

AMENDED IN SENATE APRIL 23, 2012

AMENDED IN SENATE MARCH 19, 2012

SENATE BILL

No. 988

Introduced by Senator Liu

February 1, 2012

An act to add Section 634.3 to the Welfare and Institutions Code, relating to juveniles.

LEGISLATIVE COUNSEL'S DIGEST

SB 988, as amended, Liu. Juveniles: attorney qualifications.

Existing law provides that any person under 18 years of age who commits a crime is within the jurisdiction of the juvenile court, except as specified. Existing law further provides that a minor has the right to counsel in proceedings to declare the minor a ward of the court. If the minor and his or her parents are indigent, the minor is entitled to appointed counsel.

~~This bill would set forth~~ *require the Judicial Council to adopt rules of court regarding the qualifications of appointed counsel in delinquency proceedings. The bill would require these rules to include mandatory training and education standards for defense attorneys representing minors in delinquency proceedings, and core training areas. The bill would also require the rules of court to encourage public defender offices and other agencies that represent minors in delinquency cases to provide juvenile delinquency training. Additionally, the bill would require the rules of court to provide that expert witnesses are agents of the delinquency attorney and must adhere to the attorney-client privilege. The bill would further require that an the rules of court to specify that a juvenile delinquency attorney be is solely responsible for fulfilling these requirements and also be responsible for providing*

diligent and conscientious advocacy, meeting regularly with his or her client, maintaining a confidential relationship with the client, and consulting with professionals when appropriate for the client's defense. By increasing the duties of these attorneys, including public defenders, this bill would impose a state-mandated local program. *the imposed by the rules of court. This bill would also prohibit the rules of court from requiring a delinquency attorney to undertake specified actions.*

~~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, if the Commission on State Mandates determines that the bill contains costs mandated by the state, reimbursement for those costs shall be made pursuant to these statutory provisions.~~

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

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

- 1 SECTION 1. Section 634.3 is added to the Welfare and
- 2 Institutions Code, to read:
- 3 634.3. (a) The Legislature finds and declares all of the
- 4 following:
- 5 (1) As representing minors in the juvenile justice system has
- 6 become much more complex, and the potential consequences of
- 7 juvenile court involvement have become more severe than when
- 8 the Arnold-Kennick Juvenile Court Law (Chapter 2 (commencing
- 9 with Section 200) was enacted, delinquency attorneys need
- 10 specialized skills, education, and training to ensure proper
- 11 representation of minors in juvenile delinquency court.
- 12 (2) Competent legal representation by defense attorneys is
- 13 needed to preserve the integrity of the juvenile justice system,
- 14 prevent wrongful judgments, reduce unnecessary incarceration,
- 15 and help ensure that minors receive the care, treatment, and
- 16 guidance upon which the juvenile justice system is premised.
- 17 (3) It is essential that California's juvenile delinquency defense
- 18 attorneys have the appropriate knowledge and skills needed to
- 19 meet the demands of this increasingly complex area of legal
- 20 practice. Advances in brain research demonstrate that children and
- 21 adolescents do not possess the same cognitive, emotional,

1 decisionmaking, and behavioral capacities as adults. Counsel must
2 ensure that these differences are appropriately recognized in the
3 attorney-client relationship and defense of the case.

4 ~~(b) (1) Commencing January 1, 2014, defense attorneys in~~
5 ~~delinquency proceedings shall complete at least eight hours of~~
6 ~~training approved for minimum continuing legal education credit~~
7 ~~by an approved State Bar of California agency prior to representing~~
8 ~~a juvenile for the first time, and an additional eight hours within~~
9 ~~the regular minimum continuing legal education requirements due~~
10 ~~per three-year cycle. These training hours may be counted toward~~
11 ~~the minimum continuing legal education hours required by the~~
12 ~~State Bar of California. The required eight hours of minimum~~
13 ~~continuing legal education per three-year cycle shall include~~
14 ~~developments in juvenile delinquency law, child development,~~
15 ~~special education, mental health issues, child abuse and neglect,~~
16 ~~counsel's ethical duties, appellate issues, direct and collateral~~
17 ~~consequences of court involvement, and how to secure effective~~
18 ~~rehabilitative resources.~~

19 ~~(2) While public defender offices and agencies contracting to~~
20 ~~provide representation under Sections 601 and 602 are encouraged~~
21 ~~to provide training that meets the requirements of paragraph (1),~~
22 ~~each attorney shall be solely responsible for fulfilling those training~~
23 ~~and education requirements. District attorneys in delinquency~~
24 ~~proceedings are encouraged, but not required, to pursue education~~
25 ~~in the relevant areas.~~

26 ~~(c) A defense attorney representing a minor in any proceeding~~
27 ~~under Section 601 or 602 shall do all of the following:~~

28 ~~(1) Provide diligent and conscientious advocacy and make~~
29 ~~rational and informed decisions founded on adequate investigation~~
30 ~~and preparation.~~

31 ~~(2) Comply with Rule 5.663 of the California Rules of Court.~~

32 ~~(3) Represent the expressed interests of the minor, meet regularly~~
33 ~~with the minor, and maintain a confidential relationship with the~~
34 ~~minor. The attorney for the minor shall have sufficient contact~~
35 ~~with the minor to establish and maintain a meaningful and~~
36 ~~professional attorney-client relationship.~~

37 ~~(4) Consult with social workers and mental health and other~~
38 ~~experts when appropriate for the minor's defense, and seek~~
39 ~~appointment, when appropriate, of those experts pursuant to~~
40 ~~Sections 730 and 952 of the Evidence Code. Experts appointed~~

1 pursuant to Sections 730 and 952 of the Evidence Code are agents
2 of the attorney and shall adhere to the attorney-client privilege.

3 ~~(d) A defense attorney representing a minor in any proceeding~~
4 ~~under Section 601 or 602 is not required to do any of the following:~~

5 ~~(1) Assume the responsibilities of a probation officer, social~~
6 ~~worker, parent, or guardian.~~

7 ~~(2) Provide nonlegal services to the minor.~~

8 ~~(3) Represent the minor in any proceeding outside of the~~
9 ~~delinquency proceedings.~~

10 *(4) It is essential that delinquency attorneys provide diligent*
11 *and conscientious advocacy and make rational and informed*
12 *decisions founded on adequate investigation and preparation.*

13 *(5) It is essential that delinquency attorneys represent the*
14 *expressed interests of the minor, meet regularly with the minor,*
15 *and maintain a confidential relationship with the minor. The*
16 *attorney for the minor should have sufficient contact with the minor*
17 *to establish and maintain a meaningful and professional*
18 *attorney-client relationship.*

19 *(6) When appropriate, delinquency attorneys should consult*
20 *with social workers, mental health experts, and other experts for*
21 *the minor's defense, and, when appropriate, seek appointment of*
22 *those experts pursuant to Sections 730 and 952 of the Evidence*
23 *Code.*

24 *(b) On or before January 1, 2014, the Judicial Council shall*
25 *adopt rules of court regarding the qualifications of appointed*
26 *counsel in proceedings under Sections 601 and 602. These rules*
27 *shall include, but are not limited to, the following:*

28 *(1) Establishing minimum levels of training and education*
29 *necessary in order to be appointed as counsel in delinquency*
30 *proceedings. The minimum level of training should not exceed*
31 *eight hours, and those training hours shall be counted toward the*
32 *minimum continuing legal education (MCLE) hours required of*
33 *all attorneys by the State Bar of California.*

34 *(2) Establishing core training areas that include, but are not*
35 *limited to, developments in juvenile delinquency law, child and*
36 *adolescent development, special education, mental health issues,*
37 *child abuse and neglect, counsel's ethical duties, appellate issues,*
38 *direct and collateral consequences for a minor of court*
39 *involvement, and securing effective rehabilitative resources.*

1 (3) Encouraging public defender offices and agencies that
2 provide representation in proceedings under Sections 601 and 602
3 to provide training on juvenile delinquency issues. That training
4 shall be approved for MCLE credit by an agency or provider
5 related to the representation of minors in proceedings under
6 Sections 601 and 602 and approved by the State Bar of California.
7 District attorneys should also be encouraged to pursue education
8 in the relevant areas.

9 (4) Providing that experts whose appointment is requested by
10 delinquency attorneys are agents of the attorneys and requiring
11 those experts to adhere to the attorney-client privilege under
12 Article 3 (commencing with Section 950) of Chapter 4 of Division
13 8 of the Evidence Code.

14 (5) Providing that attorneys practicing in juvenile delinquency
15 courts shall be solely responsible for compliance with the training
16 and education requirements adopted pursuant to this section.

17 (c) The rules adopted pursuant to this section shall not require
18 a delinquency attorney to do any of the following:

19 (1) Assume the responsibilities of a probation officer, social
20 worker, parent, or guardian.

21 (2) Provide nonlegal services or assistance to the minor.

22 (3) Represent the minor in any proceeding outside of the
23 delinquency proceedings.

24 ~~SEC. 2.—If the Commission on State Mandates determines that~~
25 ~~this act contains costs mandated by the state, reimbursement to~~
26 ~~local agencies and school districts for those costs shall be made~~
27 ~~pursuant to Part 7 (commencing with Section 17500) of Division~~
28 ~~4 of Title 2 of the Government Code.~~