

Assembly Bill No. 129

CHAPTER 468

An act to amend Sections 241.1, 387, and 11401 of, and to add Sections 241.2 and 366.5 to, the Welfare and Institutions Code, relating to the juvenile court.

[Approved by Governor September 10, 2004. Filed with Secretary of State September 10, 2004.]

LEGISLATIVE COUNSEL'S DIGEST

AB 129, Cohn. Juvenile court: dual status children.

Existing law provides that whenever a minor appears to come within the descriptions of both a dependent child and a ward of the juvenile court, the county probation department and the child protective services department shall, pursuant to a jointly developed written protocol, initially determine which status will serve the best interests of the minor and the protection of society.

This bill would authorize the probation department and the child welfare services department in any county to create a protocol which would permit a minor who meets specified criteria to be designated as both a dependent child and a ward of the juvenile court, as specified. A minor who is designated as both a dependent child and a ward of the juvenile court would be known as a dual status child.

This bill would also require the Judicial Council to collect and compile data, to evaluate the results of implementing the protocol, and to report its findings and any resulting recommendations to the Legislature within 2 years of the date participating counties first deem a child to be a dual status child.

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

SECTION 1. Section 241.1 of the Welfare and Institutions Code is amended to read:

241.1. (a) Whenever a minor appears to come within the description of both Section 300 and Section 601 or 602, the county probation department and the child welfare services department shall, pursuant to a jointly developed written protocol described in subdivision (b), initially determine which status will serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court with the petition that is filed on behalf of the minor, and the court shall determine which status



is appropriate for the minor. Any other juvenile court having jurisdiction over the minor shall receive notice from the court, within five calendar days, of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.

(b) The probation department and the child welfare services department in each county shall jointly develop a written protocol to ensure appropriate local coordination in the assessment of a minor described in subdivision (a), and the development of recommendations by these departments for consideration by the juvenile court. These protocols shall require, which requirements shall not be limited to, consideration of the nature of the referral, the age of the minor, the prior record of the minor's parents for child abuse, the prior record of the minor for out-of-control or delinquent behavior, the parents' cooperation with the minor's school, the minor's functioning at school, the nature of the minor's home environment, and the records of other agencies which have been involved with the minor and his or her family. The protocols also shall contain provisions for resolution of disagreements between the probation and child welfare services departments regarding the need for dependency or ward status and provisions for determining the circumstances under which a new petition should be filed to change the minor's status.

(c) Whenever a minor who is under the jurisdiction of the juvenile court of a county pursuant to Section 300, 601, or 602 is alleged to come within the description of Section 300, 601, or 602 by another county, the county probation department or child welfare services department in the county that has jurisdiction under Section 300, 601, or 602 and the county probation department or child welfare services department of the county alleging the minor to be within one of those sections shall initially determine which status will best serve the best interests of the minor and the protection of society. The recommendations of both departments shall be presented to the juvenile court in which the petition is filed on behalf of the minor, and the court shall determine which status is appropriate for the minor. In making their recommendation to the juvenile court, the departments shall conduct an assessment consistent with the requirements of subdivision (b). Any other juvenile court having jurisdiction over the minor shall receive notice from the court in which the petition is filed within five calendar days of the presentation of the recommendations of the departments. The notice shall include the name of the judge to whom, or the courtroom to which, the recommendations were presented.

(d) Except as provided in subdivision (e), nothing in this section shall be construed to authorize the filing of a petition or petitions, or the entry



of an order by the juvenile court, to make a minor simultaneously both a dependent child and a ward of the court.

(e) Notwithstanding the provisions of subdivision (d), the probation department and the child welfare services department, in consultation with the presiding judge of the juvenile court, in any county may create a jointly written protocol to allow the county probation department and the child welfare services department to jointly assess and produce a recommendation that the child be designated as a dual status child, allowing the child to be simultaneously a dependent child and a ward of the court. This protocol shall be signed by the chief probation officer, the director of the county social services agency, and the presiding judge of the juvenile court prior to its implementation. No juvenile court may order that a child is simultaneously a dependent child and a ward of the court pursuant to this subdivision unless and until the required protocol has been created and entered into. This protocol shall include:

(1) A description of the process to be used to determine whether the child is eligible to be designated as a dual status child.

(2) A description of the procedure by which the probation department and the child welfare services department will assess the necessity for dual status for specified children and the process to make joint recommendations for the court's consideration prior to making a determination under this section. These recommendations shall ensure a seamless transition from wardship to dependency jurisdiction, as appropriate, so that services to the child are not disrupted upon termination of the wardship.

(3) A provision for ensuring communication between the judges who hear petitions concerning children for whom dependency jurisdiction has been suspended while they are within the jurisdiction of the juvenile court pursuant to Section 601 or 602. A judge may communicate by providing a copy of any reports filed pursuant to Section 727.2 concerning a ward to a court that has jurisdiction over dependency proceedings concerning the child.

(4) A plan to collect data in order to evaluate the protocol pursuant to Section 241.2.

(5) Counties that exercise the option provided for in this subdivision shall adopt either an "on-hold" system as described in subparagraph (A) or a "lead court/lead agency" system as described in subparagraph (B). In no case shall there be any simultaneous or duplicative case management or services provided by both the county probation department and the child welfare services department. It is the intent of the Legislature that judges, in cases in which more than one judge is involved, shall not issue conflicting orders.



(A) In counties in which an on-hold system is adopted, the dependency jurisdiction shall be suspended or put on hold while the child is subject to jurisdiction as a ward of the court. When it appears that termination of the court's jurisdiction, as established pursuant to Section 601 or 602, is likely and that reunification of the child with his or her parent or guardian would be detrimental to the child, the county probation department and the child welfare services department shall jointly assess and produce a recommendation for the court regarding whether the court's dependency jurisdiction shall be resumed.

(B) In counties in which a lead court/lead agency system is adopted, the protocol shall include a method for identifying which court or agency will be the lead court/lead agency. That court or agency shall be responsible for case management, conducting statutorily mandated court hearings, and submitting court reports.

SEC. 2. Section 241.2 is added to the Welfare and Institutions Code, to read:

241.2. The Judicial Council shall collect and compile all of the data to be collected pursuant to paragraph (4) of subdivision (e) of Section 241.1 and shall prepare an evaluation of the results of the implementation of the protocol authorized in that subdivision for a representative sample of the counties that create a protocol pursuant to that provision. The Judicial Council shall report its findings and any resulting recommendations to the Legislature within two years of the date those counties first deem a child to be a dual status child. The Judicial Council shall review all proposed protocols to ensure that they provide for the collection of adequate, standardized data to perform these evaluations. In order to assist counties with data collection and evaluation, the Judicial Council may prepare model data collection and evaluation provisions that a county must include in their protocol.

SEC. 3. Section 366.5 is added to the Welfare and Institutions Code, to read:

366.5. The dependency jurisdiction shall be suspended for a child whom the juvenile court declares to be a dual status child based on the joint assessment and recommendation of the county probation department and the child welfare services department pursuant to subparagraph (A) of paragraph (5) of subdivision (e) of Section 241.1. The suspension shall be in effect while the child is a ward of the court. If the jurisdiction established pursuant to Section 601 or 602 is terminated without the need for continued dependency proceedings concerning the child, the juvenile court shall terminate the child's dual status. If the termination of the Section 601 or 602 jurisdiction is likely and reunification of the child with his or her parent or guardian would be detrimental to the child, the county probation department and child



welfare services department shall jointly assess and produce a recommendation regarding whether the court's dependency jurisdiction shall be resumed.

SEC. 4. Section 387 of the Welfare and Institutions Code is amended to read:

387. (a) An order changing or modifying a previous order by removing a child from the physical custody of a parent, guardian, relative, or friend and directing placement in a foster home, or commitment to a private or county institution, shall be made only after noticed hearing upon a supplemental petition.

(b) The supplemental petition shall be filed by the social worker in the original matter and shall contain a concise statement of facts sufficient to support the conclusion that the previous disposition has not been effective in the rehabilitation or protection of the child or, in the case of a placement with a relative, sufficient to show that the placement is not appropriate in view of the criteria in Section 361.3.

(c) Notwithstanding subdivision (a), dependency jurisdiction shall be resumed for a child as to whom dependency jurisdiction has been suspended pursuant to Section 366.5 if the jurisdiction established pursuant to Section 601 or 602 is terminated and if, after the issuance of a joint assessment pursuant to Section 366.5, the court determines that the child's dependency jurisdiction should be resumed.

(d) Upon the filing of the supplemental petition, the clerk of the juvenile court shall immediately set the same for hearing within 30 days, and the social worker shall cause notice thereof to be served upon the persons and in the manner prescribed by Sections 290.1 and 291.

(e) An order for the detention of the child pending adjudication of the petition may be made only after a hearing is conducted pursuant to Article 7 (commencing with Section 305).

SEC. 5. Section 11401 of the Welfare and Institutions Code is amended to read:

11401. Aid in the form of AFDC-FC shall be provided under this chapter on behalf of any child under the age of 18 years, except as provided in Section 11403, who meets the conditions of subdivision (a), (b), (c), (d), (e), or (f):

(a) The child has been relinquished, for purposes of adoption, to a licensed adoption agency, or the department, or the parental rights of either or both of his or her parents have been terminated after an action under the Family Code has been brought by a licensed adoption agency or the department, provided that the licensed adoption agency or the department, if responsible for placement and care, provides to those children all services as required by the department to children in foster care.



(b) The child has been removed from the physical custody of his or her parent, relative, or guardian as a result of a voluntary placement agreement or a judicial determination that continuance in the home would be contrary to the child's welfare and that, if the child was placed in foster care, reasonable efforts were made, consistent with Chapter 5 (commencing with Section 16500) of Part 4, to prevent or eliminate the need for removal of the child from his or her home and to make it possible for the child to return to his or her home, and any of the following applies:

(1) The child has been adjudged a dependent child of the court on the grounds that he or she is a person described by Section 300.

(2) The child has been adjudged a ward of the court on the grounds that he or she is a person described by Sections 601 and 602.

(3) The child has been detained under a court order, pursuant to Section 319 or 636, that remains in effect.

(4) The child's dependency jurisdiction has resumed pursuant to Section 387.

(c) The child has been voluntarily placed by his or her parent or guardian pursuant to Section 11401.1.

(d) The child is living in the home of a nonrelated legal guardian.

(e) The child has been placed in foster care under the federal Indian Child Welfare Act. Sections 11402, 11404, and 11405 shall not be construed as limiting payments to Indian children, as defined in the federal Indian Child Welfare Act, placed in accordance with that act.

(f) To be eligible for federal financial participation, all of the following conditions shall exist:

(1) The child meets the conditions of subdivision (b).

(2) The child has been deprived of parental support or care for any of the reasons set forth in Section 11250.

(3) The child has been removed from the home of a relative as defined in Section 233.90(c)(1) of Title 45 of the Code of Federal Regulations, as amended.

(4) The requirements of Sections 671 and 672 of Title 42 of the United States Code, as amended, have been met.

