

## DEPARTMENT OF SOCIAL SERVICES

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February 3, 1986

## ALL-COUNTY INFORMATION NOTICE NO. 1-07-86

TO: ALL COUNTY WELFARE DIRECTORS  
ALL COUNTY COUNSELS  
ALL COUNTY PROBATION DEPARTMENTS

SUBJECT: AB 836 (CHAPTER 440, STATUTES OF 1985, EFFECTIVE 01/01/86) REVISED  
DETENTION CRITERIA AND REVISIONS IN COURT ORDERED SERVICES IN  
CIRCUMSTANCES INVOLVING CHILDREN OF ABSENT PARENTS

AB 836 (Mojonnier) was signed by the Governor as Chapter 440, Statutes of 1985. This new law amends Welfare and Institutions Code (WIC) Sections 319 and 361, effective January 1, 1986. It contains provisions with significant implications for Child Welfare Services (CWS) programs, particularly those pertaining to services to children of absent parents.

WIC Section 319 is amended by the act to allow the juvenile court to continue detention of a minor if such action is a "matter of immediate and urgent necessity for the protection of the minor." This amendment gives more discretion to the court to handle cases in which the court fears returning the minor to the parent(s) is not in the child's protective interest, and yet the minor's situation does not meet one of the specific categories described in the section.

The amendments to Section 361 pertain to services mandates in circumstances involving children of absent parents. They describe certain circumstances under which family reunification services need not be ordered by the court upon removal of the child from the physical custody of the parent or guardian.

Specific details regarding these new provisions are as follows:

Subsection 361(b) is amended to describe additional circumstances under which a child may be removed by the juvenile court from the custody of the parent. This includes circumstances where a child is without provision for support and there is no parent available to maintain care, custody, and control of the child due to the parent's incarceration or institutionalization or unknown whereabouts. The court shall make a determination in such situations as to whether it was reasonable under the circumstances not to make any efforts to prevent or eliminate the removal of the child

from his or her home. Counties are encouraged under such circumstances to recommend to the court that it make a specific finding that it was reasonable not to make such efforts due to the emergency nature of the situation requiring immediate and urgent action for the protection of the child.

Provisions are also added to Subsection 361(f) to clarify that the court is not required to order family reunification services if it is established "by clear and convincing evidence", that any of the following conditions exist:

- (a) The location of the parent(s) is unknown and cannot be ascertained by a reasonably diligent search. If, however, the whereabouts of the parent(s) become known within six months, the court must order family reunification services at that time.
- (b) The parent is incarcerated or institutionalized, and the resources or policies and procedures of the facility do not permit such services. The court may order certain other services, when reasonable to do so, such as transportation services for visitation purposes or to facilitate contact between parent and child through collect telephone calls. Family Reunification Services must be ordered by the court upon the parent's release from incarceration or institutionalization.
- (c) The parent is suffering from a mental disability that makes him or her incapable of using such services.

Additionally, Subsection 361(f) is amended to specifically authorize the court to consider the results of past efforts at family reunification between the parent and any other of his or her children when making determinations under that subsection. This includes such determinations as to whether or not the parent should be ordered to attend counseling, treatment services, or parent or vocational training, whether the provision of specialized services should be ordered and whether family reunification services should be extended past the initial 12 months. Consideration of those past efforts at reunification is in addition to and in conjunction with consideration by the court of other evidence and/or pertinent factors of the case.

The department will be publishing proposed regulations pertaining in part to the provision of services to children of absent parents. Other major provisions of AB 836 will be implemented by the courts. In the meantime, if you have any questions regarding this subject, please contact your Adult and Family Services Operations Consultant at (916) 445-0623 or ATSS 485-0623.



LOREN D. SUTER  
Deputy Director  
Adult and Family Services Division

cc: CWDA

Assembly Bill No. 836

CHAPTER 440

An act to amend Sections 319 and 361 of the Welfare and Institutions Code, relating to juvenile court law.

[Approved by Governor July 30, 1985. Filed with Secretary of State July 31, 1985.]

LEGISLATIVE COUNSEL'S DIGEST

AB 836, Mojonnier. Juvenile court law.

Under existing law, at the initial hearing on a petition to adjudge a minor a dependent child of the juvenile court, the court is required to order the minor released from custody unless it finds any one of several circumstances to exist.

X This bill would enlarge these circumstances to include a finding that continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor.

Existing law requires the provision of child welfare services to a dependent child of the juvenile court who has been removed from parental custody and his or her parents or guardians for the purpose of facilitating reunification of the family, as specified.

X This bill would provide that services need not be ordered when the court finds any one of several specified facts to exist. It also would authorize a court to consider evidence of past efforts made to facilitate the reunification of a parent and any other of his or her children in making determinations with regard to reunification services.

Under existing law, a minor adjudged to be a dependent child of the juvenile court may not be taken from the physical custody of his or her parents or guardians unless the court finds clear and convincing evidence of any one of several specified circumstances, such as substantial danger to the minor's physical health or that the minor is suffering severe emotional damage, as specified.

X This bill also would allow removal from the physical custody of a parent or guardian upon a finding that the minor has been left without any provision for his or her support and there is no parent or guardian available to maintain care, custody, and control of the minor, due to specified circumstances.

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

SECTION 1. Section 319 of the Welfare and Institutions Code is amended to read:

319. At the initial petition hearing the court shall examine the minor, the minor's parents, guardians, or other persons having relevant knowledge and hear the relevant evidence as the minor, the

minor's parents or guardians, or their counsel desires to present.

The probation officer shall report to the court on the reasons why the minor has been removed from the parent's custody, the need, if any, for continued detention, and on the available services and the referral methods to be used which would facilitate the return of the minor to the custody of the minor's parents or guardians. The court shall order the release of the minor from custody unless it finds any of the following:

(a) There is a substantial danger to the physical health of the minor or the minor is suffering severe emotional damage, and there are no reasonable means by which the minor's physical or emotional health may be protected without removing the minor from the parents' or guardians' physical custody.

(b) The minor has violated an order of the juvenile court or has escaped from the commitment of the juvenile court.

(c) The minor is a threat to the person or property of another or his or her parent or guardian or responsible relative is likely to flee the jurisdiction of the court.

(d) The minor indicates an unwillingness to return home, if the minor has been sexually molested by a person residing in the home.

(e) Continued detention of the minor is a matter of immediate and urgent necessity for the protection of the minor.

Whenever a court orders a minor detained, the court shall state the facts on which the decision is based. The court shall also make a determination in the order as to whether reasonable services have been provided to aid the parents or guardians in order to prevent the need for removal of the child. Where the first contact with the family has occurred during an emergency situation in which the child could not safely remain at home, even with reasonable services being provided, the court shall make a finding that the lack of preplacement preventive efforts were reasonable.

When the minor is not released from custody the court may order that the minor shall be placed in an emergency shelter or other suitable licensed place or a place exempt from licensure designated by the juvenile court for a period not to exceed 15 judicial days.

SEC. 2. Section 361 of the Welfare and Institutions Code is amended to read:

361. (a) In all cases in which a minor is adjudged a dependent child of the court on the ground that the minor is a person described by Section 300, the court may limit the control to be exercised over the dependent child by any parent or guardian and shall by its order clearly and specifically set forth all such limitations. The limitations shall not exceed those necessary to protect the child.

(b) No dependent child shall be taken from the physical custody of his or her parents or guardians unless, upon the hearing, the juvenile court finds clear and convincing evidence of any of the following:

(1) There is a substantial danger to the physical health of the

minor or would be if the minor was returned home, and there are no reasonable means by which the minor's physical health can be protected without removing the minor from the minor's parents' or guardians' physical custody.

(2) The parent or guardian of the minor is unwilling to have physical custody of the minor, and the parent or guardian has been notified that if the minor remains out of their physical custody for the period specified in Section 366.25, the minor may be declared permanently free from their custody and control under Section 232 of the Civil Code.

(3) The minor is suffering severe emotional damage, as indicated by extreme anxiety, depression, withdrawal, or untoward aggressive behavior toward self or others, and there are no reasonable means by which the minor's emotional health may be protected without removing the minor from the minor's parents' or guardians' physical custody.

(4) The minor has been sexually abused and there are no reasonable means by which the minor can be protected from further sexual abuse without removing the minor from his or her parent or guardian or the minor does not wish to return to his or her parent or guardian.

(5) The minor, while under the age of three, was a victim of severe physical abuse by any parent or guardian seeking custody of the minor, or by any person sharing the home of the parent or guardian at the time he or she seeks custody of the minor. For the purposes of this section, "severe physical abuse" means any of the following: any single act of abuse which causes physical trauma of sufficient severity that, if left untreated, it would cause permanent physical disfigurement, permanent physical disability, or death; any single act of sexual abuse which causes significant bleeding, deep bruising, or significant external or internal swelling; or repeated acts of physical abuse, each of which causes bleeding, deep bruising, significant external or internal swelling, bone fracture, or unconsciousness. A minor may not be removed from the physical custody of his or her parents or guardians on the basis of a finding of severe physical abuse unless the probation officer has made such an allegation pursuant to Section 332.

(6) The minor has been left without any provision for his or her support and there is no parent or guardian available to maintain care, custody, and control of the minor due to either of the following circumstances:

(A) The minor's parent or guardian is incarcerated or institutionalized.

(B) The whereabouts of the parent or guardian is unknown and reasonable efforts to locate him or her have been unsuccessful.

The court shall state the facts on which the decision to remove the child is based. The court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for

removal of the child from his or her home or, if the minor is removed for one of the reasons stated in paragraph (6), whether it was reasonable under the circumstances not to make any such efforts. The court also shall inform the parent or parents of the provisions of Section 366.25 of this code and Section 232 of the Civil Code and shall specify one of the following: (A) if the minor is removed for one of the reasons stated in paragraphs (1) to (4), inclusive, of this subdivision, or because of severe physical abuse inflicted by a person other than the parent or parents pursuant to paragraph (5) of this subdivision, that the parent's or parents' parental rights may be terminated permanently under Section 366.25 of this code and Section 232 of the Civil Code if they are not able to resume custody within 12 months or (B) if the minor is removed because of severe physical abuse by a parent or parents as stated in paragraph (5) of this subdivision, the parental rights of the parent or parents inflicting that abuse may be terminated permanently under Section 366.25 of this code and Section 232 of the Civil Code if the court finds, upon completion of the investigation required under subdivision (e), that reunification with the parent or parents would be detrimental to the minor. In such a case, the court shall specifically advise the parent or parents of paragraph (8) of subdivision (a) of Section 232 of the Civil Code and of the consequences which may result pursuant to the provisions of that paragraph from matters proven in and found by the juvenile court.

(c) If the minor is taken from the physical custody of the minor's parents or guardians and unless the minor is placed with relatives, the minor shall be placed in foster care in the county of residence of the minor's parents or guardians in order to facilitate reunification of the family.

In the event that there are no appropriate placements available in the parents' or guardians' county, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parents' or guardians' community of residence.

Nothing in this section shall be interpreted as requiring multiple disruptions of the minor's placement corresponding to frequent changes of residence by the parents or guardians. In determining whether the minor should be moved, the probation officer will take into consideration the potential harmful effects of disrupting the placement on the minor and the parents' or guardians' reason for the move.

(d) Whenever the probation officer must change the placement of the minor and is unable to find a suitable placement within the county and must place the minor outside the county, no such placement shall be made until he or she has served written notice on the parents or guardians in the same manner as provided in Section 366 at least 14 days prior to the placement unless the child's health or well-being is endangered by delaying the action or would be endangered if prior notice were given. The notice shall state the

reasons which require placement outside the county. The parents or guardians may object to the placement not later than seven days after receipt of the notice and, upon objection the court shall hold a hearing not later than five days after the objection and prior to the placement. The court shall order out-of-county placement if it finds that the minor's particular needs require placement outside the county.

(e) The court shall make all the findings required by subdivision (a) of Section 366 in either of the following circumstances:

(1) The minor has been taken from the custody of his or her parents or guardians and has been living in an out-of-home placement pursuant to Section 319.

(2) The minor has been living in a voluntary out-of-home placement pursuant to Section 16507.4.

(f) (1) In any case where a minor is removed from a parent's or guardian's custody for one of the reasons stated in paragraphs (1) to (4), inclusive, or in paragraph (6), of subdivision (b), or because of severe physical abuse inflicted by a person other than the parent or parents pursuant to paragraph (5) of subdivision (b), the juvenile court shall order the probation officer to provide child welfare services to the minor and the minor's parents or guardians for the purpose of facilitating reunification of the family within a maximum time period not to exceed 12 months. (When counseling or other treatment services are ordered, the parent shall be ordered to participate in those services, unless the parent's participation is deemed by the court to be inappropriate or potentially detrimental to the child. Services may be extended up to an additional six months if it can be shown that the objectives of the service plan can be achieved within the extended time period. Physical custody of the minor by the parents or guardians during the 18-month period shall not serve to interrupt the running of the period. In any case where a minor is removed from a parent's or guardian's custody because of severe abuse by a parent or parents as stated in paragraph (5) of subdivision (b), the juvenile court shall order the probation officer to provide appropriate reunification services except unsupervised visits and trial placements in the home and to investigate the circumstances surrounding the severe physical abuse of the minor and to prepare a report which advises the court whether there are circumstances which, in spite of the severe physical abuse, indicate that it would not be detrimental to the minor to continue to attempt reunification of the family. The probation officer shall provide the parent or parents with a copy of the report, including his or her conclusion that it would or would not be detrimental to the minor to continue to attempt reunification of the family, at least 14 days before the hearing. This report shall be submitted to the juvenile court at the first review hearing required by subdivision (a) of Section 366. The report shall include a statement of the circumstances relied upon in drawing the conclusion that it would or

would not be detrimental to the minor to continue to attempt reunification of the family. If the report concludes that reunification would be detrimental to the minor, the report shall make recommendations concerning an appropriate permanent plan for the minor.

If the parent or guardian is incarcerated or institutionalized, reasonable services may include, but shall not be limited to, all of the following:

- (A) Maintaining contact between parent and child through collect phone calls.
- (B) Transportation services where appropriate.
- (C) Visitation services where appropriate.
- (D) Reasonable services to extended family members or foster parents providing care for the child if the services are not detrimental to the child.

An incarcerated parent may be required to attend counseling, parenting classes, or vocational training programs as part of the service plan if these programs are available.

(2) Services need not be ordered when the court finds, by clear and convincing evidence, any of the following:

- (A) That the whereabouts of the parent is unknown. A finding pursuant to this subparagraph shall be supported by an affidavit or by proof that a reasonably diligent search has failed to locate the parent. The posting or publication of notices is not required in such a search.
- (B) That the parent is incarcerated or institutionalized and the court finds that the resources or policies and procedures of the facility do not permit the provision of the services.
- (C) That the parent is suffering from a mental disability that is described in paragraph (5) or (6) of subdivision (a) of Section 232 of the Civil Code and that renders him or her incapable of utilizing those services.

(3) If the whereabouts of a parent become known within six months of the out-of-home placement of the minor, the court shall order the probation officer to provide family reunification services in accordance with this subdivision.

When a parent is released from incarceration or institutionalization, the court shall order the probation officer to provide family reunification services in accordance with this subdivision.

(4) In making a determination pursuant to this subdivision, in addition to other evidence, the court may take into consideration evidence of past efforts made to facilitate the reunification of the parent and any other of his or her children.