STATE OF CALIFORNIA
AUTHENTICATED
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LEGISLATIVE COUNSEL BUREAU

State of California

WELFARE AND INSTITUTIONS CODE

Section 361.2

361.2. (a) When a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child. The fact that the parent is enrolled in a certified substance abuse treatment facility that allows a dependent child to reside with his or her parent shall not be, for that reason alone, prima facie evidence that placement with that parent would be detrimental.

(b) If the court places the child with that parent it may do any of the following:

(1) Order that the parent become legal and physical custodian of the child. The court may also provide reasonable visitation by the noncustodial parent. The court shall then terminate its jurisdiction over the child. The custody order shall continue unless modified by a subsequent order of the superior court. The order of the juvenile court shall be filed in any domestic relation proceeding between the parents.

(2) Order that the parent assume custody subject to the jurisdiction of the juvenile court and require that a home visit be conducted within three months. In determining whether to take the action described in this paragraph, the court shall consider any concerns that have been raised by the child's current caregiver regarding the parent. After the social worker conducts the home visit and files his or her report with the court, the court may then take the action described in paragraph (1), (3), or this paragraph. However, nothing in this paragraph shall be interpreted to imply that the court is required to take the action described in this paragraph as a prerequisite to the court taking the action described in either paragraph (1) or (3).

(3) Order that the parent assume custody subject to the supervision of the juvenile court. In that case the court may order that reunification services be provided to the parent or guardian from whom the child is being removed, or the court may order that services be provided solely to the parent who is assuming physical custody in order to allow that parent to retain later custody without court supervision, or that services be provided to both parents, in which case the court shall determine, at review hearings held pursuant to Section 366, which parent, if either, shall have custody of the child.

(c) The court shall make a finding either in writing or on the record of the basis for its determination under subdivisions (a) and (b).

(d) Part 6 (commencing with Section 7950) of Division 12 of the Family Code shall apply to the placement of a child pursuant to paragraphs (1) and (2) of subdivision (e).

(e) When the court orders removal pursuant to Section 361, the court shall order the care, custody, control, and conduct of the child to be under the supervision of the social worker who may place the child in any of the following:

(1) The home of a noncustodial parent as described in subdivision (a), regardless of the parent's immigration status.

(2) The approved home of a relative, regardless of the relative's immigration status.

(3) The approved home of a nonrelative extended family member as defined in Section 362.7.

(4) The approved home of a resource family as defined in Section 16519.5.

(5) A foster home considering first a foster home in which the child has been placed before an interruption in foster care, if that placement is in the best interest of the child and space is available.

(6) A home or facility in accordance with the federal Indian Child Welfare Act (25 U.S.C. Sec. 1901 et seq.).

(7) A suitable licensed community care facility, except a runaway and homeless youth shelter licensed by the State Department of Social Services pursuant to Section 1502.35 of the Health and Safety Code.

(8) With a foster family agency, as defined in subdivision (g) of Section 11400 and paragraph (4) of subdivision (a) of Section 1502 of the Health and Safety Code, to be placed in a suitable family home certified or approved by the agency, with prior approval of the county placing agency.

(9) A child of any age who is placed in a community care facility licensed as a group home for children or a short-term residential therapeutic program as defined in subdivision (ad) of Section 11400 and paragraph (18) of subdivision (a) of Section 1502 of the Health and Safety Code, shall have a case plan that indicates that placement is for purposes of providing short term, specialized, and intensive treatment for the child, the case plan specifies the need for, nature of, and anticipated duration of this treatment, pursuant to paragraph (2) of subdivision (c) of Section 16501.1, and the case plan includes transitioning the child to a less restrictive environment and the projected timeline by which the child will be transitioned to a less restrictive environment. If the placement is longer than six months, the placement shall be documented consistent with paragraph (3) of subdivision (a) of Section 16501.1 and shall be approved by the deputy director or director of the county child welfare department.

(A) A child under six years of age shall not be placed in a community care facility licensed as a group home for children, or a short-term residential therapeutic program except under the following circumstances:

(i) When the facility meets the applicable regulations adopted under Section 1530.8 of the Health and Safety Code and standards developed pursuant to Section 11467.1 of this code, and the deputy director or director of the county child welfare department has approved the case plan.

(ii) The short term, specialized, and intensive treatment period shall not exceed 120 days, unless the county has made progress toward or is actively working toward implementing the case plan that identifies the services or supports necessary to transition the child to a family setting, circumstances beyond the county's control have prevented the county from obtaining those services or supports within the timeline documented in the case plan, and the need for additional time pursuant to the case plan is documented by the caseworker and approved by a deputy director or director of the county child welfare department.

(iii) To the extent that placements pursuant to this paragraph are extended beyond an initial 120 days, the requirements of clauses (i) and (ii) shall apply to each extension. In addition, the deputy director or director of the county child welfare department shall approve the continued placement no less frequently than every 60 days.

(iv) In addition, when a case plan indicates that placement is for purposes of providing family reunification services, the facility shall offer family reunification services that meet the needs of the individual child and his or her family, permit parents to have reasonable access to their children 24 hours a day, encourage extensive parental involvement in meeting the daily needs of their children, and employ staff trained to provide family reunification services. In addition, one of the following conditions exists:

(I) The child's parent is also under the jurisdiction of the court and resides in the facility.

(II) The child's parent is participating in a treatment program affiliated with the facility and the child's placement in the facility facilitates the coordination and provision of reunification services.

(III) Placement in the facility is the only alternative that permits the parent to have daily 24-hour access to the child in accordance with the case plan, to participate fully in meeting all of the daily needs of the child, including feeding and personal hygiene, and to have access to necessary reunification services.

(B) A child who is 6 to 12 years of age, inclusive, may be placed in a community care facility licensed as a group home for children or a short-term residential therapeutic program under the following conditions.

(i) The short-term, specialized, and intensive treatment period shall not exceed six months, unless the county has made progress or is actively working toward implementing the case plan that identifies the services or supports necessary to transition the child to a family setting, circumstances beyond the county's control have prevented the county from obtaining those services or supports within the timeline documented in the case plan, and the need for additional time pursuant to the case plan is documented by the caseworker and approved by a deputy director or director of the county child welfare department.

(ii) To the extent that placements pursuant to this paragraph are extended beyond an initial six months, the requirements of this subparagraph shall apply to each extension. In addition, the deputy director or director of the county child welfare department shall approve the continued placement no less frequently than every 60 days.

(10) Any child placed in a short-term residential therapeutic program shall be either of the following:

(A) A child who has been assessed as meeting one of the placement requirements set forth in subdivisions (b) and (e) of Section 11462.01.

(B) A child under 6 years of age who is placed with his or her minor parent or for the purpose of reunification pursuant to clause (iv) of subparagraph (A) of paragraph (9).

(11) Nothing in this subdivision shall be construed to allow a social worker to place any dependent child outside the United States, except as specified in subdivision (f).

(f) (1) A child under the supervision of a social worker pursuant to subdivision (e) shall not be placed outside the United States prior to a judicial finding that the placement is in the best interest of the child, except as required by federal law or treaty.

(2) The party or agency requesting placement of the child outside the United States shall carry the burden of proof and shall show, by clear and convincing evidence, that placement outside the United States is in the best interest of the child.

(3) In determining the best interest of the child, the court shall consider, but not be limited to, the following factors:

(A) Placement with a relative.

(B) Placement of siblings in the same home.

(C) Amount and nature of any contact between the child and the potential guardian or caretaker.

(D) Physical and medical needs of the dependent child.

(E) Psychological and emotional needs of the dependent child.

(F) Social, cultural, and educational needs of the dependent child.

(G) Specific desires of any dependent child who is 12 years of age or older.

(4) If the court finds that a placement outside the United States is, by clear and convincing evidence, in the best interest of the child, the court may issue an order authorizing the social worker to make a placement outside the United States. A child subject to this subdivision shall not leave the United States prior to the issuance of the order described in this paragraph.

(5) For purposes of this subdivision, “outside the United States” shall not include the lands of any federally recognized American Indian tribe or Alaskan Natives.

(6) This subdivision shall not apply to the placement of a dependent child with a parent pursuant to subdivision (a).

(g) (1) If the child is taken from the physical custody of the child’s parent or guardian and unless the child is placed with relatives, the child shall be placed in foster care in the county of residence of the child’s parent or guardian in order to facilitate reunification of the family.

(2) In the event that there are no appropriate placements available in the parent’s or guardian’s county of residence, a placement may be made in an appropriate place in another county, preferably a county located adjacent to the parent’s or guardian’s community of residence.

(3) Nothing in this section shall be interpreted as requiring multiple disruptions of the child's placement corresponding to frequent changes of residence by the parent or guardian. In determining whether the child should be moved, the social worker shall take into consideration the potential harmful effects of disrupting the placement of the child and the parent's or guardian's reason for the move.

(4) When it has been determined that it is necessary for a child to be placed in a county other than the child's parent's or guardian's county of residence, the specific reason the out-of-county placement is necessary shall be documented in the child's case plan. If the reason the out-of-county placement is necessary is the lack of resources in the sending county to meet the specific needs of the child, those specific resource needs shall be documented in the case plan.

(5) When it has been determined that a child is to be placed out of county either in a group home or with a foster family agency for subsequent placement in a certified foster family home, and the sending county is to maintain responsibility for supervision and visitation of the child, the sending county shall develop a plan of supervision and visitation that specifies the supervision and visitation activities to be performed and specifies that the sending county is responsible for performing those activities. In addition to the plan of supervision and visitation, the sending county shall document information regarding any known or suspected dangerous behavior of the child that indicates the child may pose a safety concern in the receiving county. Upon implementation of the Child Welfare Services Case Management System, the plan of supervision and visitation, as well as information regarding any known or suspected dangerous behavior of the child, shall be made available to the receiving county upon placement of the child in the receiving county. If placement occurs on a weekend or holiday, the information shall be made available to the receiving county on or before the end of the next business day.

(6) When it has been determined that a child is to be placed out of county and the sending county plans that the receiving county shall be responsible for the supervision and visitation of the child, the sending county shall develop a formal agreement between the sending and receiving counties. The formal agreement shall specify the supervision and visitation to be provided the child, and shall specify that the receiving county is responsible for providing the supervision and visitation. The formal agreement shall be approved and signed by the sending and receiving counties prior to placement of the child in the receiving county. In addition, upon completion of the case plan, the sending county shall provide a copy of the completed case plan to the receiving county. The case plan shall include information regarding any known or suspected dangerous behavior of the child that indicates the child may pose a safety concern to the receiving county.

(h) Whenever the social worker must change the placement of the child and is unable to find a suitable placement within the county and must place the child outside the county, the placement shall not be made until he or she has served written notice on the parent or guardian, the child's attorney, and, if the child is 10 years of age or older, on the child, 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 that require placement outside the county. The child or parent or guardian 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 child's particular needs require placement outside the county.

(i) If the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether the family ties and best interest of the child will be served by granting visitation rights to the child's grandparents. The court shall clearly specify those rights to the social worker.

(j) If the court has ordered removal of the child from the physical custody of his or her parents pursuant to Section 361, the court shall consider whether there are any siblings under the court's jurisdiction, or any nondependent siblings in the physical custody of a parent subject to the court's jurisdiction, the nature of the relationship between the child and his or her siblings, the appropriateness of developing or maintaining the sibling relationships pursuant to Section 16002, and the impact of the sibling relationships on the child's placement and planning for legal permanence.

(k) (1) An agency shall ensure placement of a child in a home that, to the fullest extent possible, best meets the day-to-day needs of the child. A home that best meets the day-to-day needs of the child shall satisfy all of the following criteria:

(A) The child's caregiver is able to meet the day-to-day health, safety, and well-being needs of the child.

(B) The child's caregiver is permitted to maintain the least restrictive family setting that promotes normal childhood experiences and that serves the day-to-day needs of the child.

(C) The child is permitted to engage in reasonable, age-appropriate day-to-day activities that promote normal childhood experiences for the foster child.

(2) The foster child's caregiver shall use a reasonable and prudent parent standard, as defined in paragraph (2) of subdivision (a) of Section 362.04, to determine day-to-day activities that are age appropriate to meet the needs of the child. Nothing in this section shall be construed to permit a child's caregiver to permit the child to engage in day-to-day activities that carry an unreasonable risk of harm, or subject the child to abuse or neglect.

(*l*) This section shall become operative on January 1, 2017.

(Amended (as added by Stats. 2015, Ch. 773, Sec. 48) by Stats. 2016, Ch. 612, Sec. 70.5. (AB 1997) Effective January 1, 2017.)