 party, that person shall appear either by a guardian or
 6 conservator of the estate or by a guardian ad litem
 7 appointed by the court in which the action or proceeding
 8 is pending, or by a judge thereof, in each case. A guardian
 9 ad litem may be appointed in any case when it is deemed



1 by the court in which the action or proceeding is
2 prosecuted, or by a judge thereof, expedient to appoint
3 a guardian ad litem to represent the minor, incompetent
4 person, or person for whom a conservator has been
5 appointed, notwithstanding that the person may have a
6 guardian or conservator of the estate and may have
7 appeared by the guardian or conservator of the estate.
8 The guardian or conservator of the estate or guardian ad
9 litem so appearing for any minor, incompetent person, or
10 person for whom a conservator has been appointed shall
11 have power, with the approval of the court in which the
12 action or proceeding is pending, to compromise the same,
13 to agree to the order or judgment to be entered therein
14 for or against the ward or conservatee, and to satisfy any
15 judgment or order in favor of the ward or conservatee or
16 release or discharge any claim of the ward or conservatee
17 pursuant to that compromise. Any money or other
18 property to be paid or delivered pursuant to the order or
19 judgment for the benefit of a minor, incompetent person,
20 or person for whom a conservator has been appointed
21 shall be paid and delivered as provided in Chapter 4
22 (commencing with Section 3600) of Part 8 of Division 4
23 of the Probate Code.

24 Where reference is made in this section to
25 “incompetent person,” such reference shall be deemed
26 to include “a person for whom a conservator may be
27 appointed.”

28 Nothing in this section, or in any other provision of this
29 code, the Civil Code, the Family Code, or the Probate
30 Code is intended by the Legislature to prohibit a minor
31 from exercising an intelligent and knowing waiver of his
32 or her constitutional rights in any proceedings under the
33 Juvenile Court Law, Chapter 2 (commencing with
34 Section 200) of Part 1 of Division 2 of the Welfare and
35 Institutions Code.

36 (b) (1) Notwithstanding subdivision (a), a minor 12
37 years of age or older may appear in court without a
38 guardian, counsel, or guardian ad litem, for the purpose
39 of requesting or opposing a request for any of the
40 following:



1 (A) An injunction or temporary restraining order or
2 both to prohibit harassment pursuant to Section 527.6.

3 (B) An injunction or temporary restraining order or
4 both against violence or a credible threat of violence in
5 the workplace pursuant to Section 527.8.

6 (C) A protective order pursuant to Division 10
7 (commencing with Section 6200) of the Family Code.

8 (D) A protective order pursuant to Sections 7710 and
9 7720 of the Family Code.

10 The court may, either upon motion or in its own
11 discretion, and after considering reasonable objections by
12 the minor to the appointment of specific individuals,
13 appoint a guardian ad litem to assist the minor in
14 obtaining or opposing the order, provided that the
15 appointment of the guardian ad litem does not delay the
16 issuance or denial of the order being sought. In making
17 the determination concerning the appointment of a
18 particular guardian ad litem, the court shall consider
19 whether the minor and the guardian have divergent
20 interests.

21 (2) For purposes of this subdivision only, upon the
22 issuance of an order pursuant to paragraph (1), if the
23 minor initially appeared in court seeking an order
24 without a guardian or guardian ad litem, and if the minor
25 is residing with a parent or guardian, the court shall send
26 a copy of the order to at least one parent or guardian
27 designated by the minor, unless, in the discretion of the
28 court, notification of a parent or guardian would be
29 contrary to the best interest of the minor. The court is not
30 required to send the order to more than one parent or
31 guardian.

32 (3) The Judicial Council shall adopt forms by July 1,
33 1999, to facilitate the appointment of a guardian ad litem
34 pursuant to this subdivision.

35 SEC. 2. Section 374 is added to the Code of Civil
36 Procedure, to read:

37 374. (a) A minor under 12 years of age, accompanied
38 by a duly appointed and acting guardian ad litem, shall be
39 permitted to appear in court without counsel for the
40 limited purpose of requesting or opposing a request for



1 (1) an injunction or temporary restraining order or both
2 to prohibit harassment pursuant to Section 527.6, (2) an
3 injunction or temporary restraining order or both against
4 violence or a credible threat of violence in the workplace
5 pursuant to Section 527.8, (3) a protective order pursuant
6 to Division 10 (commencing with Section 6200) of the
7 Family Code, or (4) a protective order pursuant to
8 Sections 7710 and 7720 of the Family Code.

9 (b) In making the determination concerning
10 appointment of a particular guardian ad litem for
11 purposes of this section, the court shall consider whether
12 the minor and the guardian have divergent interests.

13 (c) The Judicial Council shall adopt forms by July 1,
14 1999, to implement this section. The forms shall be
15 designed to facilitate the appointment of the guardian ad
16 litem for purposes of this section.

17 SEC. 3. Section 374.5 is added to the Code of Civil
18 Procedure, to read:

19 374.5. A proceeding *initiated by or brought* against a
20 minor for any of the injunctions or orders described in
21 paragraph (1) of subdivision (b) of Section 372 or
22 subdivision (a) of Section 374 shall be heard in the court
23 assigned to hear those matters; except that, if the minor
24 *bringing the action or against whom the action is brought*
25 has previously been adjudged a dependent child or a
26 ward of the juvenile court, the matter shall be heard in
27 the juvenile court having jurisdiction over the minor.

28 SEC. 4. Section 602 of the Welfare and Institutions
29 Code is amended to read:

30 602. (a) Any person who is under the age of 18 years
31 when he or she violates any law of this state or of the
32 United States or any ordinance of any city or county of this
33 state defining crime other than an ordinance establishing
34 a curfew based solely on age, is within the jurisdiction of
35 the juvenile court, which may adjudge him or her to be
36 a ward of the court.

37 (b) Any person under the age of 18 years who violates
38 (1) an injunction or temporary restraining order or both
39 to prohibit harassment pursuant to Section 527.6 of the
40 Code of Civil Procedure, (2) an injunction or temporary



1 restraining order or both against violence or a credible
2 threat of violence in the workplace pursuant to Section
3 527.8 of the Code of Civil Procedure, (3) a protective
4 order pursuant to Division 10 (commencing with Section
5 6200) of the Family Code, or (4) a protective order
6 pursuant to Sections 7710 and 7720 of the Family Code is
7 within the jurisdiction of the juvenile court, which may
8 adjudge him or her to be a ward of the court.

9 SEC. 5. This act is an urgency statute necessary for the
10 immediate preservation of the public peace, health, or
11 safety within the meaning of Article IV of the
12 Constitution and shall go into immediate effect. The facts
13 constituting the necessity are:

14 In order to ensure that the courts may promptly issue
15 and enforce protective and restraining orders with
16 respect to minors who are victims or perpetrators of
17 violence, it is necessary that this act take effect
18 immediately.

