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Juveniles

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Juveniles

Juveniles; appointed counsel

Civil Code §§4602, 4606, ~~4607~~ (amended).
AB 100 (McAlister); 1985 STAT. Ch 361
(Effective July 30, 1985)

Support: Association of Family and Conciliation Courts

Under existing law, the court may appoint counsel to represent a minor child¹ in a custody matter.² With the enactment of Chapter 361, the court also may appoint counsel to represent a minor child when visitation rights are at issue.³ In addition, Chapter 361 provides that probation officers, domestic relations investigators, and mediators may recommend that counsel be appointed to represent a minor in a custody or visitation dispute.⁴

1. CAL. CIV. CODE §25 (minors are all persons under 18 years of age).

2. CAL. CIV. CODE §4606.2 (appointment of counsel must be in the best interests of the child); *id.* §4608 (health, safety, and welfare are considered to determine the child's best interests).

3. *Id.* §4606.

4. *Id.* §§4602 (probation officers and domestic relations investigators), 4607 (mediators). In making the recommendation the probation officer, domestic relations officer, or the mediator is to inform the court why it is in the best interests of the child to appoint counsel. *Id.*

Juveniles; testimony outside the presence of parents or guardians

Civil Code §232 (amended); Welfare & Institutions Code §350 (amended).

AB 2415 (Molina); 1985 STAT. Ch 528

Support: State Bar of California; Children's Services Task Force

Existing law provides that an action to have any child under the age of eighteen years¹ declared free from parental custody and control may be brought when specified instances of abuse or neglect²

1. CAL. CIV. CODE §25 (definition of minor).

2. *Id.* §232(a)(1)-(8) (enumeration of the specific instances of child abuse for which an

are presented by clear and convincing evidence.³ Existing law also empowers a judge of the juvenile court to conduct proceedings in the manner most expeditious and effective to ascertain the jurisdictional facts⁴ and information pertinent to the welfare of the minor on whose behalf a petition is brought.⁵ When no contested issue of fact or law is presented, existing law requires the court to conduct the proceedings in an informal, nonadversarial atmosphere in order to obtain the maximum cooperation of the minor.⁶

In cases dealing with the termination of parental rights, Chapter 528 allows the testimony of the minor concerning abuse or neglect to be given outside the presence of either of the minor's parents or guardians.⁷ Such *in camera* testimony is allowed only if the court considers the procedure necessary to ensure truthful testimony,⁸ prevent intimidation in the formal setting of a courtroom,⁹ or to prevent intimidation by either the parents or the guardians of the child.¹⁰ After the testimony is given, Chapter 528 provides that the parents or guardians may have the court reporter read back the testimony or have the testimony summarized by counsel for them.¹¹

action may be brought pursuant to Civil Code §232). See Comment, *The Closed Door: A Need for Reform of the California Mandatory Closure Rule in Child Custody Cases Predicated on Parental Abuse*, 15 Pac. L.J. 83, 92 (custody proceedings predicated on parental abuse).

3. CAL. CIV. CODE §232(c).

4. See generally *id.* §§245-265 (jurisdiction and procedures of juvenile court).

5. CAL. WELF. & INST. CODE §350(a). See Garrison, *Why Terminate Parental Rights?*, 35 Stan. L. Rev. 423 (1983).

6. CAL. WELF. & INST. CODE §350(a).

7. CAL. CIV. CODE §232(b). Chapter 528 allows the child to testify away from the parents only if counsel representing the parents is present in the place of testimony. *Id.* See *In Re Tanya P.*, 120 Cal. App. 3d 66, 69, 174 Cal. Rptr. 533, 535 (1981) (holding that the trial court did not err in excluding the stepfather from the presence of the testifying minor when the stepfather's attorney, who was present during the testimony, was permitted to be present and to cross-examine the minor).

8. CAL. CIVIL CODE §232(b)(1); CAL. WELF. & INST. CODE §350(f)(1).

9. CAL. CIVIL CODE §232(b)(2); CAL. WELF. & INST. CODE §350(f)(2).

10. CAL. CIVIL CODE §232(b)(3); CAL. WELF. & INST. CODE §350(f)(2).

11. CAL. CIVIL CODE §232(b)(3); CAL. WELF. & INST. CODE §350(f)(3).

Juveniles; ward hearings—appointment of doctors

Welfare and Institutions Code §741 (amended).

SB 401 (Lockyer); 1985 STAT. Ch 101

Support: California Judges Association

Existing law allows a juvenile court, in an action to declare a minor¹

1. CAL. CIV. CODE §25 (definition of minor).

a ward of the court,² to order a probation officer³ to obtain the services of psychologists or clinical experts to examine the minor and determine any appropriate treatment⁴ for the minor.⁵ Chapter 101 provides that a probation officer also may be ordered to obtain the services of physicians and surgeons, dentists, optometrists, or audiologists to help in the determination of the appropriate treatment for the minor.⁶

2. CAL. WELF. & INST. CODE §§601 (allowing a court to make a minor a ward of the court if the minor is habitually disobedient or truant), 602 (allowing a court to make a minor a ward of the court if the minor commits a crime).

3. *Id.* §215 (definition of probation officer).

4. *See generally id.* §§725-39 (providing various courses of action for treatment of a minor that is a ward of the court).

5. *Id.* §741.

6. *Id.*

Juveniles; dependency proceedings

Welfare and Institutions Code §356.5 (new); §§356, 358, 358.1 (amended).

SB 932 (Rosenthal); 1985 STAT. Ch 1341

Support: Los Angeles County Bar Association

Existing law provides that before a minor¹ may be declared a dependent child² of the court, a dependency hearing³ must be held.⁴ If the court rules that the minor is a dependent child, the court will then proceed to hear evidence⁵ regarding the proper disposition of the minor.⁶ Existing law permits the court to continue the hearing so that a social study⁷ or evaluation prepared by a probation officer⁸ may

1. CAL. CIV. CODE §25 (definition of minor).

2. CAL. WELF. & INST. CODE §300 (definition of dependent child).

3. *Id.* §§345-359 (regulations governing dependency hearings).

4. *Id.* §360 (requiring the court to make a finding as to whether or not the minor is a dependent child of the court). *See also Matter of La Shonda B.*, 95 Cal. App. 3d 593, 599, 157 Cal. Rptr. 280, 283 (1979).

5. CAL. WELF. & INST. CODE §355. Any matter or information relevant and material to the circumstances or acts and that is alleged to bring the minor within the jurisdiction of the juvenile court is admissible and may be received in evidence. *Id.*

6. *Id.* §§356, 358.

7. *Id.* §358.1 (contents of a social study).

8. *Id.* §§270-286 (powers, duties and responsibilities of probation officers). Probation

be received prior to determination.⁹ Chapter 1341 provides that the court may continue the dependency hearing to receive any study or evaluation¹⁰ made by a duly appointed child advocate.¹¹ In addition, Chapter 1341 provides that if a study or evaluation made by a duly appointed child advocate is available, the court must receive the study into evidence and specifically state that the study was read and considered by the court in arriving at a judgment and order of disposition.¹²

officers must submit a social study for every dependency hearing. *Id.* §280.

9. *Id.* §356.

10. *Id.* §358.1 (contents of study or evaluation made by a child advocate or probation officer).

11. *Id.* §356. Chapter 1341 provides that a child advocate has the same duties and responsibilities as a guardian ad litem. *Id.* §356.5. CAL. CIV. PROC. CODE §372 (appointment and powers of guardian ad litem).

12. CAL. WELF. & INST. CODE §358(a).

Juveniles; juvenile courts—custody and control

Welfare and Institutions Code §§319, 361 (amended).

AB 836 (Mojonnier); 1985 STAT. Ch 440

Support: State Bar Committee on Adoptions; Los Angeles Board of Supervisors; Los Angeles County Department of Children's Services

Existing law provides that a child may not be removed from parental custody by the juvenile court unless specified circumstances exist.¹ Chapter 440 expands the scope of existing law by providing that the juvenile court may remove a minor from parental custody if the minor has been left without provision for support, and a parent or guardian is not available to maintain care, custody, and control of the

1. CAL. WELF. & INST. CODE §361(b). A dependent child may not be removed from parental custody unless the court finds clear and convincing evidence that: (1) Substantial danger is posed to the physical health of the minor at home, and no reasonable alternative means exist to protect the minor; (2) the parent or guardian refuses custody of the minor, and the parent or guardian has been notified that the minor may be declared permanently free from the parents' custody pursuant to Section 232 of the Civil Code; (3) the minor is suffering severe emotional damage and no reasonable alternative means of protecting the emotional health of the minor exist; (4) the minor has been sexually abused and no reasonable alternative means of protecting the minor from further abuse exist; or (5) the minor suffered severe physical abuse while under the age of three by any parent or guardian seeking custody of the minor. *Id.* §361(b)(1)-(5). See *id.* §361(b)(5) (definition of severe physical abuse).

minor because of (1) incarceration or institutionalization of the parent or guardian, or (2) inability to locate the parent or guardian after reasonable efforts have been made.² Existing law further provides that in cases in which a minor is removed from custody of a parent or guardian, the juvenile court should order that child welfare services be provided to the minor and the minor's parents for the purpose of facilitating family reunification.³ Chapter 440 provides that when the parent or guardian of the minor is incarcerated, the child welfare services may include, but are not limited to, maintaining contact between parent through collect phone calls, transportation services, visitation services, and other reasonable services to extended family members or foster parents providing care for the child.⁴ Chapter 440 further states that reunification services need not be ordered if the whereabouts of the parent are unknown, the parent is incarcerated or institutionalized and the facility does not permit the services, or the parent is suffering from a mental disability⁵ rendering the parent incapable of utilizing the services.⁶ Chapter 440 also provides that if a parent is released from incarceration or institutionalization, family reunification services will be provided.⁷

Under existing law, a minor removed from parental custody must be returned to the custody of the parents unless specified circumstances exist.⁸ Chapter 440 expands existing law to provide that a minor may be kept from parental custody if continued detention is a matter of immediate and urgent necessity for the protection of the minor.⁹

2. *Id.* §361(b)(6).

3. *Id.* §361(f).

4. *Id.* §361(f)(1)(A)-(D).

5. CAL. CIV. CODE §§232(a)(5), (6) (definition of mental disability).

6. *Id.* §361(f)(2).

7. *Id.* §361(f)(3).

8. *Id.* §319. A minor must be released unless the court finds any one of the following: (1) There is substantial danger to the physical health of the minor, or the minor is suffering severe emotional damage, and removal from parental custody is the only reasonable means of protecting the minor's physical or emotional health; (2) the minor has violated an order of the juvenile court or escaped from the custody of the juvenile court; (3) the minor is a threat to the person or property of another, or the minor's parent or guardian is likely to flee the jurisdiction of the court; or (4) the minor refuses to return home and the minor has been sexually molested by a resident of the home. *Id.* §319(a)-(d).

9. *Id.* §319(e). Additionally, existing law requires the juvenile court to order family reunification services for a minor and the parents of a minor if the minor is removed from parental custody. *Id.* §361(f).

Juveniles; juvenile courts—truancy cases

Education Code §48295 (amended);

Welfare & Institutions Code §§601.4, 700.2 (new); §§656, 661 (amended).

AB 378 (Leonard); 1985 STAT. Ch 120

Support: Juvenile Court Judges of San Bernadino County; Department of the Youth Authority

Under existing law, child truancy cases are under the jurisdiction of the juvenile court,¹ while cases involving parents or guardians charged with violation of school attendance laws² are under the jurisdiction of a municipal or justice court.³ Chapter 120 provides that when a truancy case is before the juvenile court, the juvenile court judge may be assigned to sit as a municipal court judge to hear complaints against an adult charged with the violation of school attendance laws.⁴ The jurisdiction of the juvenile court over an adult is not exclusive, however, and the action against the adult may be heard in a municipal or justice court.⁵ Upon motion in a municipal or justice court, however, the action against the adult must be transferred to the juvenile court.⁶ Chapter 120 also provides that unless the adult charged with the violation, a member of the press, or a member of the public objects to a closed hearing, the truancy action and the action against the adult may be heard simultaneously.⁷ Chapter 120 requires that notice to adults charged with violation of school attendance laws must include the following information: (1) Failure to comply with compulsory school attendance laws is an infraction within the jurisdiction of the juvenile court; and (2) the adult has the right to a hearing before a judge different from the judge hearing the truancy case of the minor involved.⁸ The juvenile court must inform the adult, upon appearance before the court, of the right to an open hearing and the right to

1. CAL. WELF. & INST. CODE §601(b).

2. See CAL. EDUC. CODE §48293 (penalties against parents for violation of compulsory education laws).

3. *Id.* §48295.

4. *Id.*; CAL. WELF. & INST. CODE §601.4(a).

5. CAL. WELF. & INST. CODE §601.4(a).

6. *Id.*

7. *Id.* §601.4(b).

8. *Id.* §§656(i), 661. Chapter 120 also requires that the adults charged with the violation be informed of the provisions of Section 170.6 of the Code of Civil Procedure (prejudice against party; attorney or interest thereof; motion and affidavit; assignment of another judge; court commissioner or referee; number of motions; continuance; cumulative remedy; severability). *Id.*

have a hearing before a judge other than the judge hearing the truancy case of the minor involved.⁹

9. *Id.* §700.2.

Juveniles; misdemeanor arrests

Welfare and Institutions Code §§631, 632 (amended).

SB 64 (Boatwright); 1985 STAT. Ch 291

Support: State Coalition of Probation Organizations; Department of the Youth Authority; Attorney General; Fresno County

Existing law provides that a minor¹ taken into custody must be released within forty-eight hours, *excluding non-judicial days*, unless a criminal complaint or a petition to have the minor declared a ward of the court is filed.² Under prior law, a minor taken into custody without an arrest warrant, on the belief that the minor had committed *any* misdemeanor³ was required to be released within forty-eight hours or *on the next judicial day*, whichever was later.⁴ Chapter 291 narrows prior law by providing that minors arrested without a warrant, who are not on probation or parole or suspected of a misdemeanor involving violence, threat of violence, or possession or use of a weapon, are entitled to be released within forty-eight hours or on the next judicial day, whichever is later.⁵

Prior law provided that a minor taken into custody without a warrant on the belief that the minor had committed *any* misdemeanor had to be either released or brought before a judge or referee of the juvenile court within forty-eight hours or before the expiration of the next judicial day.⁶ Chapter 291 provides that only juveniles who are

1. CAL. CIV. CODE §25 (definition of minor).

2. CAL. WELF. & INST. CODE §631(a) (these provisions do not apply to minors who willfully misrepresent their age as greater than 18 years).

3. CAL. PEN. CODE §17 (definition of misdemeanor).

4. 1978 Cal. Stat. c. 1372, §3, at 4553 (amending CAL. WELF. & INST. CODE §631) (unless a petition has been filed to declare the minor a ward of the court and the minor has been ordered detained by a judge or referee of the juvenile court).

5. CAL. WELF. & INST. CODE §631(b) (unless a petition has been filed to declare the minor a ward of the court and the minor has been ordered detained by a judge or referee of the juvenile court). These provisions of Chapter 291 do not apply to minors who willfully misrepresent their age as greater than 18 years. *Id.*

6. 1978 Cal. Stat. c. 1372, §4, at 4553 (amending CAL. WELF. & INST. CODE §632).

not on probation or parole or suspected of a misdemeanor involving violence, threat of violence, or possession or use of weapons must be granted a hearing⁷ before the juvenile court within forty-eight hours or before the expiration of the next judicial day, whichever is later.⁸

7. The purpose of the hearing, under existing law, is to determine whether a petition filed to have the minor adjudged a ward of the court should be granted. CAL. WELF. & INST. CODE §632.

8. *Id.*