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# Juveniles

## Juveniles; dependent children of the Juvenile Court

Welfare and Institutions Code §§ 358.1, 361.3, 361.5, 366.21, 366.22, 366.25, 366.26 (amended).  
SB 426 (Presley); 1993 STAT. Ch. 892

Existing law defines dependent children of the Juvenile Court<sup>1</sup> and specifies subjects which must be considered by a probation officer<sup>2</sup> or child advocate<sup>3</sup> when conducting a social study<sup>4</sup> for the purpose of determining the disposition of a dependent child of the juvenile court.<sup>5</sup> Under Chapter 892, the probation officer or child advocate must also consider whether it would be appropriate to place the child with the child's relatives.<sup>6</sup>

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1. See CAL. WELF. & INST. CODE § 300 (West Supp. 1993) (providing a list of circumstances under which a minor may be adjudged to be a dependent child of the Juvenile Court).

2. See *id.* § 270 (West Supp. 1993) (providing for the appointment of a probation officer in every county); *id.* § 280 (West Supp. 1993) (stating that it is the duty of the probation officer to prepare for hearings on the disposition of dependent children and to conduct a social study of the child, which includes a recommendation for the disposition of the case).

3. See *id.* § 356.5 (West Supp. 1993) (stating that a child advocate appointed by the court to represent the interests of a dependent child in a proceeding will have the same duties and responsibilities as a guardian ad litem); *id.* § 326 (West Supp. 1993) (providing that the probation officer or social worker who files a petition based upon alleged neglect or abuse of a minor shall be the guardian ad litem to represent the interests of the minor in all proceedings unless the court appoints another guardian ad litem, and providing that the guardian ad litem shall not be the attorney responsible for presenting evidence alleging child abuse or neglect).

4. See CAL. CT. FAM. LAW RULES 1455 (1993) (setting forth procedures to be followed with respect to the social study of the minor); see also CAL. WELF. & INST. CODE § 358(b) (West Supp. 1993) (providing that before determining the disposition of the dependent child, the court will receive in evidence the social study of the minor made by the probation officer); *In re L.S.*, 220 Cal. App. 3d 1100, 1106-07, 269 Cal. Rptr. 700, 704 (1990) (reversing a Juvenile Court order committing a ward of the court to the California Youth Authority because the Juvenile Court ruled without the benefit of a current social study on the juvenile).

5. CAL. WELF. & INST. CODE § 358.1 (amended by Chapter 892); see *id.* § 358.1(a)-(d) (amended by Chapter 892) (requiring that the social study or evaluation made by the probation officer or child advocate shall contain a factual discussion of: (1) Whether child protective services would be a solution to the problems at hand and whether such services have been offered to qualified parents; (2) whether a plan for the return of the child is recommended; (3) whether the child's best interests would be served by granting visitation rights to the child's grandparents; and (4) whether the child is eligible to be considered for further court action to be freed from parental custody).

6. *Id.* § 358.1(e) (amended by Chapter 892); see *id.* § 361.3(c)(2) (amended by Chapter 892) (defining relative as an adult who is a grandparent, aunt, uncle, or sibling); *In re Baby Girl D.*, 208 Cal. App. 3d 1489, 1494, 257 Cal. Rptr. 1, 3 (1989) (stating that the great aunt of a child is not a relative as defined under § 361.3).

Under existing law, when a child is removed from the physical custody of the child's parents,<sup>7</sup> the court will give preferential consideration<sup>8</sup> to requests by relatives that the child be placed with the relatives.<sup>9</sup> Chapter 892 specifies the factors to be considered in determining whether placement with a relative is appropriate, including: (1) The best interests of the child, including special physical, psychological or emotional needs; (2) the wishes of the parents; (3) provisions of the Family Code with respect to relative placement; (4) the placement of siblings and half-siblings in the same home, if in the best interest of the children; (5) the good moral character of the relative; and (6) the ability of the relative to provide a secure and stable environment, to exercise proper and effective care and control of the child, to provide a home and the necessities of life, to protect the child from the child's parents, and to facilitate court-ordered reunification efforts and visitation with the child's other relatives.<sup>10</sup> Chapter 892 also requires the county social worker to investigate whether there are other relatives with whom the child might possibly be placed.<sup>11</sup> This preferential consideration applies whenever a new placement of the child must be made.<sup>12</sup>

Under existing law, when a minor has been removed from a parent's or guardian's custody, the court may order the probation officer to provide child welfare services<sup>13</sup> to the minor and the minor's parents or guardians

7. See CAL. WELF. & INST. CODE § 361(b)(1)-(5) (West Supp. 1993) (stating the circumstances under which a child may be taken from the physical custody of the child's parents or guardian including, but not limited to, if the child would be in substantial danger if returned home, if the parent is unwilling to have physical custody of the minor, or if the minor is suffering from severe emotional damage); *id.* § 361(b)(1) (West Supp. 1993) (stating that the fact that a child has been adjudicated a dependent child of the court is prima facie evidence that the minor cannot be safely left in the custody of the parent or guardian); *see also* § 361.2(a) (West Supp. 1993) (providing that when a court orders the removal of a minor, the court will first determine whether there is a parent of the minor, with whom the child was not residing, who wants to assume custody of the minor).

8. See *id.* § 361.3(c)(1) (amended by Chapter 892) (stating that preferential consideration means the relative seeking placement will be the first placement to be considered and investigated by the county social worker); *In re Rodger H.*, 228 Cal. App. 3d 1174, 1185, 279 Cal. Rptr. 406, 412 (1991) (finding that a child's grandparents' request, made in open court, for placement of the child with them was sufficient to trigger an investigation as required by § 361.3 and that the grandparents did not waive their right to request placement because they did not contact the social worker directly); *In re Baby Girl D.*, 208 Cal. App. 3d at 1494, 257 Cal. Rptr. at 3 (1989) (holding that the court was not required to give preferential consideration to a child's great aunt because she was not considered a relative, as defined under § 361.3).

9. CAL. WELF. & INST. CODE § 361.3 (amended by Chapter 892).

10. *Id.* § 361.3(a)(1)-(6) (amended by Chapter 892).

11. *Id.* § 361.3(a) (amended by Chapter 892); *see id.* § 361.3(e) (amended by Chapter 892) (requiring the court to state for the record the reasons placement was denied if the court does not place the child with a relative who was considered for placement).

12. *Id.* § 361.3(d) (amended by Chapter 892).

13. See *id.* §§ 16500-16517 (West 1991 & Supp. 1993) (regarding State Child Welfare Services).

for the purpose of facilitating reunification<sup>14</sup> of the family.<sup>15</sup> If the parent or guardian is incarcerated or institutionalized, the court will order reasonable services<sup>16</sup> unless the court determines that reunification would be detrimental to the child.<sup>17</sup> Chapter 892 requires a higher standard of proof, providing that there must be clear and convincing evidence<sup>18</sup> that reunification will be detrimental to the child before a court may deny reunification services.<sup>19</sup>

Existing law provides that when a court denies reunification services, it will conduct a hearing<sup>20</sup> to determine the disposition of the child and order that an assessment be prepared.<sup>21</sup> The assessment shall include a statement by the child regarding placement and the adoption or guardianship.<sup>22</sup> Existing law further provides that the court may disallow the termination of parental rights if the child objects to the termination.<sup>23</sup> Under prior law, the age of a child's consent for parental termination, and the age at which the child was required to make a statement regarding placement, was ten years of age.<sup>24</sup> Under Chapter 892, no statement will be required from the child if the child's age or physical, emotional or other

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14. See *id.* §§ 16500.5, 16500.7, 16507 (West Supp. 1993) (describing family reunification services).

15. *Id.* § 361.5(a) (amended by Chapter 892).

16. See *id.* § 361.5(e)(1)(A)-(D) (amended by Chapter 892) (stating that services may include maintaining contact between parent and child by telephone, providing transportation or visitation services, and other reasonable services to extended family members or foster parents).

17. *Id.* § 361.5(e)(1) (amended by Chapter 892); see *id.* (stating that in determining detriment, the court shall consider the age of the child, the degree of parent-child bonding, the length of the sentence or treatment, the nature of the crime or illness, and other appropriate factors); see also *In re Misako R.*, 2 Cal. App. 4th 538, 548, 3 Cal. Rptr. 2d 217, 222 (1991) (stating that the standard of proof is preponderance of the evidence).

18. See *In re Michael B.*, 149 Cal. App. 3d 1073, 1087, 197 Cal. Rptr. 379, 388 (1983) (noting that the California Supreme Court has defined clear and convincing evidence as proof by evidence that is clear, explicit and unequivocal; that is so clear as to leave no substantial doubt; and is sufficiently strong to demand the unhesitating assent of every reasonable mind).

19. CAL. WELF. & INST. CODE § 361.5(e)(1) (amended by Chapter 892); see *In re Rebecca H.*, 227 Cal. App. 3d 825, 830, 278 Cal. Rptr. 185, 186 (1991) (holding that a juvenile court may not deprive a parent of reunification services under § 361.5 unless, based upon the opinions of two qualified mental health experts, it finds that the parent is mentally disabled and is either incapable of utilizing reunification services at all or is unlikely to be capable of learning to care for the child within 12 months); *id.* 227 Cal. App. 3d at 845, 278 Cal. Rptr. at 196 (holding that a father's alcohol consumption and long work hours were not a sufficient basis for denial of reunification services under § 361.5).

20. See CAL. WELF. & INST. CODE §§ 366.25, 366.26 (amended by Chapter 892) (describing hearings to determine the future status of the child including terminating parental rights or establishing guardianship).

21. *Id.* § 361.5(g) (amended by Chapter 892).

22. *Id.* § 361.5(g)(5) (amended by Chapter 892).

23. *Id.* §§ 366.25(d)(1)(B), 366.26(c)(1)(B) (amended by Chapter 892); see *In re Jennifer J.*, 8 Cal. App. 4th, 1080, 1089, 10 Cal. Rptr. 2d 813, 819 (1992) (holding that a court may exclude testimony from a seven-year old child where it was shown that the child would be psychologically damaged by being required to testify).

24. 1992 Cal. Stat. Ch. 455, sec. 2, at 1513 (amending CAL. WELF. & INST. CODE § 361.5); 1992 Cal. Stat. Ch. 163, sec. 139, at 666 (amending CAL. WELF. & INST. CODE § 366.25); 1992 Cal. Stat. Ch. 163, sec. 140, at 669 (amending CAL. WELF. & INST. CODE § 366.26).

condition precludes the child's meaningful response.<sup>25</sup> In addition, Chapter 892 raises the age at which the child may object to the termination of parental rights from ten years of age to twelve years.<sup>26</sup>

Existing law provides that when a minor has been adjudged to be a dependent of the juvenile court, the court may, without permanently terminating parental rights, identify adoption as the permanent placement goal and order that efforts be made to locate an appropriate adoptive family for the minor within sixty days.<sup>27</sup> Chapter 892 extends this period to ninety days.<sup>28</sup>

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### Juveniles; minors—juvenile court jurisdiction

Welfare and Institutions Code § 603.5 (amended).  
AB 1436 (Connolly); 1993 STAT. Ch. 1151

Existing law provides that municipal or justice courts have jurisdiction over minors who have allegedly committed violations of the Vehicle Code classified as infractions or violations of specified local ordinances.<sup>1</sup> Existing law further mandates that the above mentioned instances are governed by the Vehicle Code.<sup>2</sup>

Chapter 1151 mandates that the municipal court or justice court shall adhere to the procedures delineated in the law of the juvenile court when a minor, between sixteen and eighteen years of age, has been given notice

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25. CAL. WELF. & INST. CODE §§ 361.5(g)(5), 366.21(i)(5), 366.22(b)(5) (amended by Chapter 892).

26. *Id.* §§ 366.25(d)(1)(B), 366.26(c)(1)(B) (amended by Chapter 892).

27. *Id.* § 366.26(b)(2) (amended by Chapter 892).

28. *Id.*

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1. CAL. WELF. & INST. CODE § 603.5 (amended by Chapter 1151); *see id.* § 603.5(a) (stating that specified cases may be referred to the juvenile court); *see generally In re Kevin*, 40 Cal. 3d 644, 650, 709 P.2d 1315, 1319, 221 Cal. Rptr. 146, 149 (1985) (holding that a juvenile accused of a misdemeanor who elects to proceed before a traffic hearing officer is entitled to appointed counsel); 63 Op. Cal. Att'y Gen. 232 (1980) (stating that procedures in juvenile court are sui generis and are not criminal actions).

2. CAL. WELF. & INST. CODE § 603.5 (amended by Chapter 1151).

to appear for traffic cases as specified.<sup>3</sup> Chapter 1151 further requires that, whenever possible, the parent<sup>4</sup> or guardian<sup>5</sup> shall appear with the minor.<sup>6</sup> Chapter 1151 also mandates that traffic matters involving minors may not be resolved by bail forfeiture in lieu of a court appearance.<sup>7</sup> Chapter 1151 additionally provides that in all traffic cases heard before the municipal or justice court, the notice to appear will serve as a petition.<sup>8</sup> Under Chapter 1151, certain requirements shall not apply, including any provisions of law requiring that confidentiality be observed as to cases and proceedings,

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3. *Id.*; see SENATE RULES COMMITTEE, ANALYSIS OF AB 1436, at 1 (Aug. 19, 1993) (stating that the intent of Chapter 1151 is to provide traffic court judges the opportunity to talk with the juvenile offenders); *cf.* ARIZ. REV. STAT. ANN. § 8-202(c) (1989) (stating that the juvenile court has exclusive original jurisdiction over traffic violations committed by juveniles unless the presiding judge declines jurisdiction); COLO. REV. STAT. § 19-2-102(1)(a)(I) (1993) (stating that the juvenile court may exercise jurisdiction over a juvenile who is under 16 years of age and has violated a traffic law if the case is transferred to the juvenile court from the county court); FLA. STAT. ANN. § 26.012 (West 1988 & Supp. 1993) (stating that the circuit court has jurisdiction over all cases in equity including all cases involving juveniles except traffic offenses); GA. CODE ANN. § 15-11-5(a)(1)(E) (Harrison 1993) (stating that the juvenile court shall have exclusive original jurisdiction over juvenile matters and shall be the sole court for initiating action concerning any child who is alleged to have committed a juvenile traffic offense); NEB. REV. STAT. § 43-247(1) (1988) (stating that the juvenile court has exclusive original jurisdiction over any juvenile in the applicable county having committed an act which would constitute a traffic offense); NEV. REV. STAT. § 62.040(2) (1991) (delineating the exclusive jurisdiction of the juvenile courts and stating that the provisions do not preclude justices' courts and municipal courts in counties with populations in excess of 400,000 to try juveniles charged with minor traffic violations); N.D. CENT. CODE § 39-06.1-02.1 (1987) (stating that the clerk shall notify the parent or guardian of any juvenile appearing before the court on a traffic offense of the charge as contained in the citation).

4. See CAL. GOV'T CODE § 12945.2(b)(6) (West Supp. 1993) (defining parent to mean a biological, foster, or adoptive parent, a stepparent, or a legal guardian).

5. See *State v. Johnson*, 88 N.W.2d 209, 216 (N.D. 1958) (defining guardian as one who is entitled to care and management of person, or property, or both, of another, as of a minor or of a person incapable of managing his own affairs); see also BLACK'S LAW DICTIONARY 706 (6th ed. 1990) (defining guardian as a person lawfully invested with the power and charged with the duty, of taking care of the person and managing the property and rights of another person, who, for defect of age, understanding, or self-control, is considered incapable of administering his own affairs).

6. CAL. WELF. & INST. CODE § 603.5(b)(2) (amended by Chapter 1151).

7. *Id.*; see 63 Op. Cal. Att'y Gen. 232, 234 (1980) (concluding that a juvenile traffic hearing officer may not establish a bail schedule or accept forfeiture of bail in lieu of an appearance by the juvenile); *cf.* *State v. Buckman*, 770 P.2d 418, 419-20 (Haw. 1989) (discussing the limitations placed on the court's ability to make dispositions and stating that one of the limited authorizations is to qualify a juvenile for bail forfeiture in the amount set forth on the bail forfeiture schedule). See generally *Woolums v. Greer*, 728 F.2d 918, 921 (7th Cir. 1984) (discussing committee comments to Illinois Revised Statute chapter 38 stating that, in practice, it is usually cheaper for the state or city, in traffic cases to accept bail forfeiture in lieu of the fine); *Revamping Indigent Defense — Process Minor Offenses Outside The Courtroom*, SEATTLE TIMES, Dec. 11, 1991, at A10 (discussing the recommendation by the state advisory committee to permit the bail for minor misdemeanors to be forfeitable).

8. CAL. WELF. & INST. CODE § 603.5(b)(3)(A) (amended by Chapter 1151).

prohibiting or restricting the disclosure of juvenile court records, or restricting attendance by the public at juvenile court proceedings.<sup>9</sup>

Chapter 1151 is applicable only in counties where the board of supervisors, with the concurrence of presiding judges of the superior, municipal, and justice courts, have adopted a resolution making the aforementioned provisions effective.<sup>10</sup>

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9. *Id.* § 603.5 (amended by Chapter 1151); *see id.* § 781 (West Supp. 1993) (describing the procedures and rules for the sealing of juvenile records); *cf. In re R.T.*, 345 A.2d 156, 157 (D.C. 1975) (rejecting the appellee's contention that the court's authority to seal records is founded on the doctrine of *parens patriae* and is contrary to the express mandate of Congress, which limits the authority of the court); *In re Clueso*, 552 N.Y.S.2d 822, 824 (N.Y. Fam. Ct. 1990) (stating that the sealing of court records should not be used as a device to rewrite history).

10. CAL. WELF. & INST. CODE § 603.5(b)(3)(C) (amended by Chapter 1151).